NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

PREAMBLE

1. Sections Affected **Rulemaking Action**

R3-2-906 Amend

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

Authorizing statute: A.R.S. § 3-710(F).

Implementing statute: A.R.S. § 3-727.

3. The effective date of the rules:

October 7, 1999

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 880, March 26, 1999.
Notice of Proposed Rulemaking: 5 A.A.R. 2146, July 9, 1999.

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

Name: Shirley Conard

Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: shirley.conard@agric.state.az.us

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

H.B. 2068, passed in the 1999 legislative session, changed the ambient temperature requirement in A.R.S. § 3-727(A) for the refrigeration of shell eggs for human consumption from 60^{o} to 45^{o}. This rulemaking reflects that proposed statutory change and makes minor punctuation changes.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None.

8. 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.

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

The 1999 legislative session enacted legislation requiring that dealers, manufacturers, and retailers keep shell eggs for human consumption under refrigeration at an ambient temperature not higher than 45°F. This rulemaking reflects that legislation.

A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

Other than administrative costs for promulgating this rulemaking, there is no quantifiable beneficial impact to the Department for the implementation and enforcement of this rulemaking.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Dealers, manufacturers and retailers are required by law to refrigerate shell eggs at an ambient temperature not higher than 45°F., this rulemaking does not economically affect these entities.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

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

Except for minor punctuation, grammatical, and clarification changes requested by G.R.R.C. staff, no substantive changes were made.

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

None.

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

None.

13. Incorporations by reference and their location in the rules:

None.

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

No.

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

Sections

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

R3-2-906. Violations and Penalties

A. ~~Dealers, producer-dealers, manufacturers, producers and retailers may~~ A dealer, producer-dealer, manufacturer, producer, or retailer, at each individual location, shall be subject to ~~civil penalty~~ the penalties in subsection(B) if any of the following actions occur~~.~~: ~~At the retail level, violations shall accrue at each individual location and not at the parent firm.~~

1. Category A~~.~~:
   a. Making a false or misleading statement relating to advertising ~~and~~ or selling eggs and egg products~~.~~;
   b. Acting as a dealer, producer-dealer, producer, or manufacturer without a valid license;
   c. ~~Allowing~~ Selling shell eggs ~~to be sold~~ with incorrect or no date codes;
   d. Selling grade AA or grade A eggs after the expiration date on the carton, case, or container. ~~A violation for retailers will not be issued for grade AA or grade A eggs~~ The Department shall not penalize a retailer under this subsection if not more than 10% or 60 dozen of the eggs, whichever ~~are~~ is less, are ~~being~~ offered for sale after the expiration date on the carton, case, or container, ~~pursuant to~~ under A.R.S. § 3-715(K);
   e. Failing to maintain records and reports required by this Article;
   f. Failing to label a carton~~s~~, case~~s~~, ~~and~~ or container~~s~~ with ~~one~~ 1 size, ~~one~~ 1 quality grade, and ~~one~~ 1 brand name;
   g. Moving eggs, ~~or their~~ an egg case~~s~~, carton~~s~~, or container~~s to which~~ with a warning ~~notice hold~~ tag or notice, ~~has been placed~~ or removing a warning ~~notice hold~~ tag or notice ~~from the place where it is affixed~~ without permission from the Director;
   h. Refusing to submit egg~~s~~ or egg product~~s~~, ~~or a~~ an egg case, carton, container, subcontainer, lot, load, or display of eggs to inspection; or
   i. Refusing to stop, at the request of an authorized representative of the Department, any vehicle transporting eggs or egg products.
2. Category B~~.~~:
   a. Extending the expiration date of shell eggs as ~~prescribed by~~ defined in A.R.S. § 3-701(10); or
   b. Advertising, representing, or selling out-of-state eggs as local eggs.
3. Category C~~.~~:
   a. Failing to ensure that shell eggs for human consumption are kept refrigerated at an ambient temperature not higher than ~~60o Fahrenheit.~~ 45oF.;
   b. Failing to ensure that frozen egg products for human consumption, ~~which are~~ labeled for storage at ~~zero degrees~~ 0oF. ~~Fahrenheit~~ or below, are kept under refrigeration at a temperature not higher than ~~zero degrees~~ ~~Fahrenheit.~~ 0oF.; or
   c. Failing to ensure that liquid egg products for human consumption are kept refrigerated at a temperature not higher than 40^{o}F. ~~Fahrenheit.~~

B. ~~Violations~~ Any violation of this Article or of ~~Title 3, Chapter 5~~ 3 A.R.S. 5, Article 1 ~~of the Arizona Revised Statutes that are~~ not listed in subsection (A) ~~shall be classified as~~ is subject to a Category A civil penalty.

C. ~~Pursuant to~~ Under A.R.S. § 3-739, the civil ~~penalties~~ penalty for a violation of subsection (A) is: ~~shall be based upon the categories listed in subsection (A). Additional violations in each category shall be subject to the last civil penalty given in that category.~~

NUMBER OF VIOLATIONS	CATEGORY A	CATEGORY B	CATEGORY C
1 (Notice)	Warning	Warning	Warning
2	$50.00	$50.00	$100.00
3	$100.00	$100.00	$200.00
4		$150.00	$400.00
5		$200.00	$500.00
6		$250.00	
7		$300.00	

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R9-22-101	Amend
R9-22-109	Amend
Article 9	Amend
R9-22-901	Repeal
R9-22-901	New Section
R9-22-902	Repeal
R9-22-902	New Section
R9-22-903	Repeal
R9-22-904	Repeal
R9-22-905	Repeal
R9-22-906	Repeal
R9-22-907	Repeal

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

Authorizing statute: A.R.S. §§ 36-2903.01(H) and 36-2905.01(G)

Implementing statute: A.R.S. §§ 36-2905.01 and 36-2905.02

3. The effective date of the rules:

October 8, 1999

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 621, February 26, 1999.
Notice of Proposed Rulemaking: 5 A.A.R. 1774-1787, June 11, 1999

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

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS, Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

Title 9, Chapter 22, Article 9, Quality Control, defines the requirements that the Administration and the county eligibility departments use during the quality control sample review process and the quality control case analysis process. The 7 Sections in the current Article have been combined into 2 Sections. Like concepts have been grouped together to provide additional clarity and conciseness to the rule language.

R9-22-901, Quality Control Sample Review explains requirements regarding the Administration's evaluation of a statistically valid sample of case records, under A.R.S. § 36-2905.01, of a county eligibility department's eligibility determinations. The Section explains the various types of certification errors, the process used for challenges by the county eligibility department, and corrective action plans.

R9-22-902, Quality Control Case Analysis explains requirements regarding the Administration's evaluation of individual case records, under A.R.S. § 36-2905.02, of a county eligibility department's eligibility determinations.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

Not applicable.

8. 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.

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

It is anticipated that the private sector, including small businesses, will not be impacted because the changes pertain to the quality control sample review process and the quality control case analysis process between the Administration and county eligibility departments. The Administration and the county eligibility departments will benefit because the changes provide greater flexibility and clarification to the rule language.

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

	Rule Citation	Change
1.	General	The Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, and punctuation changes throughout the proposed rules.
2.	R9-22-901(A)(2)(f)	Quality control rules do not specify eligibility criteria but can cross-reference eligibility rules. The Administration amended R9-22-901(A)(2)(f) by striking the remainder of the sentence after "HMO" and inserting "as specified in R9-22-1611".
3.	R9-22-901(B)(1)(a)	The Administration added a definition of "Quality control case report" to provide clarification to the rule.
4.	R9-22-901(C)(1)	The Administration added a definition of "Statewide summary report" to provide clarification to the rule.

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

The Administration received no oral comments at a video-conference public hearing in Phoenix, Flagstaff, and Tucson. The Administration received written comments from Maricopa County and Coconino County, and responded to the comments in telephone conference calls with the commentors. Maricopa County described the utilization of the clear and convincing standard of proof of fraud in R9-22-902(B)(1) and (2) as unlawful, discriminatory, and inappropriate, and requested that the Administration replace it with the standard of "preponderance of the evidence". A Pima County Superior Court judge determined that AHCCCS' use of the "clear and convincing" standard for establishing fraud was improper in that case. However, the case was not reviewed by the Court of Appeals, and the ruling has no value as a legal precedent. Despite other legal challenges, the Courts have not required AHCCCS to adopt the "preponderance of the evidence" standard. Additionally, the "clear and convincing" standard is used in fraud-related civil matters.

Coconino County questioned the factors identified as certification errors, and commented on the Administration's timeframe for reporting a certification error to a county. The Administration clarified the quality control process in a discussion with county staff, and amended the language in R9-22-901(A)(2)(f) to provide clarification.

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

Not applicable.

13. Incorporations by reference and their location in the rules:

None.

14. Was this rule previously adopted as an emergency rule? If so, please indicate the Register citation:

No.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

ARTICLE 1. DEFINITIONS

Sections
R9-22-101. Location of Definitions
R9-22-109. Quality Control Related Definitions

ARTICLE 9. QUALITY CONTROL ~~REVIEW AND ANALYSIS~~

Sections
~~R9-22-901.~~ ~~Definitions~~ Repealed
R9-22-901. Quality Control Sample Review
~~R9-22-902.~~ ~~Certification Errors~~ Repealed
R9-22-902. Quality Control Case Analysis
~~R9-22-903.~~ ~~County responsibilities~~ Repealed
~~R9-22-904.~~ ~~Quality control review challenge process~~ Repealed
~~R9-22-905.~~ ~~Quality control analysis challenge process~~ Repealed
~~R9-22-906.~~ ~~Corrective Action Plans for Certification Errors~~ Repealed
~~R9-22-907.~~ ~~Recovery of cost for covered services~~ Repealed

ARTICLE 1. DEFINITIONS

R9-22-101. Location of Definitions

A. Location of definitions. Definitions applicable to Chapter 22 are found in the following:

Definition	Section or Citation
1. "210"	R9-22-114
2. "1931"	R9-22-114
3. "1-time income"	R9-22-116
4. "1st-party liability"	R9-22-110
5. "3-month income period"	R9-22-116
6. "3rd-party"	R9-22-110
7. "3rd-party liability"	R9-22-110
8. "Accommodation"	R9-22-107
9. "Act"	R9-22-114
10. "Acute mental health services"	R9-22-112
11. "Adequate notice"	R9-22-114
12. "Administration"	R9-22-106, R9-22-114, and A.R.S. § 36-2901
13. "Adverse action"	R9-22-114
14. "AEC"	R9-22-117
15. "Affiliated corporate organization"	R9-22-106
16. "Aged"	R9-22-115
17. "Aggregate"	R9-22-107
18. "AHCCCS"	R9-22-101
19. "AHCCCS-disqualified dependent"	R9-22-101
20. "AHCCCS-disqualified spouse"	R9-22-101
~~19.~~21. "AHCCCS hearing officer"	R9-22-108
~~20.~~22. "AHCCCS inpatient hospital day or days of care"	R9-22-107
~~21.~~23. "Ambulance"	R9-22-102
~~22.~~24. "Ancillary department"	R9-22-107
~~23.~~25. "Annual enrollment choice"	R9-22-117
~~24.~~26. "Appeal"	R9-22-108
~~25.~~27. "Appellant"	R9-22-114

~~26.~~28.“Applicant”	R9-22-101
~~27.~~29.“Application”	R9-22-101
~~28.~~30.“Assignment”	R9-22-101
~~29.~~31.“Assistance unit”	R9-22-114
~~30.~~32.“Authorized representative”	R9-22-114
~~31.~~33.“Auto-assignment algorithm”	R9-22-117
~~32.~~34.“Baby Arizona”	R9-22-114
~~33.~~35.“BHS”	R9-22-114
~~34.~~36.“Billed charges”	R9-22-107
~~35.~~37.“Blind”	R9-22-115
~~36.~~38.“Bona fide funeral agreement”	R9-22-114
~~37.~~39.“Burial plot”	R9-22-114
~~38.~~40.“Capital costs”	R9-22-107
~~39.~~41.“Capped fee-for-service”	R9-22-101
~~40.~~42.“Caretaker relative”	R9-22-114
~~41.~~43.“Case record”	R9-22-101
~~42.~~44.“Cash assistance”	R9-22-114
~~43.~~45.“Categorically eligible”	A.R.S. § 36-2901(4)(b) and 36-2934
46. “Certification”	R9-22-109
~~44.~~47.“Certification error”	~~A.R.S. § 36-2905.01~~ R9-22-109
~~45.~~48.“Certification period”	R9-22-115 and R9-22-116
~~46.~~49.“Child welfare agency”	R9-22-114
~~47.~~50.“Clean claim”	A.R.S. § 36-2904
~~48.~~51.“CMDP”	R9-22-117
~~49.~~52.“Continuous stay”	R9-22-101
~~50.~~53.“Contract”	R9-22-101
~~51.~~54.“Contractor”	R9-22-101
~~52.~~55.“Contractor of record”	R9-22-101
~~53.~~56.“Copayment”	R9-22-107
57. “Corrective action plan”	R9-22-109
~~54.~~58.“Cost-to-charge ratio”	R9-22-107
~~55.~~59.“Countable income”	R9-22-116
60. “County eligibility department”	R9-22-109
~~56.~~61.“County eligibility staff”	R9-22-116
~~57.~~62.“Covered charges”	R9-22-107
~~58.~~63.“Covered services”	R9-22-102
~~59.~~64.“CPT”	R9-22-107
~~60.~~65.“CRS”	R9-22-114
~~61.~~66.“Date of determination”	R9-22-116
~~62.~~67.“Date of discontinuance”	R9-22-116
~~63.~~68.“Date of enrollment action”	R9-22-117
~~64.~~69.“Day”	R9-22-101
~~65.~~70.“DCSE”	R9-22-114
~~66.~~71.“Deductible medical expense”	R9-22-116
~~67.~~72.“Deemed application date”	R9-22-116
~~68.~~73.“Dentures”	R9-22-102
~~69.~~74.“Department”	R9-22-114
~~70.~~75.“Dependent child”	R9-22-114 and R9-22-116
~~71.~~76.“DES”	R9-22-101
~~72.~~77.“Determination”	R9-22-116
~~73.~~78.“Diagnostic services”	R9-22-102
~~74.~~79.“Disabled”	R9-22-115
~~75.~~80.“Discontinuance”	R9-22-116

~~76.~~81.“Discussions”	R9-22-106
~~77.~~82.“Disenrollment”	R9-22-117
~~78.~~83.“District Medical Consultant”	R9-22-114
~~79.~~84.“DME”	R9-22-102
~~80.~~85.“DRI inflation factor”	R9-22-107
~~81.~~86.“E.P.S.D.T. services”	R9-22-102
~~82.~~87.“EAC”	R9-22-101
~~83.~~88.“Earned income”	R9-22-116
~~84.~~89.“Educational income”	R9-22-116
~~85.~~90.“ELIC”	R9-22-101
~~86.~~91.“Eligibility determination date”	R9-22-114
~~87.~~92.“Eligible assistance children”	A.R.S. § 36-2905.03(B)
~~88.~~93.“Eligible applicant”	A.R.S. § 36-2901(4)
~~89.~~94.“Eligible low income children”	A.R.S. § 36-2905.03(C) and (D)
~~90.~~95. “Emancipated minor”	R9-22-116
~~91.~~96.“Emergency medical condition”	42 U.S.C. 1396b(v)
~~92.~~97.“Emergency medical services”	R9-22-102
~~93.~~98.“Encounter”	R9-22-107
~~94.~~99.“Enrollment”	R9-22-117
~~95.~~100.“Enumeration”	R9-22-101
~~96.~~101.“Equity”	R9-22-101
~~97.~~102.“Expressly emancipated minor”	R9-22-116
~~98.~~103.“FAA” or “Family Assistance Administration”	R9-22-114
~~99.~~104.“Facility”	R9-22-101
~~100.~~105.“Factor”	R9-22-101
~~101.~~106.“FBR”	R9-22-101
~~102.~~107.“Federal Benefit Rate”	R9-22-101
~~103.~~108.“Federal emergency services program”	R9-22-101
~~104.~~109.“FESP”	R9-22-101
~~105.~~110.“Foster care maintenance payment”	R9-22-114
~~106.~~111.“Foster child”	R9-22-114
~~107.~~112.“FPL”	R9-22-114
~~108.~~113.“FQHC”	R9-22-101
114.“Fraudulent information”	R9-22-109
~~109.~~115.“Grievance”	R9-22-108
~~110.~~116.“GSA”	R9-22-101
~~111.~~117.“Guardian”	R9-22-116
~~112.~~118.“Head-of-household”	R9-22-116
~~113.~~119.“Hearing aid”	R9-22-102
~~114.~~120.“Home health services”	R9-22-102
~~115.~~121.“Homebound”	R9-22-114
~~116.~~122.“Hospital”	R9-22-101
~~117.~~123.“Hospitalized”	R9-22-116
~~118.~~124.“ICU”	R9-22-107
~~119.~~125.“IHS”	R9-22-117
~~120.~~126.“Income”	R9-22-114 and R9-22-116
~~121.~~127.“Income-in-kind”	R9-22-116
~~122.~~128.“Indigent”	A.R.S. § 11-297
~~123.~~129.“Inmate of a public institution”	42 CFR 435.1009
~~124.~~130.“Interested party”	R9-22-106
~~125.~~131.“Interim change”	R9-22-116
~~126.~~132.“JTPA”or “Job Training Partnership Act”	R9-22-114
~~127.~~133.“License” or “licensure”	R9-22-101
~~128.~~134.“Liquid assets”	R9-22-114 and R9-22-116
~~129.~~135.“Liquid resources”	R9-22-116
~~130.~~136.“Lump-sum income”	R9-22-116

~~131.~~137.“Mailing date”	R9-22-114
~~132.~~138.“Medical education costs”	R9-22-107
~~133.~~139.“Medical record”	R9-22-101
~~134.~~140.“Medical review”	R9-22-107
~~135.~~141.“Medical services”	R9-22-101
~~136.~~142.“Medical supplies”	R9-22-102
~~137.~~143.“Medical support”	R9-22-114
~~138.~~144.“Medically necessary”	R9-22-101
~~139.~~145.“Medicare claim”	R9-22-107
~~140.~~146.“Medicare HMO”	R9-22-101
~~141.~~147.“MI/MN”	A.R.S. § 36-2901(4)(a) and (c)
~~142.~~148.“Minor parent”	R9-22-114
~~143.~~149.“Month of determination”	R9-22-116
~~144.~~150.“New hospital”	R9-22-107
~~145.~~151.“NICU”	R9-22-107
~~146.~~152.“Noncontracting provider”	A.R.S. § 36-2931
~~147.~~153.“Nonliquid resources”	R9-22-116
~~148.~~154.“Nonparent caretaker relative”	R9-22-114
~~149.~~155.“Nursing facility”	42 U.S.C. 1396r(a)
~~150.~~156.“Occupational therapy”	R9-22-102
~~151.~~157.“Offeror”	R9-22-106
~~152.~~158.“Operating costs”	R9-22-107
~~153.~~159.“Outlier”	R9-22-107
~~154.~~160.“Outpatient hospital service”	R9-22-107
~~155.~~161.“Ownership change”	R9-22-107
~~156.~~162.“Peer group”	R9-22-107
~~157.~~163.“Pharmaceutical service”	R9-22-102
~~158.~~164.“Physical therapy”	R9-22-102
~~159.~~165.“Physician”	R9-22-102
~~160.~~166.“Post-stabilization services”	42 CFR 438.114
~~161.~~167.“Practitioner”	R9-22-102
~~162.~~168.“Pre-enrollment process”	R9-22-114
~~163.~~169.“Prescription”	R9-22-102
~~164.~~170.“Primary care provider”	R9-22-102
~~165.~~171.“Primary care provider services”	R9-22-102
~~166.~~172.“Prior authorization”	R9-22-102
~~167.~~173.“Private duty nursing services”	R9-22-102
~~168.~~174.“Proposal”	R9-22-106
~~169.~~175.“Proposal of discontinuance”	R9-22-116
~~170.~~176.“Prospective rate year”	R9-22-107
~~171.~~177.“Prospective rates”	R9-22-107
~~172.~~178.“Prudent layperson standard”	42 U.S.C. 1396u-2
~~173.~~179.“Public assistance”	R9-22-116
180.“Quality control case analysis”	R9-22-109
181.“Quality control sample review”	R9-22-109
~~174.~~182.“Quality management”	R9-22-105
~~175.~~183.“Radiology”	R9-22-102
~~176.~~184.“Rebasing”	R9-22-107
~~177.~~185.“Recipient”	R9-22-114
~~178.~~186.“Redetermination”	R9-22-116
~~179.~~187.“Referral”	R9-22-101
~~180.~~188.“Rehabilitation services”	R9-22-102
~~181.~~189.“Reinsurance”	R9-22-107
~~182.~~190.“Resources”	R9-22-114 and R9-22-116
~~183.~~191.“Respiratory therapy”	R9-22-102
~~184.~~192.“Responsible offeror”	R9-22-106
~~185.~~193.“Responsive offeror”	R9-22-106

~~186.~~194."Review"	R9-22-114
~~187.~~195."RFP"	R9-22-105 and R9-22-106
~~188.~~196."Scope of services"	R9-22-102
~~189.~~197."SDAD"	R9-22-107
~~190.~~198."Separate property"	A.R.S. § 25-213
~~191.~~199."Service location"	R9-22-101
~~192.~~200."Service site"	R9-22-101
~~193.~~201."SESP"	R9-22-101
~~194.~~202."S.O.B.R.A."	R9-22-101
~~195.~~203."Specialist"	R9-22-102
~~196.~~204."Specified relative"	R9-22-114 and R9-22-116
~~197.~~205."Speech therapy"	R9-22-102
~~198.~~206."Spendthrift restriction"	R9-22-114
~~199.~~207."Spouse"	R9-22-101
~~200.~~208."SSA"	P.L. 103-296, Title I
~~201.~~209."SSI"	R9-22-101
~~202.~~210."SSN"	R9-22-101
~~203.~~211."State alien"	R9-22-101
~~204.~~212."State emergency services program"	R9-22-101
~~205.~~213."Sterilization"	R9-22-102
~~206.~~214."Subcontract"	R9-22-101
~~207.~~215."SVES" or "State Verification and Exchange System"	R9-22-114
~~208.~~216."Tier"	R9-22-107
~~209.~~217."Tiered per diem"	R9-22-107
~~210.~~218."Title IV-A"	R9-22-114
~~211.~~219."Title IV-D"	R9-22-114
~~212.~~220."Title IV-E"	R9-22-114
~~213.~~221."TMA"	R9-22-114
~~214.~~222."Total inpatient hospital days"	R9-22-107
~~215.~~223."Unearned income"	R9-22-116
~~216.~~224."Utilization management"	R9-22-105

B. General definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

1. "AHCCCS" means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to an eligible person.
2. "AHCCCS-disqualified dependent" means a dependent child of an AHCCCS-disqualified spouse who resides in the same household of an AHCCCS-disqualified spouse.
3. "AHCCCS-disqualified spouse" means the spouse of an MI/MN applicant, who is ineligible for MI/MN benefits because the value of that spouse's separate property, when combined with the value of other resources owned by household members, exceeds the allowable resource limit.

~~2.~~ 4. "Applicant" means a person who submits or whose representative submits, a written, signed, and dated application for AHCCCS benefits that has not been approved or denied.

~~3.~~ 5. "Application" means an official request for medical assistance made under this Chapter.

~~4.~~ 6. "Assignment" means enrollment of an eligible person with a contractor by the Administration.

~~5.~~ 7. "Capped fee-for-service" means the payment mechanism by which a provider of care is reimbursed upon submission of a valid claim for a specific AHCCCS covered service and equipment provided to an eligible applicant. A payment is made in accordance with an upper, or capped, limit established by the Director.

~~6.~~ 8. "Case record" means the file and all documents in the file that are used to establish eligibility.

~~7.~~ 9. "Categorically eligible" means a person who is eligible as defined by A.R.S. §§ 36-2901(4)(b) and 36-2934.

~~8.~~ 10. "Continuous stay" means the period of time during which an eligible person receives inpatient hospital services without interruption beginning with the date of admission and ending with the date of discharge or date of death.

~~9.~~ 11. "Contract" means a written agreement entered into between a person, an organization, or other entity and the Administration, to provide health care services to a member under A.R.S. Title 36, Chapter 29, and these rules.

~~10.~~ 12. "Contractor" means a person, an organization, or an entity that agrees through a direct contracting relationship with the Administration, to provide goods and services specified by the contract under the requirements of the contract and these rules.

~~11.~~ 13. "Contractor of record" means an organization or an entity in which a person is enrolled for the provision of AHCCCS services.
~~12.~~ 14. "Day" means a calendar day unless otherwise specified in the text.
~~13.~~ 15. "DES" means the Department of Economic Security.
~~14.~~ 16. "EAC" means eligible assistance children.
~~15.~~ 17. "ELIC" means eligible low-income children.
~~16.~~ 18. "Eligible assistance children" means the children defined by A.R.S. § 36-2905.03(B).
~~17.~~ 19. "Eligible low income children" means the children defined by A.R.S. § 36-2905.03(C) and (D).
~~18.~~ 20. "Eligible applicant" means the applicant defined in A.R.S. § 36-2901(4).
~~19.~~ 21. "Enumeration" means the assignment of a specific 9-digit identification number to a person by the Social Security Administration.
~~20.~~ 22. "Equity" means the county assessor full cash or market value of a resource minus valid liens, encumbrances, or both.
~~21.~~ 23. "Facility" means a building or portion of a building licensed or certified by the Arizona Department of Health Services as a health care institution, under A.R.S. Title 36, Chapter 4, to provide a medical service, a nursing service, or other health care or health-related services.
~~22.~~ 24. "Factor" means an organization, a collection agency, a service bureau, or a person who advances money to a provider for accounts receivable that the provider assigns, sells, or otherwise transfers, including transfers through the use of a power of attorney, to the organization, the collection agency, the service bureau, or the person that receives an added fee or a deduction of a portion of the face value of the accounts receivable in return for the advanced money. The term "factor" does not include a business representative, such as a billing agent or an accounting firm described within these rules, or a health care institution.
~~23.~~ 25. "FBR" means Federal Benefit Rate, defined in R9-22-101(B)(24) 26.
~~24.~~ 26. "Federal Benefit Rate" means the maximum monthly Supplemental Security Income payment rate for an eligible person or a married couple.
~~25.~~ 27. "Federal emergency services program" means a program designed to provide emergency medical services covered under 42 U.S.C. 1396b(v), to treat an emergency medical condition for a categorically eligible person who is determined eligible under A.R.S. § 36-2903.03.
~~26.~~ 28. "FESP" means federal emergency services program.
~~27.~~ 29. "FQHC" means federally qualified health center.
~~28.~~ 30. "GSA" means a geographical service area designated by the Administration within which a contractor of record provides, directly or through a subcontract, a covered health care service to a member enrolled with that contractor of record.
~~29.~~ 31. "Hospital" means a health care institution that is licensed as a hospital by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4, Article 2, and certified as a provider under Title XVIII of the Social Security Act, as amended, or is currently determined to meet the requirements of certification.
~~30.~~ 32. "Indigent" means meeting eligibility criteria under A.R.S. § 11-297.
~~31.~~ 33. "Inmate of a public institution" means a person defined by 42 CFR 435.1009.
~~32.~~ 34. "License" or "licensure" means a nontransferable authorization that is based on established standards in law, is issued by a state or a county regulatory agency or board, and allows a health care provider to render a health care service lawfully.
~~33.~~ 35. "Medical record" means all documents that relate to medical and behavioral health services provided to an eligible person a member, a physician, physician or other licensed practitioner of the healing arts or member and that are kept at the site of the provider.
~~34.~~ 36. "Medical services" means health care services provided to an eligible person by a physician, a practitioner, a dentist, or by a health professional and technical personnel under the direction of a physician, a practitioner, or a dentist.
~~35.~~ 37. "Medically necessary" means a covered service provided by a physician or other licensed practitioner of the healing arts and within the scope of practice under state law to:
   a. Prevent disease, disability, and other adverse health conditions or their progression; or
   b. Prolong life.
~~36.~~ 38. "Medicare HMO" means a health maintenance organization that has a current contract with the Health Care Financing Administration (HCFA) for participation in the Medicare program under 42 CFR 417(L).
~~37.~~ 39. "MI/MN" means medically indigent and medically needy defined in A.R.S. § 36-2901(4)(a) and (c).
~~38.~~ 40. "Nursing facility" means a nursing facility defined in 42 U.S.C. 1396r(a).
~~39.~~ 41. "Noncontracting provider" means the provider defined in A.R.S. § 36-2931.
~~40.~~ 42. "Referral" means the process by which an eligible person is directed by a primary care provider or an attending physician to another appropriate provider or resource for diagnosis or treatment.
~~41.~~ 43. "Separate property" means property defined in A.R.S. § 25-213.

~~42.~~ 44."Service location" means any location at which a member obtains any health care service provided by a contractor of record under the terms of a contract.
~~43.~~ 45."Service site" means a location designated by a contractor of record as the location at which a person is to receive health care services.
~~44.~~ 46."SESP" means state emergency services program.
~~45.~~ 47."S.O.B.R.A." means Section 9401 of the Sixth Omnibus Budget Reconciliation Act, 1986, amended by the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396a(a)(10)(A)(ii)(IX), July 1, 1988.
~~46.~~ 48."Spouse" means the husband or wife who has entered into a contract of marriage, recognized as valid by Arizona.
~~47.~~ 49."SSA" means Social Security Administration defined in P.L. 103-296, Title I.
~~48.~~ 50."SSI" means Supplemental Security Income under Title XVI of the Social Security Act, as amended.
~~49.~~ 51."SSN" means social security number.
~~50.~~ 52."State alien" means an unqualified alien described in A.R.S. § 36-2903.03(C).
~~51.~~ 53."State emergency services program" means a program designed to provide emergency medical services identified as covered under R9-22-217 to treat an emergency medical condition for a person who is determined eligible under A.R.S. § 36-2905.05.
~~52.~~ 54."Subcontract" means an agreement entered into by a contractor with any of the following:
a. A provider of health care services who agrees to furnish covered services to a member;
b. A marketing organization; or
c. Any other organization or person who agrees to perform any administrative function or service for a contractor specifically related to securing or fulfilling the contractor's obligation to the Administration under the terms of a contract.

R9-22-109. Quality Control Related Definitions
In addition to definitions contained in A.R.S. § 36-2901, ~~the~~ words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning: ~~"Certification error" has the meaning in A.R.S. § 36-2905.01.~~
1. "Certification" means approval of eligibility under 9 A.A.C. 22, Article 16.
2. "Certification error" means an error defined in A.R.S. § 36-2905.01(I), R9-22-901(A), and R9-22-902(A).
3. "Corrective action plan" means a plan developed by a county eligibility department to reduce the county eligibility department's error rate calculated under A.R.S. § 36-2905.01(A).
4. "County eligibility department" means an entity within a county administration that is responsible for determining eligibility under 9 A.A.C. 22, Article 16.
5. "Fraudulent information" means information provided or withheld intentionally for the purpose of obtaining benefits that a person would not otherwise be entitled to receive.
6. "Quality control case analysis" means the Administration's evaluation of individual case records, under A.R.S. § 36-2905.02, of a county eligibility department's eligibility determinations.
7. "Quality control sample review" means the Administration's evaluation of a statistically valid sample of case records, under A.R.S. § 36-2905.01, of a county eligibility department's eligibility determinations.

ARTICLE 9. QUALITY CONTROL ~~REVIEW AND ANALYSIS~~

~~**R9-22-901. Definitions**~~ **Repealed**
~~The terms used in this Article have the following meanings:~~
~~1. "Certification errors" has the meaning defined in A.R.S. § 36-2905.01(I) and R9-22-902.~~
~~2. "Corrective action plan" means a plan developed by a county to reduce its error rate calculated pursuant to A.R.S. § 36-2905.01(A).~~
~~3. "Fraudulent information" means incorrect information intentionally provided with the purpose of obtaining benefits to which the applicant would not otherwise be entitled.~~
~~4. "Good cause" means events that are beyond the control of the county or its agents which cause inability to comply with the requirements of submitting case files to the Administration.~~
~~5. "Improperly classified" means a person who was certified as indigent or medically needy but was eligible only under the criteria for eligible low-income children, or a person who was erroneously certified as indigent or medically needy and who is approved for categorical eligibility or a person who was certified as indigent or medically needy or as an eligible low-income child but was eligible only under the criteria for state emergency services.~~
~~6. "Improperly incurred expenses" means all expenses paid by the Administration or paid or incurred by providers or nonproviders on behalf of an ineligible person, a person certified through a certification error, the difference between the amount of capitation paid and the correct amount for a person improperly classified, or expenses resulting from the county's failure to take timely action to discontinue or adjust benefits. "Improperly incurred expenses" also means two thirds of all expenses paid or incurred by providers or nonproviders on behalf of a hospitalized person potentially eligible for Title XIX, who was not referred for federal emergency services and who would have been approved for Title XIX had the person been referred.~~

~~7. "Loss of contact" means that a member could not be located at the address of record and there is no alternate or forwarding address known to the Administration or the county.~~
~~8. "Quality control analysis" means the AHCCCS analysis of a county's eligibility files pursuant to A.R.S. § 36-2905.02.~~
~~9. "Quality control review" means the AHCCCS review of a county's eligibility files pursuant to A.R.S. § 36-2905.01.~~
~~10. "Review Committee" means the persons designated by the Director to review and make decisions on county challenges of certification errors.~~
~~11. "Review period" means the period during which member files are selected for review of eligibility.~~
~~12. "Timely action" means the county took appropriate action to adjust or discontinue benefits in accordance with the time frames prescribed by Article 3.~~
~~13. "Total capitation payment" means the amount of capitation paid by AHCCCS to providers in a county for the review period. This includes any retroactive adjustments in capitation rates.~~

R9-22-901. Quality Control Sample Review

A. Certification errors. The Administration shall include the following as certification errors for a quality control sample review conducted under A.R.S. § 36-2905.01:
1. A county eligibility department's failure to provide a case record, defined in R9-22-1633, that the Administration selects for review under A.R.S. §§ 36-2905.01 or 36-2905.02; or
2. Certification of a person or household that is ineligible at the time of certification because:
   a. The household's annual income exceeds the limits specified in A.R.S. §§ 11-297, 36-2905, or 36-2905.03;
   b. The household's resources exceed the limits specified in A.R.S. §§ 11-297, 36-2905, and 36-2905.03;
   c. The household member transfers resources, except as permitted under R9-22-1628, for the purpose of meeting the resource limits specified in A.R.S. §§ 11-297, 36-2905, and 36-2905.03;
   d. The person is not a resident of Arizona under A.R.S. § 36-2903.01;
   e. The person is not a citizen of the United States or a qualified alien under R9-22-1624. This requirement does not apply to SESP;
   f. The person is enrolled or eligible to be enrolled to receive Medicare-covered services through a managed care organization, except if the person receives a transplant as specified in A.R.S. § 36-2905(J) or is prohibited from enrolling in a Medicare HMO as specified in R9-22-1611;
   g. The person is 1 of the following as specified in R9-22-1616:
      i. An inmate in a public institution,
      ii. A patient in a public mental hospital,
      iii. Deceased,
      iv. An AHCCCS-disqualified spouse,
      v. An AHCCCS-disqualified dependent, or
      vi. A current recipient of benefits under Title XIX or Title XXI of the Social Security Act;
   h. A person refuses to cooperate with the Title XIX or Title XXI eligibility process as required under A.R.S. §§ 11-297, 36-2905, and 36-2905.03;
   i. The county eligibility department did not screen and refer the person for potential eligibility for Title XIX or Title XXI under A.R.S. § 36-2905 and 36-2983; or
   j. The person is potentially eligible for S.O.B.R.A., and neither of the conditions in R9-22-1610(E)(1) or (E)(3)(c) is met.

B. Challenge of certification errors by county eligibility department.
1. Challenge process.
   a. "Quality control case report" means the report of findings for an individual case record which the Administration issues to the county eligibility department following a quality control sample review.
   b. A county eligibility department may challenge the Administration quality control finding of a certification error by submitting a written challenge to the Administration postmarked no later than 30 days from the postmark date of the quality control case report. A county eligibility department's challenge shall include evidence that refutes the quality control finding of a certification error. A county eligibility department may include evidence obtained after the date of the quality control case report.
   c. The Administration's quality control finding of a certification error shall be final if a county eligibility department fails to submit a challenge under the time-frame in subsection (B)(1)(b).
2. Challenge review.
   a. The Administration shall review a county eligibility department's challenge and either uphold or overturn a quality control finding of a certification error.
   b. The Administration shall only consider evidence submitted by the Administration's quality control staff and the county eligibility department.
   c. The Administration shall overturn a quality control finding of a certification error if a preponderance of the evidence establishes that a person was eligible for AHCCCS benefits at the time of certification.

d. If the Administration overturns a quality control finding of a certification error, the Administration shall not consider a case record an error in calculating a county eligibility department's error rate under A.R.S. § 36-2905.01(A).

3. Hearings. A county eligibility department may appeal the Administration's decision under 9 A.A.C. 22, Article 8.

C. Corrective action plan.

1. "Statewide summary report" means the report of all quality control sample review findings by county for all case records reviewed statewide for any review period. The Administration issues the report to each county eligibility department on a semi-annual basis.
2. Submittal of a corrective action plan. A county eligibility department in a county with a certification error rate greater than 3%, calculated under A.R.S. § 36-2905.01(A), shall prepare a corrective action plan if the county eligibility department has not completed 1 in the last 12 months. The county eligibility department shall submit to the Administration a corrective action plan that is postmarked no later than 90 days from the postmark date of the Administration's statewide summary report.
3. Content of a corrective action plan.
   a. A corrective action plan shall include procedures that a county eligibility department will use to:
      i. Identify certification errors,
      ii. Analyze the frequency of certification errors,
      iii. Analyze the cause of certification errors,
      iv. Develop and implement corrective actions to prevent certification errors, and
      v. Identify procedures for evaluating the effectiveness of the corrective action plan.
   b. For each corrective action, a corrective action plan shall include a narrative summary that contains:
      i. A statement identifying each certification error addressed by the corrective action;
      ii. An estimate of the certification error percentage caused by an identified error;
      iii. A summary explaining how each certification error was discovered by the Administration;
      iv. A description of the county eligibility department's procedures in use when each certification error occurred;
      v. A description of a subsequent or proposed change to correct each certification error;
      vi. A summary of the expected certification error rate reduction resulting from implementation of the corrective action; and
      vii. An estimate of when the county eligibility department expects to achieve the certification error rate reduction.
   c. For each corrective action, a corrective action plan shall include a work plan that identifies:
      i. Major activities or action steps planned to implement the corrective action;
      ii. A person responsible for each activity or action step;
      iii. A proposed timetable for implementing each activity or action step listed in the work plan;
      iv. A person who will monitor implementation of the work plan; and
      v. A method for evaluating the effectiveness of the work plan.

D. Recovery of costs. If a county's certification error rate exceeds 3%, the Administration shall recover costs as defined in A.R.S. § 36-2905.01.

~~R9-22-902.~~ ~~Certification Errors~~ Repealed

~~A. Certification errors for quality control reviews and quality control analyses include:~~

~~1. Certification of an applicant who was in fact ineligible because:~~
   ~~a. Income exceeded the income limit;~~
   ~~b. Total resources exceeded the liquid or total resource limits;~~
   ~~c. Transfer of property;~~
   ~~d. The applicant was not an Arizona resident;~~
   ~~e. The applicant did not meet the family household criteria;~~
   ~~f. Someone was improperly included or excluded from the AHCCCS family household; or~~
   ~~g. The applicant was not a citizen of the United States or an alien who meets the requirements of 42 CFR 435.406(a), March 14, 1991, incorporated by reference herein and on file with the Office of the Secretary of State.~~
~~2. The case file was not available for review and the written explanation provided by the county did not establish good cause for the absence of the case file pursuant to A.R.S. §§ 36-2905.01(D) or 36-2905.02(F).~~
~~3. Certification of an applicant when any eligibility requirement was not met including:~~
   ~~a. Approving a potentially eligible S.O.B.R.A. person or an emergency services applicant potentially eligible for Title XIX, or failing to discontinue a hospitalized person potentially eligible for Title XIX, who has refused to cooperate in the federal eligibility determination process, pursuant to A.R.S. § 11-297, 36-2905, 36-2905.03, or 36-2905.05.~~
   ~~b. Approving a potentially eligible Title XIX person when Title XIX eligibility has not been determined, except:~~
      ~~i. When the applicant is admitted to a hospital as an inpatient at any time while the application is pending, or~~

~~ii. After a S.O.B.R.A. application has been completed and submitted to DES by the county by 31 days from the date of application, but DES has not made a S.O.B.R.A. eligibility determination within ten working days from the date the completed S.O.B.R.A. application was received by DES.~~

~~c. Approving a hospitalized person who is a citizen of the United States or an alien who meets the requirements of 42 CFR 435.406(a), March 14, 1991, incorporated by reference herein and on file with the Office of the Secretary of State, except as permitted by R9-22-313(D) and R9-22-309.~~

~~d. Approving a state emergency services applicant except as permitted by R9-22-309 and R9-22-343(H) and (L).~~

~~**B.** An applicant under subparagraph (A)(3)(b) is ineligible for indigent, medically needy, eligible low-income child, or state emergency services coverage and the county shall be subject to sanctions until one of the following occurs:~~

~~1. Ten working days have elapsed since a completed S.O.B.R.A. application was received by DES from the county, but the S.O.B.R.A. eligibility decision is still pending; or~~

~~2. The person is approved for Title XIX by DES and the adjustment in capitation rate, if appropriate, has been made; or~~

~~3. The person is denied for Title XIX other than for a refusal to cooperate.~~

~~**C.** Certification errors for quality control analyses also include:~~

~~1. Improper classification of a person as indigent or medically needy when in fact the person met only the criteria for eligible low-income children.~~

~~2. The county failed to take timely action to discontinue benefits, in accordance with R9-22-316, R9-22-318, or R9-22-330, after receiving notice, from any source, containing cause for ineligibility.~~

~~3. Improper classification of a person as indigent or medically needy or as an eligible low-income child when in fact the person only met the criteria for state emergency services.~~

R9-22-902. Quality Control Case Analysis

A. Certification error. To identify certification errors, the Administration may conduct a quality control case analysis under A.R.S. § 36-2905.02. In addition to certification errors described in R9-22-901(A), a certification error for a quality control case analysis includes:

1. Improper classification of a person as MI/MN if the person meets only the criteria for ELIC; or
2. A county eligibility department's failure to take timely action to discontinue benefits when appropriate, under R9-22-1615, after receiving information containing cause for ineligibility.

B. Challenge process. Except for R9-22-901(B)(2)(d), the challenge process described in R9-22-901(B) applies to a quality control case analysis with the following additions:

1. If a county eligibility department claims that a certification decision was based on fraudulent information, a county eligibility department shall establish the existence of fraudulent information by clear and convincing evidence.
2. The Administration shall overturn a quality control finding if clear and convincing evidence establishes that a county eligibility department's certification decision was based on fraudulent information.
3. If the Administration overturns a finding, the Administration shall withdraw any associated penalties.

C. Recovery of cost for covered services. The Administration shall recover costs for covered services under A.R.S. § 36-2905.02. The following conditions apply:

1. A county shall reimburse the Administration for capitation, claims, and reinsurance paid to a contractor as a result of a certification error.
2. A county shall reimburse a provider or nonprovider that incurred or paid an expense not already paid by the Administration, including an expense in excess of the capitation.
3. A county may file a grievance concerning the amount of a financial penalty resulting from a quality control case analysis under 9 A.A.C. 22, Article 8.
4. If the Director issues a decision in favor of a county, and the Administration has recovered the cost of services under A.R.S. § 36-2905.02, the Administration shall refund to the county an amount specified by the Director.

R9-22-903. ~~County responsibilities~~ Repealed

~~In addition to other responsibilities required by this Article, a county shall observe the following:~~

~~1. Failure by a member to cooperate with a quality control review or a quality control analysis shall result in a member's discontinuance from AHCCCS. The county shall send an advance notice of discontinuance to the head of household within two days from the date of notification from the Administration of the member's failure to cooperate. Discontinuance shall be withdrawn if the county receives notice from the Administration during the advance notice period that the member is cooperating with the Administration.~~

~~2. A county shall initiate discontinuance of a household and send advance notice of discontinuance to the head of household within two days of receipt of notice from the Administration that loss of contact with a head of household has occurred in the course of a quality control review or a quality control analysis.~~

~~3. When a county claims that a certification error was based on fraudulent information, the county shall establish the existence of fraudulent information by clear and convincing evidence.~~

~~4. A notification to a county of a change in circumstances or any information which would effect eligibility shall result in a re-evaluation or redetermination in accordance with R9-22-330.~~

5. ~~In all cases except those involving fraudulent information, the county shall establish by a preponderance of the evidence that the applicant is eligible for AHCCCS coverage.~~

R9-22-904. ~~Quality control review challenge process~~ Repealed

~~A county may challenge review findings of certification errors in any case.~~

1. ~~A challenge shall include evidence to support the county's claim of error by the Administration reviewer.~~
2. ~~Failure to submit a challenge to the Administration within 30 days of the postmarked date of the initial report shall be deemed an acceptance by the county of the review findings and the finding of the AHCCCS Administration shall be final.~~
3. ~~Challenges shall be reviewed by an AHCCCS Review Committee which may uphold, modify or overturn the review findings. If the review findings are overturned, the corrected status of the case shall be used in calculating the error rate pursuant to A.R.S. § 36-2905.01(A).~~
4. ~~The Review Committee shall consider only documentary or written evidence presented by the quality control reviewer and the evidence submitted by the county. A county may submit evidence obtained subsequent to the date of AHCCCS notification of eligibility for consideration in the challenge process. The Review Committee shall base its decision on the most convincing evidence presented that establishes whether the member was in fact eligible for AHCCCS benefits as a medically indigent or medically needy person or eligible low-income child.~~

R9-22-905. ~~Quality control analysis challenge process~~ Repealed

~~A county may challenge an error decision resulting from a quality control analysis.~~

1. ~~Failure to submit a challenge to the Administration within 30 days shall be deemed an acceptance by the county of the analysis review findings and the findings of the AHCCCS Administration shall be final.~~
2. ~~A county may submit documentary or written evidence obtained subsequent to the date of AHCCCS notification of eligibility for consideration in the challenge process.~~
3. ~~All challenge evidence shall be reviewed by an AHCCCS Review Committee, which may uphold, modify or overturn the review findings. If the review findings are overturned, the county shall be absolved of all penalties that otherwise would have resulted from the review.~~
4. ~~The Review Committee shall consider the documentary or written evidence presented by the quality control reviewer and the documentary or written evidence submitted by the county and shall base its decision on the most convincing evidence presented. The challenge shall be successful if a preponderance of the evidence establishes that a member was in fact eligible for AHCCCS benefits or if clear and convincing evidence establishes that a certification decision was based on fraudulent information.~~

R9-22-906. ~~Corrective Action Plans for Certification Errors~~ Repealed

~~A.~~ ~~A county with a certification error rate of more than 3%, as calculated according to A.R.S. § 36-2905.01(A), shall prepare a corrective action plan to reduce the certification error rate.~~

~~B.~~ ~~A county shall include in its corrective action plan procedures to reduce the occurrence of all certification errors that prevent the county from achieving an allowable eligibility certification error rate of 3% or less.~~

~~C.~~ ~~A county shall describe in its corrective action plan procedures that will be used by the county to:~~

1. ~~Identify certification errors,~~
2. ~~Analyze the frequency of occurrence of the certification errors,~~
3. ~~Analyze the cause of the certification errors,~~
4. ~~Develop and implement corrective actions for the certification errors, and~~
5. ~~Identify the procedures for evaluating the effectiveness of the corrective action plan.~~

~~D.~~ ~~For each corrective action developed, a county shall prepare a narrative summary that contains the following information:~~

1. ~~A statement identifying the certification error addressed by the corrective action;~~
2. ~~An estimate of the certification error percentage caused by the identified error;~~
3. ~~A summary explaining how the certification error was discovered (internal, Quality Analysis, Quality Control, etc.);~~
4. ~~A description of the county system that existed when the certification error occurred;~~
5. ~~A description of the subsequent or proposed changes to correct the certification error;~~
6. ~~A summary of the expected certification error rate reduction resulting from the implementation of this corrective action; and~~
7. ~~An estimate of when the certification error rate reduction is expected to be achieved.~~

~~E.~~ ~~For each corrective action developed and described in a county's corrective action plan, the county shall include a work plan that identifies:~~

1. ~~The major activities or action steps planned to implement the initiative;~~
2. ~~The individual responsible for each activity or action step;~~
3. ~~The proposed timetable for implementing each activity or action step listed in the work plan (start date, planned completion date, etc.);~~
4. ~~Who will monitor implementation of each work plan; and~~
5. ~~How the effectiveness of the work plan will be evaluated.~~

~~**F.** A county shall submit an annual corrective action plan to the Administration within 60 days of issuance of the Administration's certification error rate report.~~

R9-22-907. ~~Recovery of cost for covered services~~ Repealed

~~**A.** Quality control analysis. Pursuant to A.R.S. § 36-2905.02, counties shall reimburse AHCCCS for any expenses improperly incurred by AHCCCS due to erroneous eligibility certifications. The following reimbursement conditions apply:~~

~~1. A county shall reimburse the Administration for any capitation paid to a contractor,~~
~~2. A county shall reimburse the Administration for any claims paid by the Administration,~~
~~3. A county shall reimburse the Administration for any reinsurance paid by the Administration, and~~
~~4. A county shall reimburse a provider or nonprovider which has incurred or paid expenses not already paid by the Administration, including expenses in excess of the capitations.~~

~~**B.** A county may file a grievance concerning the amount of a financial penalty resulting from a quality control review or analysis, pursuant to A.R.S. §§ 36-2905.01 or 36-2905.02, by following the county grievance process in accordance with Article 8. In the event that a county files a grievance concerning the amount of a financial penalty and the Director renders a final decision in favor of the county after the county has paid the financial penalty or the state treasurer has deposited any portion of the financial penalty into the Arizona Health Care Cost Containment System Fund pursuant to A.R.S. § 36-2905.02(C), the Administration shall refund to the county the amount specified by the Director in his decision.~~

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

PREAMBLE

1. **Sections Affected** — **Rulemaking Action**

R18-2-101	Amend
R18-2-301	Amend
R18-2-306	Amend
R18-2-306.02	New Section
R18-2-317	Amend
R18-2-317.01	New Section
R18-2-317.02	New Section
R18-2-318.01	New Section
R18-2-319	Amend
R18-2-320	Amend
R18-2-401	Amend
R18-2-404	Amend
R18-2-405	Amend
Appendix 3	New Appendix

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

Authorizing and implementing statutes: A.R.S. §§ 49-104(A)(11), 49-425, 49-426, and 49-426.01

3. The effective date of the rules:

September 22, 1999

4. A list of all previous notices appearing in the register addressing the proposed rule:

Notice of Docket Opening: 3 A.A.R. 978, April 4, 1997.
Notice of Docket Opening: 4 A.A.R. 372, February 6, 1998.
Notice of Docket Opening: 5 A.A.R. 75, January 8, 1999.
Notice of Proposed Rulemaking: 5 A.A.R. 174, January 22, 1999.

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: Department of Environmental Quality
3033 N. Central
Phoenix, AZ 85012-2809

Telephone: (602) 207-2230 or (602) 207-2222 (Any extension may be reached in-state by dialing (800) 234-5677, and asking for that extension.)

Fax: (602) 207-2251

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

ADEQ is making changes to the air quality permit system related to facility changes at both Class I and Class II sources. Class I sources are Arizona facilities that are usually major sources and required to obtain a Title V permit under federal law. Class II sources are neither major sources nor required to obtain a Title V permit.

In order to increase operating flexibility for Class II sources, these rules more precisely describe all facility changes with regulatory consequences and expand the list of facility changes that do not require permit revisions. The rules also establish mechanisms for setting emission caps for both Class I and Class II sources. Related to Class I sources, ADEQ is modifying the definition of "major source" for the purposes of New Source Review (NSR), making other NSR related changes, and modifying the definition of "major modification" by incorporating EPA's "WEPCO" rule into the permitting rules.

Finally, ADEQ has deleted certain chemical compounds from its definition of "volatile organic compounds (VOC)," consistent with EPA's deletion of the same chemical compounds.

I. INTRODUCTION: PERMITS & PERMIT REVISIONS

Air quality permits are a key tool in regulating air pollution from stationary and portable sources. A permit issued to a source contains conditions for both construction and operation. Permits commonly contain:

1. Emission limitations and standards that the source must comply with in order to protect the environment and public health;

2. Requirements to operate air pollution control equipment so that emission limitations and standards are met;

3. Requirements to conduct performance testing, monitoring, record-keeping, and reporting to demonstrate that emission limitations and standards are met; and

4. A listing of equipment which are permitted to be operated at the source.

Often, however, a source needs to change its permit to react to changing economic conditions or to implement new business priorities.

The permit revision procedures revised in this rule apply to both Class I and Class II permits and are contained in R18-2-317 through 320. The procedures were over 5 and 1/2 years old and limited in how they allowed sources to make operational changes after issuance of the permit. Formerly, the changes allowed at a permitted source fell into 1 of 4 potential permit revision groups:

1. Changes that could only be made after a "significant" permit revision, requiring an opportunity for public comment;

2. Changes that could be made with a "minor" permit revision and that do not require an opportunity for public comment;

3. Changes that could be made without any permit revision, but that require prior notice to ADEQ; and

4. Changes that could be made without any regulatory consequence.

As discussed below, the public, industry, and government convened in the summer of 1996, to determine whether and how the procedural and administrative burdens for Class II facility changes might be reduced. This process produced a generic list of facility changes that was used as the basis of the proposed rule.

This rule describes many facility changes and categorizes some changes into groups with lower procedural and administrative requirements. The rule also creates an additional group: changes that do not require prior notice, but that must be "logged" in records at the facility. No facility change was moved into a group with greater procedural and administrative burdens. One change in the notice group had notice increased from 7 to 30 days. In addition, this rule creates a category of emissions cap under which permits may be written to exempt sources with those caps from certain notice or logging requirements (see R18-2-317.02) to allow more operating flexibility.

II. BACKGROUND

In November 1993, ADEQ promulgated major revisions to its air quality permitting rules as a result of the omnibus air quality bill enacted by the Legislature in July 1992. The 1993 rule revisions:

1. Changed the structure of air quality permitting in Arizona from a dual system of construction and operating permits to a unitary system where 1 permit sufficed for both construction and operation.

2. Implemented a permitting system for federally-required Class I permits that reflected the 40 CFR, Part 70 permit rules promulgated by EPA in July, 1992.

3. Implemented a Class II permitting system for minor sources that, for the most part, was consistent with the one for Class I permits.

The 3 Arizona counties with air quality programs (Maricopa, Pima and Pinal) adopted similar permit programs. In November 1993, Arizona applied for approval of its Title V (Class I) operating permits program. EPA granted interim approval in November 1996. During the intervening years, sources, states, and EPA gained experience with the federal Part 70 permitting system, and there was substantial sentiment for improvement, both nationally and in Arizona. As a result, EPA proposed revisions to its Part 70 permit program in August 1994 and August 1995, and issued a 3rd draft of revisions on June 3, 1997. At the time this rule was made final, none of these EPA proposed revisions have yet been adopted by EPA.

In Arizona, the movement to reform the air permitting process began in 1995 when Maricopa County and the Arizona Association of Industries initiated the Air Permit Process Improvement Project (APPIP), which focused on Maricopa County's non-Title V permits. One of the stated goals of the project was "a more streamlined, consistent, predictable, and timely air permitting process." ADEQ played a minor role in the process, although it was kept informed of the proceedings and provided advice on specific issues.

In February 1996, after holding several public workshops, APPIP published a draft report, which included a table entitled "Regulatory Consequences of Facility Changes At Class II Sources." This table defined operational changes at a facility and their regulatory consequences. The group also drew up a list of "trivial" activities that could be initiated by a source without any review by the government or the public. Much of this material was used in the draft rules that were eventually offered by ADEQ and Maricopa County in December 1996.

Another mandate for ADEQ to propose a facility change rule came in April 1996, when the Legislature amended A.R.S. § 49-426.01 to allow ADEQ to create different permit revision procedures for Class II permits with "the necessity for and level of public and departmental review of a change [to] be determined as prescribed by this chapter and the environmental significance of the change." (Laws 1996, Chapter 88.)

In May 1996, ADEQ was asked by APPIP to convene meetings and workshops to draft a proposable state/county rule governing permit revisions and facility changes. ADEQ hired a facilitator and conducted 5 public workshops from June through September 1996. A range of public interest and environmental advocacy groups were invited. At the meeting on September 5, 1996, agreement was achieved on the fundamental provisions of the rule, and, in December 1996, ADEQ produced a "straw man" draft. The proposed rule was a direct result of that "straw man" draft document.

In 2 different letters sent to Maricopa County and to the Department in the spring of 1997, EPA raised a series of issues with respect to the draft rules. In response to the EPA concerns, the Department convened stakeholder sessions on July 21, 1997, and August 20, 1997; however, no consensus was reached at that time on how to deal with the 21 issues that EPA had raised. Based on the views expressed by stakeholders during these 2 sessions, the Department proceeded to make revisions to the draft rule. Many of these revisions were designed to accommodate the concerns of EPA and others were made to reflect changes that had been proposed by industry representatives. Because of unforeseen administrative delays, in part brought on by the additional workload incurred by the Department as a result of the Governor's Air Quality Strategies Task Force of 1997-98, the Department was not able to present its revised draft rule to stakeholders until May 11, 1998. At that time, although consensus was reached on the advisability of the changes that the Department was suggesting, stakeholders expressed the view that certain other changes were called for as a result of the Phoenix area's reclassification from a moderate to a serious ozone non-attainment area in December 1997. These changes, which relate to the definition of major source and other NSR requirements for major sources in ozone non-attainment areas, have been incorporated in the rule.

This rule reflects ADEQ's and stakeholders' 5 and 1/2 years of experience with the permit revision and facility change system created in 1993. In the rule, facility changes are matched with "regulatory consequences" proportionate to the potential environmental significance of the change.

III. CLASS II FACILITY CHANGES

This rule classifies all changes at facilities with Class II permits as either:

1. A change that requires some specific facility action, or,

2. A change that has no regulatory consequence.

There are 4 main groups of changes that require some sort of specific facility action:

1. 7 kinds of facility changes are described that require significant permit revisions. R18-2-320(B)

2. 6 kinds of facility changes are described that require minor permit revisions. R18-2-319(B)

3. 6 kinds of facility changes are described that require prior notice to ADEQ. R18-2-317.02(C)

4. 5 kinds of facility changes are described that require "logging." R18-2-317.02(B)

If the facility change does not fall into 1 of the 4 main groups above, it has no regulatory consequence.

A. Significant Permit Revisions

The 7 kinds of facility changes that require significant permit revision are those with the highest potential for environmental significance. Each provides an opportunity for a public hearing, and a level of Departmental review roughly equivalent to that used for issuance and renewal of permits, except that the permit terms reviewed during a significant permit revision process are normally limited to those related to the facility change itself. Providing for this category of change caused the least amount of controversy during the workshops on this rule.

B. Minor Permit Revisions

The 6 kinds of facility changes for which minor permit revisions are required have some environmental significance but considerably less environmental significance than those associated with significant permit revisions. Substantially less Departmental review is necessary, and a public hearing is thought by states and EPA to add little value when there is usually little or no public interest in the change. No public notice takes place, but ADEQ is required to make available to the public monthly summaries of all applications for minor permit revisions. Very seldom is any significant Departmental engineering review necessary, and for this reason, ADEQ has reduced the maximum time necessary to process these revisions from 90 days to 60 days. Finally, although the standard procedure is to wait until the permit is revised to implement the change at the facility, an alternative option is maintained whereby the facility can implement the change immediately, concurrent with filing the application for a minor permit revision. This alternative existed in the former rule.

C. "Notice" Changes

There are 6 kinds of facility changes that can be made without any immediate permit revision provided that prior notice to the Department is given. In these situations, facilities are allowed to make the changes on relatively short notice: from 7 to 30 days. No revision of the permit is necessary, but, if desired, it can take place up to a year later. Several factors account for the differences in notice times established in this rule. ADEQ must affirm that the change does not require a permit revision, and that the change is not subject to applicable requirements beyond those in the permit. ADEQ must also confirm that there are no environmental consequences due to the change.

D. Logging Changes

These 6 types of facility changes can now be implemented at the source immediately, without prior notice to ADEQ, if logs detailing the change are kept contemporaneously. These logs are immediately accessible to ADEQ and must be sent to ADEQ every year. These logs allow ADEQ, on its own initiative, to gather facts and make investigations. As with notice changes, if the logged changes can be incorporated into the permit, an annual permit amendment incorporating all changes may be implemented by ADEQ pursuant to a new R18-2-318.01.

E. Changes with No Regulatory Consequence.

The former rules were silent regarding changes that could be made by a facility with no regulatory consequence. This rule states that if the change does not fall into 1 of 4 groups, there is no regulatory consequence. Because the 4 groups are described in considerable detail, the situations that have no regulatory consequence are also better delineated. For example, an increase in actual emissions greater than 10% of the major source threshold is a change requiring the source to submit a notice to the Director (R18-2-317.02(C)(2)), but an increase in actual emissions of a conventional pollutant of less than 10% of the major source threshold has no regulatory consequence if it does not fall into the category requiring the source to log the change (317.02(B)) or into any of the other 3 groups specified in the rule. Although this facility change might have had no regulatory consequence under the former rules, the source may not have been able to ascertain this fact from reading those rules. This rule, in contrast, more clearly defines for sources those operational changes at their facilities that trigger regulatory consequences, or none at all.

IV. MISCELLANEOUS FACILITY CHANGE ITEMS

A. Actual Emissions. The definition of "actual emissions" at R18-2-101(2)(d) is changed for Class II sources to more accurately reflect the future emissions coming from an emissions unit. Under the former rule, the definition that applied to Class I and Class II sources required "actual emissions" for a new emissions unit to be its maximum potential to emit. Although Federal requirements mandate that this definition be retained for Class I sources, ADEQ has modified the definition as it applies to Class II sources to define actual emissions for these sources in terms of projected actual operational conditions. ADEQ believes that the new Class II definition will result in a simpler and more accurate calculation of actual emissions for new emission units. R18-2-102(e) is added for the purpose of implementing EPA's "WEPCO" rule. See VII. below.

B. Emission Caps, Emission Cap Limits and Averaging Periods. A special category of emission cap was created. Maximum limits for caps at Class II sources and requirements for averaging periods are established in the rule. (R18-2-306.02)

C. Changes to Specified Cleaner Fuels. Changes to specified cleaner fuels are now allowed with minor permit revisions as opposed to the former mandatory significant permit revision. (R18-2-319(B)(3))

D. Time Limit for ADEQ Review of Class II Permit Applications. The maximum substantive review time for Class II minor permit revisions has been reduced from 90 to 60 days.

E. Trivial Activities. A list of trivial activities that may be omitted from a Class I or Class II permit application is added to R18-2-101.

V. VOC RULES

ADEQ has added 20 compounds to the list of substances that are not classified as VOC under the definition of VOC at R18-2-101(116). The additions correspond to identical federal rules deleting these compounds as follows:

1. First 3 compounds deleted at 61 FR 52848, October 8, 1996.

2. Next 16 compounds deleted at 62 FR 44900, August 25, 1997.

3. Last compound (methyl acetate) deleted at 63 FR 17331, April 9, 1998.

ADEQ received a rulemaking request from a company in December 1997 related to chemicals the company used that were delisted in EPA's August 25, 1997, rulemaking. In response to that request, ADEQ published a notice of rulemaking docket opening in the February 6, 1998, *Arizona Administrative Register* to delist all 16 chemicals. ADEQ had last amended its definition of VOC January 31, 1997. The 20 compounds delisted here represent all EPA changes that became effective between the date ADEQ proposed its last VOC rule and the date this rule was proposed (January 22, 1999).

VI. CHANGES TO DEFINITION OF "MAJOR SOURCE" IN R18-2-401;

CHANGES RELATED TO NSR "SIGNIFICANT LEVEL;"

CHANGES TO R18-2-404(L) RELATING TO OFFSETS

ADEQ has made several changes to its NSR regulations in Article 4 as a consequence of the Phoenix ozone nonattainment area being reclassified as a serious ozone nonattainment area.

First, ADEQ modified the definition of major source at R18-2-401(9). Under the former definition, any emission change, no matter how small, that increased a minor source's emissions above the major source threshold, also subjected the source to PSD or NSR for that change. Under the new language, changes at minor sources in the Phoenix ozone nonattainment area, in addition to increasing emissions above the major source threshold, would have to be "significant," as defined in R18-2-405(B), in order for the change to subject the source to NSR. The change makes the state rule more closely parallel the federal NSR program for serious and severe ozone nonattainment areas. The threshold for a change to be "significant" under R18-2-405(B) for VOC and NOx is 25 tons, consistent with § 182(c)(6) of the Clean Air Act. The major source threshold for VOC sources in the Phoenix ozone nonattainment area was automatically reduced from 100 tons to 50 tons on December 8, 1997, when the area was reclassified from moderate to serious.

ADEQ has also amended R18-2-405(B), to remove the requirement that creditable emission decreases must be "simultaneous" to the modification. This is consistent with EPA's latest interpretation and traditional major source NSR. Creditable emission decreases are used in "netting," or adding up emission increases and decreases to determine whether the net emission increase is 25 tons (significant). The change makes R18-2-405(B) consistent with the current federal 5-year "contemporaneous" period, which takes into account changes over a 5-year period when considering increases and decreases for netting. See 40 CFR §§ 52.21(b)(3)(ii) and 52.24(f)(6)(ii). The change also encourages sources to make facility changes that decrease emissions earlier than they would otherwise because the

decreases will count against emission increases for 5 years, not only when simultaneous with the change. The 5-year contemporaneous time frame already applies to the definition of "net emission increase" at R18-2-101(69).

Additionally, ADEQ clarified R18-2-405 by adding a "de minimis" or "trivial increase" level for aggregation purposes. Aggregation refers to the adding up of emission changes to determine whether a source has reached the significance level of 25 tons. Discussions at a May 11, 1998, workshop did not result in a consensus on any level for this de minimis. However, it was generally agreed that ADEQ would propose a range of levels: 1 ton, 2 tons, and 3 tons, and that, after comments and further discussion, it would select 1 of these levels for the rule that is submitted to the Governor's Regulatory Review Council (GRRC). In the proposed rule, ADEQ set forth 3 versions of R18-2-405(B), each one with a different de minimis level. While ADEQ proposed this range of de minimis levels, ADEQ stated that based on action taken on other state rules, it believed that only the 1 ton level would be approvable by EPA.

Clarifications in R18-2-405(C) and (D) were made to make those rules consistent with the above changes and EPA's latest interpretations of the "special rules" located at sections 182(c)(7) and 182(c)(8) of the Clean Air Act.

Finally, ADEQ amended R18-2-404(L) to deal with the ambiguity in Section 173(a)(1)(A) of the Clean Air Act that relates to the requirement that increases in emissions caused by new or modified sources must be offset by decreases in emissions from existing sources. The ambiguity derives from the fact that this section proposes 2 different timeframes for when these emission reductions must be in effect. To deal with this ambiguity, ADEQ amended R18-2-404(L) to clarify that emission reductions must be secured at the time of permit issuance.

VII. INCORPORATING EPA'S "WEPCO" RULE

In the July 21, 1992, *Federal Register*, EPA published a final rule changing its definition of "major modification" and making other changes for certain electric utility projects. (57 FR 32314) The rule is called the WEPCO rule because it was EPA's response, in part, to being sued in *Wisconsin Electric Power Co. v. Reilly*, 893 F.2d 901 (7th Cir. 1990). ADEQ has incorporated the entire WEPCO rule by adding 8 new definitions to R18-2-101, and by modifying the definitions of "actual emissions" and "major modification" in that Section.

7. A reference to any study that the agency relied on its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

In this rulemaking, ADEQ used a document that was prepared and issued in November 1995 by the Air Permit Process Improvement Project. This project was a joint undertaking of Maricopa County and the Arizona Association of Industries. Copies of the project report can be obtained or reviewed at ADEQ offices, Rule Development Section, 3033 N. Central, Phoenix, Arizona 85012-2809; Telephone: (602) 207-2222.

8. 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.

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

Identification of Rulemaking

Title 18, Chapter 2, Articles 1, 3 and 4; Appendix 3, sections R18-2-101, R18-2-301, R18-2-306, R18-2-306.02, R18-2-317, R18-2-317.01, R18-2-317.02, R18-2-318.01, R18-2-319, R18-2-320, R18-2-401, R18-2-404, R18-2-405.

EXECUTIVE SUMMARY

This rule provides Class II air quality permittees with greater operating flexibility and a more streamlined, consistent and timely approach to the air permit revision and facility change process. The Class II permit revision portion of the rule is the result of cooperative efforts by the county governments, the Arizona Association of Industries (AAI) and the Arizona Department of Environmental Quality (ADEQ). It expands the list of facility changes that do not require permit revisions and reduce the requirements for each level or tier of revisions.

The data available from the ADEQ AZAIRS database shows that significant and minor revisions comprise only 10.6% of all Class II permits issued and 10.2% of fee revenues derived from them. If this rule had been in place at the inception of the ADEQ permitting program in November 1993, regulated entities would have saved an estimated $17,794, or an average of $1,483 per applicant. The savings to regulated entities will mean a decline in revenue for ADEQ; however, this is not expected to create a marked adverse impact on this agency because most of the Class II permit revenues (75.3%) come from new permits, not from permit revisions. Applications for new permits are expected to increase over time, in keeping with the continued economic and demographic growth in Arizona.

ADEQ believes that this rule is essentially deregulatory and benefits all regulated entities who apply for Class II permits or permit revisions. In addition to a lower amount of fees payable to ADEQ for permit revisions, ADEQ expects

that regulated entities will benefit from a more streamlined minor permit revision process through average cycle time reductions of about one-third, from 90 days to 60 days.

As a result of the Phoenix metropolitan area being reclassified from moderate to serious nonattainment for ozone, changes have been made to the definition of "major source" in order to make the Arizona rules more consistent with the federal NSR program. Under the former rules, any emissions increase that put a minor source above the major source threshold (even a small increase), subjected the source to the lengthy PSD/NSR (prevention of significant deterioration or new source review) permitting process in Article 4. Thus a 1 ton increase, from 99 to 100 tons of VOC per year, would have pushed a source into a time-consuming and extremely costly exercise, with the permittee having to spend up to tens of thousands of dollars for a permit revision incorporating changes in its facility to implement new requirements. With this rule change, an emissions increase of VOC or NOx in a serious or severe ozone nonattainment area (where the major source threshold is already lowered to either 50 tons or 25 tons, respectively) would have to be a "significant" amount, as defined in R18-2-405(B), in addition to causing the source to exceed the major source threshold, before the source would be subjected to the NSR process. R18-2-405(B), as amended, defines a significant increase at 25 tons (this is unchanged), adding up all increases and decreases over the last 5 years (changed to count older decreases), when triggered by a net increase greater than 1 ton.

The change eliminating the requirement for creditable emission decreases to be "simultaneous" with any modification gives the permittee greater operational and financial flexibility in planning for and executing modifications to its plant or other facility changes. It also benefits the environment by ending the incentive for a source to delay innovation and emission reductions until it needs to make an increase, so as not to forgo the reduction for netting purposes.

The NSR changes in Article 4, and the addition of the "WEPCO" rule in Article 1, both allow certain sources to avoid the complex, costly analysis required by major NSR. Avoiding NSR not only saves tens of thousands of dollars and months of time in permitting resources, but can also save capital expenditures at the source into the millions of dollars, by avoiding BACT or LAER. ADEQ is aware of at least 1 utility in Arizona that may take advantage of this.

All of these measures are designed to streamline the permitting process, clarify the various requirements for emissions reduction, and achieve operational cycle time reductions in key permitting processes**,** thus reducing the costs to the permittee. Hence, benefits will accrue to some permittees, although it is not possible to quantify these benefits in dollar terms.

ADEQ believes that the changes to the "VOC" definition and the addition of "trivial activities" in R18-2-101, will decrease monitoring, record keeping, and reporting burdens on businesses and that ADEQ is not required to prepare an economic impact statement for these portions of the rule under A.R.S. § 41-1055(D)(3).

ECONOMIC IMPACTS OF THE RULE

A.R.S. § 41-1055 Requirements for an EIS

B(2) Persons Directly Affected by the Rule

a) Existing Class II permittees, both private and public, who make changes at permitted facilities as well as all regulated entities who will apply for a Class II permit.

b) Sources in the Phoenix ozone nonattainment area with actual emissions less than 50 tons of VOC and NOx, that are considering changes that would bring the source above 50 tons for 1 or both of those pollutants.

c) Electric utility steam generating units considering pollution control projects that are environmentally beneficial but that would be major modifications.

d) ADEQ staff in the Air Quality Division who process permit revisions.

B(3) Cost - Benefit Analysis

B(3)(a)(1) Costs and Benefits to ADEQ, the Implementing Agency

Class II permits are administered by the Permits Section of ADEQ's Air Quality Division. The Section currently has 24 staff positions that have direct involvement in the issuance of air permits. In FY 1998, the Permits Section accrued revenues from permit issuance and other sources totaling $3,387,676. Of that amount, $29,070 or slightly more than 8/10 of 1% represented revenues received from the issuance of permit revisions for non-Title V sources. The Section's budget for the current fiscal year totals $1.6 million. The permits specify in detail what a permittee may and may not do in operating the source.

Class II Air Quality Permits were 1st issued in November, 1993. Between November 1993 and December 31, 1996, ADEQ issued a total of 283 Class II permits (or an average of 7/month) regulating air quality from stationary sources.

Of that total, the Permits Section processed 12 significant revisions and 18 minor revisions. Revisions were issued at an average rate of less than 1 (0.75) per month.

In addition to new Class II permits and significant and minor revisions, the Permits Section issued 4 other types of permit actions in this category, as shown in the following table:

CLASS II AIR PERMITS ISSUED BY ADEQ, 1993-1996

	#	%
New Permits	121	42.8
General Permits	83	29.3
Revisions		
Significant	12	4.2
Minor	18	6.4
Adm. Amendments	6	2.1
317 Notifications	34	12.0
Transfer Permits	9	3.2
TOTAL:	283	100.0

Fee revenues are payable to ADEQ for the processing of all permits actions indicated above, except for Administrative Amendments and notifications of facility changes pursuant to R18-2-317. The fee schedule is authorized by A.R.S. § 49-426(E) and contained in R18-2-326. Each fee is either fixed or hourly. Fixed fees vary according to whether the application is complex or non-complex, and whether the facility is new or existing.

For administering Class II permits during the period under review, ADEQ received a total of $334,863 (or an average of $100,459 a year). This amount represents about 75% of the total amount billed for Class II permits issued. (Regulated entities are allowed to stagger their permit payments for up to 5 years.) Applicants or permittees paid 75.3% of the total amounts paid at that point for new permits; 13.5% for general permits; 10.2% for revisions, and only 1% for permit transfers.

Data from AZAIRS indicates that the average cost for a new Class II permit is $3,007. The average cost for a significant revision is $2,032; and about $549 for a minor revision. Because of the deregulatory nature of this rule, it is anticipated that fewer staff hours will be required to process the revisions; and, therefore, permit revision revenues will decline. However, ADEQ anticipates a larger volume of permits to be processed in the future, as more regulated entities apply for new permits. This is a reasonable assumption in view of the net increase in the number of Arizona businesses established over the last decade. Thus, overall revenues should increase, even if revision revenues decline. A decline in fees will benefit the regulated entities.

On the assumption that over the next 3 years the number of Class II permits to be issued will increase across the board by 10% per year over the average annual number issued in the last 3 years, and also assuming that there is no change in the average costs of all Class II permits, revenues accruing to ADEQ could reach $487,759. This number reflects what would happen without a change in the rule. Under this rule, projected revenues are $457,482, which represent savings to regulated entities of an estimated $30,277. Although ADEQ would see this decline in permit revision revenues, there would be an overall net increase from all types of permits of about $122,619 over a 3-year period, or $40,873 annually. The Air Permits Section is currently working on a revised workload analysis to update the fee structure.

B(3)(a)(2) Costs and Benefits to Other State Agencies

State agencies that will be affected by this rule are all State agencies that are current (or prospective) air quality permittees, and that are considering facility changes that might result in revisions or modifications to their permits. Arizona state agency permit holders (as of 11/23/98) include the Departments of Administration, Corrections, Economic Security, Game and Fish, Public Safety and Transportation. In addition, state agencies operate permitted facilities such as the Arizona State University Animal Care Facility, Camp Navajo, and the Northern Arizona University Physical Resources Dept. boilers. These agencies hold a combined total of 23 permits, and could all benefit from this rule.

B(3)(b) Costs and Benefits to Political Subdivisions

Political subdivisions of the State that are air quality permittees will be affected by this rule in the same way as other permittees. Among these are 3 counties that have air quality programs: Maricopa, Pima and Pinal. They are expected to generally conform to ADEQ's permitting processes in their own procedures. Since fewer hours are anticipated for

permit revisions, fewer staff hours will be required, and hence, cost savings will be realized. No tangible dollar benefits to the counties will necessarily result from the rule, but their staff will be more efficiently deployed carrying out other duties.

Other political subdivisions of the State will also be affected to the extent that they are permittees. Examples of these are Coconino, Mohave, Santa Cruz and Yavapai Counties. These counties hold a total of 11 permits. There are also several municipalities as well as school districts and 1 water conservation district throughout the State that have a total of 31 permits. Various Federal agencies hold 40 permits. The same potential benefits of reduced costs will apply to them in the event they choose to seek permit revisions or modifications. As of 11/25/98, ADEQ revised 7 Class II air quality permits with minor or significant revisions for political subdivisions of the State.

B(3)(c) Costs and Benefits to Private Businesses

Most of the benefits of this rule will accrue to private businesses that are current Class II permittees and need to make changes at their facilities. Data obtained from the ADEQ AZAIRS database indicates that from 1993 to 1996, most of the Class II permittees as well as those who sought permit revisions were owners/operators of business establishments that fell under the following Standard Industrial Classification (SIC) codes:

0724	Cotton Gins
1021	Copper Mines
1041	Gold Mines
1442	Construction Sand and Gravel Operations
1499	Non-Metallic Minerals
2951	Asphalt Paving Mixtures and Blocks
3273	Concrete Products
4922	Natural Gas Transmission operations
4953	Refuse Systems collection and disposal (for example, incinerators, landfills, waste treatment plants)
4959	Sanitary Services, n.e.c. *
5171	Petroleum and Petroleum Products Wholesale Distribution
5191	Farm Products (Fertilizers, Agri-chemicals, Pesticides, Animal Feeds, etc.) Wholesale Distribution
7216	Drycleaning Plants
7261	Funeral Services and Crematories
7312	Business Services, n.e.c.*
7999	Amusement and Recreation Services
8062	Hospitals
9711	Military Installations

* n.e.c. = not elsewhere classified

As indicated above, fees from permit revisions are expected to decline as a result of fewer revisions required. Some of the revisions that were classified as significant revisions will now qualify as minor revisions; and some minor revisions may not be necessary where only notice or logging is now required. The latter do not entail any fees and it is expected that the administrative burden will be less than for a revision. Other savings that may accrue to business owners could result from the ability to make more timely changes to their facilities.

B(4) Impacts on Public and Private Employment

There are no anticipated impacts of this rule on either public or private employment. Neither businesses nor government agencies will require additional staff to implement the rule. Since the requirements for permit revisions are simplified and made more flexible, less time will be spent by ADEQ and county staff in processing applications for permit revisions. Thus, staff time will be more efficiently utilized.

B(5) Impacts on Small Businesses

The rule is deregulatory for small businesses because it expands the list of facility changes that do not require permit revisions. Furthermore, business owners will require fewer resources to obtain permit revisions when they are needed. The estimated $1,500 in savings per applicant may not appear to be large, but it could be significant for a large number of small businesses.

Small businesses are defined in statute as those that have annual gross revenues of $4 million or less, less than 100 employees, are independently owned and operated, and are not a leader in their field. Since most business establishments (an estimated 98%) are "small" according to the statutory definition, they will realize most of the cost savings.

a) Small Businesses Subject to the Rule

With the exception of US military installations, large copper mines and possibly companies engaged in the distribution of natural gas, most of the businesses whose descriptors and SIC codes are indicated above are small businesses. All businesses that are Class II permittees and will seek permit revisions, whether large or small, will benefit from the rule.

b) Administrative and Other Costs to Small Businesses

There are no administrative or other costs to businesses other than the fees required by R18-2-326. This rule decreases the permit costs to all businesses that are required to obtain Class II permits or revisions.

c) Reduction of Impact on Small Businesses

Since the rule is essentially deregulatory, ADEQ does not contemplate a reduction of impacts on small businesses that are distinct from those required of large businesses. Some facility owners who were required to apply for a significant revision under the former system will most likely apply for a minor revision under the new rule; and some formerly needing a minor revision will be asked to seek administrative amendments or merely notify ADEQ of their facility changes. This "relaxation" of requirements to the next lower tier will reduce the cost of permit revisions. Since there are no fees for administrative amendments and notifications of facility changes pursuant to R-18-2-317, all applicant businesses will benefit.

B(6) Probable Effect on State Revenues

ADEQ projects that a decline in its permit revision revenues will occur with approval of this rule, but that its net revenues from Class II permits will increase if the expected increase in new applications occurs. Since fees for permit revisions comprise only a minute portion of total permit revenues, this is not likely to create a disruption in the services rendered by Air Quality Division staff.

B(7) Less Intrusive or Less Costly Alternative Methods

No less costly or less intrusive measures are necessary for small businesses since fewer permit revisions will be required of all regulated entities, and fewer resources will be expended by those who do need them.

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

The following are all the changes made after the rules were proposed:

Proposed R18-2-101(2) was amended as shown:

2. "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in ~~accordance with~~ subsections (a) through ~~(d)~~(e).
   a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a 2-year period ~~which~~ that precedes the particular date and ~~which~~ that is representative of normal source operation. The Director may allow the use of a different time period upon a demonstration that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
   b. If there is inadequate information to determine actual historical emissions, the Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
   c. For any emissions unit at a Class I source, other than an electric utility steam generating unit in subsection (e), ~~which~~ that has not begun normal operations on the particular date, actual emissions shall equal the unit's potential to emit ~~of the unit~~ on that date.
   d. For any emissions unit at a Class II source ~~which~~ that has not begun normal operations on the particular date, actual emissions shall be based on applicable control equipment requirements and projected conditions of operation.

e. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, ~~provided~~ if the source owner or operator maintains and submits to the ~~reviewing authority~~ Director, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the ~~reviewing authority~~ Director if ~~it~~ the Director determines ~~such a~~ the longer period to be more representative of normal source post-change operations.

Proposed R18-2-101(23) was amended as shown:

23. "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility ~~which~~ that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam, ~~which~~ that was not in widespread use as of November 15, 1990.

Proposed R18-2-101(63) was amended as shown:

63. "Major modification" means any physical change or change in the method of operation of a major source that would result in a significant net emissions increase of any regulated air pollutant.
    a. Any net emissions increase that is significant for volatile organic compounds ~~shall be considered~~ is significant for ozone.
    b. Any net emissions increase that is significant for oxides of nitrogen ~~shall be considered~~ is significant for ozone for ozone nonattainment areas classified as marginal, moderate, serious, or severe.
    c. For the purposes of this definition the following ~~shall~~ are not ~~be considered~~ a physical change or change in the method of operation:
        i. ~~Maintenance~~Routine maintenance, repair, and replacement ~~which the Director determines to be routine.~~;
        ii. Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 792, or by reason of a natural gas curtailment plan ~~pursuant to~~ under the Federal Power Act, 16 U.S.C. 792 - 825r~~.~~;
        iii. Use of an alternative fuel by reason of an order or rule under Section 125 of the Act~~.~~;
        iv. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste~~.~~;
        v. Use of an alternative fuel or raw material by a stationary source ~~which~~ that either:
            (1) The source was capable of accommodating before December 12, 1976, unless ~~such~~ the change would be prohibited under any federally enforceable permit condition ~~which was~~ established after December 12, 1976, ~~pursuant to~~ under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter; or
            (2) The source is approved to use under any permit issued under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter~~.~~;
        vi. An increase in the hours of operation or in the production rate, unless ~~such~~ the change would be prohibited under any federally enforceable permit condition ~~which was~~ established after December 12, 1976, ~~pursuant to~~ under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter~~.~~;
        vii. Any change in ownership at a stationary source~~.~~;
        viii. The addition, replacement, or use of a pollution control project at an existing electric utility steam generating unit, unless the Director determines that ~~such~~ the addition, replacement, or use renders the unit less environmentally beneficial, or except:
            (1) When the Director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent title I air quality impact analysis in the area ~~conducted for the purpose of title I~~, if any, and
            (2) The Director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation~~.~~;
        ix. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, ~~provided that~~ if the project complies with:
            (1) The SIP, and
            (2) Other requirements necessary to attain and maintain the national ambient air quality ~~standard~~ standards during the project and after it is terminated~~.~~;
        x. For electric utility steam generating units located in attainment and unclassifiable areas only, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, ~~provided that~~ if the project does not result in an increase in the potential to emit ~~of~~ any regulated pollutant emitted by the unit. This exemption ~~shall apply~~ applies on a pollutant-by-pollutant basis~~.~~; and
        xi. For electric utility steam generating units located in attainment and unclassifiable areas only, the reactivation

of a very clean coal-fired electric utility steam generating unit.

Proposed R18-2-101(83) was amended as shown:

83. "Pollution control project" means any activity or project undertaken at an existing electric utility steam generating unit ~~for purposes of reducing~~ to reduce emissions from ~~such~~ the unit. ~~Such~~ The activities or projects are limited to:
    a. The installation of conventional or innovative pollution control technology, including ~~but not limited to~~ advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;
    b. An activity or project to accommodate switching to a fuel ~~which is~~ less polluting than the fuel used ~~prior to~~ before the activity or project, including ~~but not limited to~~ natural gas or coal reburning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;
    c. A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (42 U.S.C. 5903(d)), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency, or
    d. A permanent clean coal technology demonstration project that constitutes a repowering project.

Proposed R18-2-101(94) was amended as follows:

94. "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with ~~the commencement of~~ commencing commercial operations by a coal-fired utility unit after a period of discontinued operation ~~where~~ if the unit:
    a. Has not been in operation for the 2-year period ~~prior to the~~ before enactment of the Clean Air Act Amendments of 1990, and the emissions from ~~such~~ the unit continue to be carried in the ~~permitting authority's~~ Arizona emissions inventory at the time of enactment;
    b. Was equipped ~~prior to~~ before shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;
    c. Is equipped with low-NOx burners ~~prior to~~ before ~~the time of~~ commencement of operations following reactivation; and
    d. Is otherwise in compliance with the Act.

Proposed R18-2-101(98) was amended as shown:

98. "Repowering" means:
    a. ~~Replacement~~ Replacing of an existing coal-fired boiler with 1 of the following clean coal technologies:
        i. atmospheric or pressurized fluidized bed combustion,
        ii. integrated gasification combined cycle,
        iii. magnetohydrodynamics,
        iv. direct and indirect coal-fired turbines,
        v. integrated gasification fuel cells,
        vi. or as determined by the Administrator, in consultation with the United States Secretary of Energy, a derivative of 1 or more of ~~these~~ the above technologies, and
        vii. any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.
    b. Repowering ~~shall~~ also ~~include~~ includes any oil, gas, or oil and gas-fired unit ~~which~~ that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the United States Department of Energy.
    c. The Director shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Act.

Proposed R18-2-101(99) was amended as shown:

99. "Representative actual annual emissions" means the average rate, in tons per year, at which ~~the~~ a source is projected to emit a pollutant for the 2-year period after a physical change or change in the method of operation of a unit, (or a different consecutive 2-year period within 10 years after that change, ~~where~~ if the ~~reviewing authority~~ Director determines that ~~such~~ the different period is more representative of source operations), considering the effect ~~any such~~ the change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Director shall:
    a. Consider all relevant information, including ~~but not limited to~~, historical operational data, the company's ~~own~~ representations, filings with ~~the state~~ Arizona or federal regulatory authorities, and compliance plans under title IV of the Act; and

b. Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit ~~that is~~ unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

Proposed R18-2-101(113) was amended as shown:

113. "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project operated for ~~a period of~~ 5 years or less, and ~~which~~ that complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

Proposed R18-2-101(117) was amended as shown:

117. "Trivial activities" means activities and emissions units, such as the following, that may be omitted from a Class I or Class II permit application. Certain of ~~these~~ the following listed activities include qualifying statements intended to exclude similar activities:
   a. Combustion emissions from propulsion of mobile sources;
   b. Air-conditioning units used for human comfort that do not have applicable requirements under title VI of the Act;
   c. Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing, industrial, or commercial process;
   d. Non-commercial food preparation;
   ~~e. Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction;~~
   ~~f.~~e. Janitorial services and consumer use of janitorial products;
   ~~g.~~f. Internal combustion engines used for landscaping purposes;
   ~~h.~~g. Laundry activities, except for dry-cleaning and steam boilers;
   ~~i.~~h. Bathroom and toilet vent emissions;
   ~~j.~~i. Emergency or backup electrical generators at residential locations;
   ~~k.~~j. Tobacco smoking rooms and areas;
   ~~l.~~k. Blacksmith forges;
   ~~m.~~l. Plant maintenance and upkeep activities, including grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots, if these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit revision. Cleaning and painting activities qualify as trivial activities if they are not subject to VOC or hazardous air pollutant (HAP) control requirements~~. Asphalt batch plant or tar kettle owners and operators must still get a permit if otherwise required~~;
   ~~n.~~m. Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating, de-greasing, or solvent metal cleaning activities, and not otherwise triggering a permit revision;
   ~~o.~~n. Portable electrical generators that can be moved by hand from 1 location to another. "Moved by hand" means ~~that it can be~~ capable of being moved without the assistance of any motorized or non-motorized vehicle, conveyance, or device;
   ~~p.~~o. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal, or plastic;
   ~~q.~~p. Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of HAP metals. Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that emit HAP metals are ~~more appropriate for treatment as~~ insignificant activities based on size or production level thresholds. Brazing, soldering, and welding equipment, and cutting torches directly related to plant maintenance and upkeep and repair or maintenance shop activities that emit HAP metals are treated as trivial and listed separately in this definition;
   ~~r.~~q. Air compressors and pneumatically operated equipment, including hand tools;
   ~~s.~~r. Batteries and battery charging stations, except at battery manufacturing plants;
   ~~t.~~s. Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any VOC or HAP. ~~Exemptions for storage tanks containing petroleum liquids or other volatile organic liquids should be based on size limits such as storage tank capacity and vapor pressure of liquids stored and are not appropriate for this list~~;
   ~~u.~~t. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, if appropriate lids and covers are ~~utilized~~ used;
   ~~v.~~u. Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, if appropriate lids and covers are ~~utilized~~ used;
   ~~w.~~v. Drop hammers or hydraulic presses for forging or metalworking;

~~x.~~w. Equipment used exclusively to slaughter animals, not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment;
~~y.~~x. Vents from continuous emissions monitors and other analyzers;
~~z.~~z. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities;
~~aa.~~z. Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation;
~~bb.~~aa. Equipment used for surface coating, painting, dipping or spraying operations, except those that will emit VOC or HAP;
~~cc.~~bb. CO(2) lasers~~,~~ used only on metals and other materials ~~which~~ that do not emit HAP in the process;
~~dd. Consumer use of paper trimmers or binders;~~
~~ee.~~cc. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam;
~~ff.~~dd. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants;
~~gg.~~ee. Laser trimmers using dust collection to prevent fugitive emissions;
~~hh.~~ff. Bench-scale laboratory equipment used for physical or chemical analysis, but not ~~lab~~ laboratory fume hoods or vents. ~~Lab fume hoods or vents might qualify for treatment as insignificant, depending on the applicable SIP, or be grouped together for purposes of description~~;
~~ii.~~gg. Routine calibration and maintenance of laboratory equipment or other analytical instruments;
~~jj.~~hh. Equipment used for quality control, quality assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis;
~~kk.~~ii. Hydraulic and hydrostatic testing equipment;
~~ll.~~jj. Environmental chambers not using HAP ~~gasses~~gases;
~~mm.~~kk. Shock chambers;
~~nn.~~ll. Humidity chambers;
~~oo.~~mm. Solar simulators;
~~pp.~~nn. Fugitive ~~emission~~ emissions related to movement of passenger vehicles, if the emissions are not counted for applicability purposes under R18-2-101(61)(c) and any required fugitive dust control plan or its equivalent is submitted with the application;
~~qq.~~oo. Process water filtration systems and demineralizes;
~~rr.~~pp. Demineralized water tanks and demineralizer vents;
~~ss.~~qq. Oxygen scavenging or de-aeration of water;
~~tt.~~rr. Ozone generators;
~~uu.~~ss. Fire suppression systems;
~~vv.~~tt. Emergency road flares;
~~ww.~~uu. Steam vents and safety relief valves;
~~xx.~~vv. Steam leaks; and
~~yy.~~ww. Steam cleaning operations and steam sterilizers.

R18-2-101(125) was amended by replacing "which" with "that", twice.

A new Section was added at R18-2-301(8):

8. "Major source threshold" means the lowest applicable emissions rate for a pollutant that would cause the source to be a major source at the particular time and location, under R18-2-101(61).

Proposed R18-2-306 was amended as shown:

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~~ ensure compliance with all applicable requirements at the time of issuance and operational requirements and limitations that have been voluntarily accepted under 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, if 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 under 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 under sections 114(a)(3) or 504(b) of the Act, and including any monitoring and analysis procedures or test methods required under R18-2-306.01;
   b. If 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 under subsection (A)(4). The monitoring requirements shall ~~assure~~ ensure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement, and as otherwise required under R18-2-306.01. Recordkeeping provisions may be sufficient to meet the requirements of this subsection; and
   c. As necessary, requirements concerning the use, maintenance, and, if appropriate, installation of monitoring equipment or methods.
   4. The permit shall incorporate all applicable recordkeeping requirements including recordkeeping requirements established under R18-2-306.01 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~~ measurement;
      ii. The ~~date(s) analyses were~~ date any analysis was performed;
      iii. The name of the company or entity that performed the ~~analyses~~ analysis;
      iv. A description of the analytical ~~techniques~~ technique or ~~methods~~ method used;
      v. The results of ~~such analyses~~ any analysis; 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. The permit shall incorporate all applicable reporting requirements, including reporting requirements established 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 the reports. All required reports shall be certified by a responsible official consistent with R18-2-304(H) and 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 the deviations, and any corrective actions or preventive measures taken. Notice that complies with subsection (E)(3)(d) shall be considered prompt for the purposes of this subsection (5)(b).
6. A permit condition prohibiting emissions exceeding any allowances the source lawfully holds under title IV of the Act or the regulations promulgated thereunder.
   a. ~~No~~A permit revision ~~shall be~~ is not required for increases in emissions that are authorized by allowances acquired under the acid rain program, if the increases do not require a permit revision under any other applicable requirement.
   b. ~~No~~A limit shall not be placed on the number of allowances held by the source. The source ~~may~~shall 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 under 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~~ owner or operator of the unit or the designated representative of the ~~owners or operators~~ owner or operator,
      ii. Exceedances of applicable emission rates,
      iii. Use of any allowance before the year for which it 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 portion 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 is a violation of the Act.
b. 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~~ the 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 to the permit holder.
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 the records directly to the Administrator along with a claim of confidentiality.
f. For any major source operating in a nonattainment area for all pollutants 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 under A.R.S. § 49-426(E), R18-2-326 and R18-2-511.
10. A provision stating that ~~no~~ a permit revision shall not be required~~,~~ under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes provided for in the permit.
11. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. The terms and conditions shall:
    a. Require the source, contemporaneously with making a change from 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. Extend the permit shield described in R18-2-325 to all terms and conditions under each such operating scenario; and
    c. 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, and 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 the increases and decreases without a case-by-case approval of each emissions trade. The terms and conditions:
    a. Shall include all terms required under subsections (A) and (C) to determine compliance;
    b. Shall not extend the permit shield subsection (D) to all terms and conditions that allow the increases and decreases in emissions;
    c. Shall not include trading ~~which~~ that 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 the terms and conditions are included, the state's emissions inventory shall not reflect the zero emissions associated with the periods of downtime.
14. ~~If~~ Upon request of a permit applicant ~~requests it~~, the Director shall issue ~~permits~~a permit that ~~contain~~contains 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 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 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 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 Class I sources, for notice that conforms to R18-2-317(D) and (E), and for Class II sources, for logging that conforms to R18-2-317.02(B)(5). In addition, the notices for Class I and Class II sources shall describe how the increases and decreases in emissions will comply with the terms and conditions of the permit.
15. Other terms and conditions as are required by the Act, A.R.S. Title 49, Chapter 3, Articles 1 and 2 and the rules 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), all terms and conditions in a Class I permit, including any ~~provisions~~ provision 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 entered into voluntarily 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. Each permit shall contain a compliance plan as specified in R18-2-309.

D. Each permit shall include the applicable permit shield provisions 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~~ that 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 the technology-based emission limitations if the conditions of 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 the permittee can identify the cause or causes of the emergency;
b. At the time of the emergency the ~~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 I permit issued to a major source shall require that revisions be made under R18-2-321 to incorporate additional applicable requirements adopted by the Administrator under the Act that become applicable to a source with a permit with a remaining permit term of 3 or more years. ~~No~~A revision shall not 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 18 months after the promulgation of the standards and regulations. Any permit revision required under this subsection shall comply with R18-2-322 for permit renewal and shall reset the 5 year permit term.

Proposed R18-2-306.02 was amended as shown:

R18-2-306.02 Establishment of an Emissions Cap

A. An applicant may, in its application for a new permit, renewal of an existing permit, or as a significant permit revision, request an emissions cap for a particular pollutant expressed in tons per year as determined on a 12-month rolling average, or any shorter averaging time necessary to enforce any applicable requirement, for any emissions unit, combination of emissions units, or an entire source to allow operating flexibility including emissions trading for the purpose of complying with the cap. This Section shall not apply to sources that hold an authority to operate under a general permit pursuant to Article 5 of this Chapter.

B. An emissions cap for a Class II source that limits the emissions of a particular pollutant for the entire source shall ~~be at or below the lowest~~ not exceed any of the following:

1. The applicable requirement for the pollutant if expressed in tons per year;
2. The source's actual emissions plus the applicable significance level for the pollutant established in R18-2-101(~~97~~104);
3. The applicable major source threshold for the pollutant; or
4. A sourcewide emission limitation for the pollutant voluntarily agreed to by the source ~~pursuant to~~ under R18-2-306.01.

C. In order to incorporate an emissions cap in a permit the applicant must demonstrate to the Director that terms and conditions in the permit will:

1. Ensure compliance with all applicable requirements for the pollutant;

2. Contain replicable procedures to ~~assure~~ ensure that the emissions cap is enforceable as a practical matter and emissions trading conducted under it is quantifiable and enforceable as a practical matter. For the purposes of this Section, "enforceable as a practical matter" shall include the following criteria:
   a. The permit conditions are permanent and quantifiable;
   b. The permit includes a legally enforceable obligation to comply;
   c. The limits impose an objective and quantifiable operational or production limit or require the use of in-place air pollution control equipment;
   d. The permit limits have short-term averaging times consistent with the averaging times of the applicable requirement;
   e. The permit conditions are enforceable and are independent of any other applicable limitations; and
   f. The permit conditions for monitoring, record keeping, and reporting requirements are sufficient to comply with R18-2-306(A)(3),(4), and (5).
3. For a Class I permit, include all terms required under R18-2-306(A) and R18-2-309.

D. Class I sources shall log an increase or decrease in actual emissions authorized as a trade under an emissions cap unless an applicable requirement requires notice to the Director. The log shall contain the information required by the permit including, at a minimum, when the proposed emissions increase or decrease occurred, a description of the physical change or change in method of operation that produced the increase or decrease, the change in emissions from the physical change or change in method of operation, and how the increase or decrease in emissions complies with the permit. Class II sources shall comply with R18-2-317.02(B)(5).

E. The Director shall not include in an emissions cap or emissions trading allowed under a cap any emissions unit for which the emissions are not quantifiable or for which there are no replicable procedures or practical means to enforce emissions trades.

Proposed R18-2-317(C) was amended as shown:

C. Except for sources with authority to operate under general permits, permitted sources may trade increases and decreases in emissions within the permitted facility, as established in the permit under R18-2-306(A)(12), if an applicable implementation plan provides for the emissions trades without applying for a permit revision and based on the 7 working days notice prescribed in subsection (D) ~~below~~. This provision is available ~~in those cases where~~ if the permit does not ~~already~~ provide for the emissions trading as a minor permit revision.

Proposed R18-2-317.01(A)(3) and (4) were amended as shown:

3. A change that will require a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or a visibility or increment analysis;
4. A change that results in emissions ~~which~~ that are subject to monitoring, recordkeeping or reporting under R18-2-306(A)(3),(4), or (5) if the emissions cannot be measured or otherwise adequately quantified by monitoring, recordkeeping, or reporting requirements already in the permit;

Proposed R18-2-317.02 was amended as shown:

R18-2-317.02 Procedures for Certain Changes that do not Require a Permit Revision - Class II

A. Except for a physical change or change in the method of operation at a Class II source requiring a permit revision under R18-2-317.01, or a change subject to logging or notice requirements in subsection (B) or (C), ~~no~~ a change at a Class II source shall not be subject to revision, notice, or logging requirements under this Chapter.

B. Except as otherwise provided in the conditions applicable to an emissions cap created under R18-2-306.02, the following changes may be made if the source keeps on-site records of the changes according to Appendix 3 ~~– Logging~~:
1. Implementing an alternative operating scenario, including raw material changes;
2. Changing process equipment, operating procedures, or making any other physical change if the permit requires the change to be logged;
3. Engaging in any new insignificant activity listed in R18-2-101(54)(a) through (i) but not listed in the permit;
4. Replacing an item of air pollution control equipment listed in the permit with an identical (same model, different serial number) item. The Director may require verification of efficiency of the new equipment by performance tests; and
5. A change that results in a decrease in actual emissions if the source wants to claim credit for the decrease in determining whether the source has a net emissions increase for any purpose. The logged information shall include a description of the change that will produce the decrease in actual emissions. A decrease that has not been logged is creditable only if the decrease is quantifiable, enforceable, and otherwise qualifies as a creditable decrease.

C. Except as ~~otherwise~~ provided in the conditions applicable to an emissions cap created under ~~to~~ R18-2-306.02, the following changes may be made if the source provides written notice to the Department in advance of the change as provided below:

1. Replacing an item of air pollution control equipment listed in the permit with 1 that is not identical but that is substantially similar and has the same or better pollutant removal efficiency: 7 days. The Director may require verification of efficiency of the new equipment by performance tests;
2. A physical change or change in the method of operation that increases actual emissions more than 10% of the major source threshold for any conventional pollutant but does not require a permit revision: 7 days;
3. Replacing an item of air pollution control equipment listed in the permit with 1 that is not substantially similar but that has the same or better efficiency: 30 days. The Director may require verification of efficiency of the new equipment by performance tests;
4. A change that would trigger an applicable requirement that already exists in the permit: 30 days ~~or as~~ unless otherwise required by the applicable requirement;
5. A change that amounts to reconstruction of the source or an affected facility: 7 days. For purposes of this subsection, reconstruction of a source or an affected facility shall be presumed ~~to have occurred~~ if the fixed capital cost of the new components exceed 50% of the fixed capital cost of a comparable entirely new source or affected facility and the changes to the components have occurred over the ~~previous~~ 12 consecutive months ~~from the time of~~ beginning with commencement of construction; and
6. A change that will result in the emissions of a new regulated air pollutant above an applicable regulatory threshold but that does not trigger a new applicable requirement for that source category: 30 days. For purposes of this requirement, an applicable regulatory threshold for a conventional air pollutant shall be 10% of the applicable major source threshold for that pollutant.

D. For each change under subsection (C), the written notice shall be by certified mail or hand delivery and shall be received by the Director the minimum amount of time in advance of the change. Notifications of changes associated with emergency conditions, such as malfunctions necessitating the replacement of equipment, may be provided with less than required notice, but must be provided as far in advance of the change, or if advance notification is not practicable, as soon after the change as possible. The written notice shall include:
1. When the proposed change will occur,
2. A description of the change,
3. Any change in emissions of regulated air pollutants, and
4. Any permit term or condition that is no longer applicable as a result of the change.

E. A source may implement any change in subsection (C) without the required notice by applying for a minor permit revision under R18-2-319 and complying with R18-2-319(D)(2) and (G).

F. The permit shield described in R18-2-325 shall not apply to any change made under this Section, other than implementation of an alternate operating scenario under subsection (B)(1).

G. Notwithstanding any other part of this Section, the Director may require a permit to be revised for any change that, when considered together with any other changes submitted by the same source under this Section over the term of the permit, constitutes a change under R18-317.01(A).

H. If a source change is described under both subsections (B) and (C), the source shall comply with subsection (C). If a source change is described under both subsection (C) and R18-2-317.01(B), the source shall comply with R18-2-317.01(B).

I. A copy of all logs required under subsection (B) shall be filed with the Director within 30 days after each anniversary of the permit issue date. If no changes were made at the source requiring logging, a statement to that effect shall be filed instead.

Proposed R18-2-319(A), (B), and (C) were amended as shown:

R18-2-319. Minor Permit Revisions

A. Minor permit revision procedures may be used only for those changes at a Class I source that satisfy all of the following:
1. Do not violate any applicable requirement;
2. Do not involve substantive changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or a visibility or increment analysis;
4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions include:
   a. A federally enforceable emissions cap ~~which~~ that the source would assume to avoid classification as a modification under any provision of Title I of the Act; and
   b. An alternative emissions limit approved under regulations promulgated under the section 112(i)(5) of the Act.
5. Are not modifications under any provision of title I of the Act~~, or regulations promulgated under A.R.S. § 49-426.06~~;
6. Are not changes in fuels not represented in the permit application or provided for in the permit;

7. The increase in the source's potential to emit any regulated air pollutant is not significant as defined in R18-2-101; and
8. Are not required to be processed as a significant revision under R18-2-320.

B. Minor permit revision procedures shall be used for the following changes at a Class II source:
1. A change that triggers a new applicable requirement if all of the following apply:
   a. For emissions units not subject to an emissions cap, the net emissions increase is less than the significant level defined in R18-2-101(104);
   b. A ~~case by case~~ case-by-case determination of an emission limitation or other standard is not required; and
   c. The change does not require the source to obtain a Class I permit;
2. Increasing operating hours or rates of production above the permitted level unless the increase otherwise creates a condition that requires a significant permit revision;
3. A change in fuel from fuel oil or coal, to natural gas or propane, if not authorized in the permit;
4. A change that results in emissions subject to monitoring, recordkeeping or reporting under R18-2-306(A)(3),(4)**,** or (5) and ~~which~~ that cannot be measured or otherwise adequately quantified by monitoring, recordkeeping or reporting requirements already in the permit;
5. A decrease in the emissions permitted under an emissions cap unless the decrease requires a change in the conditions required to enforce the cap or to ensure that emissions trades conducted under the cap are quantifiable and enforceable; and
6. Replacement of an item of air pollution control equipment listed in the permit with 1 that does not have the same or better efficiency.

C. As approved by the Director, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that ~~such~~ the minor permit revision procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by the Administrator.

Proposed R18-2-320(B) and (D) were amended as shown:

B. A source with a Class II permit shall make the following changes only after ~~its~~ the permit is revised following the public participation requirements of R18-2-330:
1. Establishing or revising a voluntarily accepted emission limitation or standard as described by R18-2-306.01 or R18-2-306.02, except a decrease in the limitation authorized by R18-2-319(B)(5);
2. Making any change in fuel not authorized by the permit and that is not fuel oil or coal, to natural gas or propane;
3. A change to or addition of an emissions unit not subject to an emissions cap that will result in a net emission increase of a pollutant greater than the significance level in R18-2-101(104);
4. A change that relaxes monitoring, recordkeeping or reporting requirements, except when the change results:
   a. From removing equipment that results in a permanent decrease in actual emissions, if the source keeps on-site records of the change in a log that satisfies Appendix 3 of this Chapter and if the requirements that are relaxed are present in the permit solely for the equipment that was removed; or
   b. From a change in an applicable requirement.
5. A change that will cause the source to violate an existing applicable requirement including the conditions establishing an emissions cap;
6. A change that will require any of the following:
   a. A case-by-case determination of an emission limitation or other standard;
   b. A source-specific determination of ambient impacts, or a visibility or increment analysis; or
   c. A ~~case by case~~ case-by-case determination of a monitoring, recordkeeping and reporting requirement; or
7. The change requires the source to obtain a Class I permit.

...

D. 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~~ that apply to permit issuance and renewal.

Proposed R18-2-401 was amended as shown:

R18-2-401. Definitions

In addition to the definitions contained in Article 1 of this Chapter and A.R.S. § 49-401.01, the following definitions apply to this Article:
1. "Adverse impact on visibility" means visibility impairment ~~which~~ that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of a Class I area, as determined according to R18-2-410.
2. "Categorical sources" means the following classes of sources:
   a. Coal cleaning plants with thermal dryers;
   b. Kraft pulp mills;
   c. Portland cement plants;

d. Primary zinc smelters;
e. Iron and steel mills;
f. Primary aluminum ore reduction plants;
g. Primary copper smelters;
h. Municipal incinerators capable of charging more than 50 tons of refuse per day;
i. Hydrofluoric, sulfuric, or nitric acid plants;
j. Petroleum refineries;
k. Lime plants;
l. Phosphate rock processing plants;
m. Coke oven batteries;
n. Sulfur recovery plants;
o. Carbon black plants using the furnace process;
p. Primary lead smelters;
q. Fuel conversion plants;
r. Sintering plants;
s. Secondary metal production plants;
t. Chemical process plants;
u. Fossil-fuel boilers, or ~~combination~~combinations thereof, totaling more than 250 million Btu's per hour heat input;
v. Petroleum storage and transfer units with a total storage capacity ~~exceeding~~ more than 300,000 barrels;
w. Taconite preprocessing plants;
x. Glass fiber processing plants;
y. Charcoal production plants;
z. Fossil-fuel-fired steam electric plants and combined cycle gas turbines of more than 250 million Btu's per hour heat input.

3. "Complete" means, in reference to an application for a permit or permit revision, that the application contains all the information necessary for processing the application.
4. "Dispersion technique" means any technique ~~which~~ that attempts to affect the concentration of a pollutant in the ambient air by any of the following:
   a. Using that portion of a stack ~~which~~ that exceeds good engineering practice stack height;
   b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
   c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into 1 stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This shall not include any of the following:
      i. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
      ii. The merging of exhaust gas streams under any of the following conditions:
      (1) The source owner or operator demonstrates that the facility was originally designed and constructed with the merged gas streams;
      (2) The merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant, applying only to the emission limitation for that pollutant; or
      iii. Smoke management in agricultural or silvicultural prescribed burning programs.
      iv. Episodic restrictions on residential woodburning and open burning.
      v. Techniques ~~which~~ that increase final exhaust gas plume rise if the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.
5. "High terrain" means any area having an elevation of 900 feet or more above the base of the stack of a source.
6. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice, or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.
7. "Low terrain" means any area other than high terrain.
8. "Lowest achievable emission rate" (LAER) means, for any source, the more stringent rate of emissions based on 1 of the following:
   a. The most stringent emissions limitation ~~which~~ that is contained in the SIP of any state for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable; or,

b. The most stringent emissions limitation ~~which~~ that is achieved in practice by the class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standards of performance in Articles 9 and 11 of this Chapter.

9. "Major source" means:
   a. Any stationary source located in a nonattainment area ~~which~~ that emits, or has the potential to emit, 100 tons per year or more of any conventional air pollutant, except as follows:

Pollutant Emitted	Nonattainment Pollutant and Classification	Quantity Threshold tons/year or more
Carbon Monoxide (CO)	CO, Serious, with stationary sources as more than 25% of source inventory	50
Volatile Organic Compounds (VOC)	Ozone, Serious	50
VOC	Ozone, Severe	25
PM_{10}	PM_{10} Serious	70
NOx	Ozone, Serious	50
NOx	Ozone, Severe	25
or		

   b. Any stationary source located in an attainment or unclassifiable area ~~which~~ that emits, or has the potential to emit, 100 tons per year or more of any conventional air pollutant if the source is classified as a Categorical Source, or 250 tons per year or more of any pollutant subject to regulation under the Act if the source is not classified as a Categorical Source; or
   c. Any change to a minor source, except for VOC or NOx emission increases at minor sources in serious or severe ozone nonattainment areas, ~~which~~ that would increase its emissions to the qualifying levels in subsections (a) or (b);
   d. Any change in VOC or NOx at a minor source in serious or severe ozone nonattainment areas that would be "significant" under R18-2-405(B) and ~~which~~ that would increase its emissions to the qualifying levels in subsection (a);
   e. Any stationary source ~~which~~ that emits, or has the potential to emit, 5 or more tons of lead per year;
   f. Any source classified as major undergoing modification that meets the definition of reconstruction;
   g. A major source that is major for VOC shall be considered major for ozone; or
   h. A major source that is major for oxides of nitrogen shall be considered major for ozone in nonattainment areas classified as marginal, moderate, serious, or severe.

10. "Reconstruction" of sources located in nonattainment areas shall be presumed to have taken place if the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new stationary source, as determined in accordance with the provisions of 40 CFR 60.15(f)(1) through (3).
11. "Resource recovery project" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Only energy conversion facilities that utilize solid waste ~~which~~ that provides more than 50% of the heat input shall be considered a resource recovery project under this Article.
12. "Significance levels" means the following ambient concentrations for the enumerated pollutants:

	Averaging Time				
Pollutant	**Annual**	**24-Hour**	**8-Hour**	**3-Hour**	**1-Hour**
SO2	1 µg/m[3]	5 µg/m[3]		25 µg/m[3]	
NO2	1 µg/m[3]				
CO			0.5 mg/m[3]		2 mg/m[3]

PM10	1 µg/m[3]	5 µg/m[3]

Except for the annual pollutant concentrations, exceedance of significance levels shall be deemed to occur when the ambient concentration of the above pollutant is exceeded more than once per year at any 1 location. If the concentration occurs at a specific location and at a time when Arizona ambient air quality standards for the pollutant ~~is~~ are not violated, the significance level does not apply.

Proposed R18-2-404 was amended as shown:

R18-2-404. Offset and Net Air Quality Benefit Standards

A. Increased emissions by a major source or major modification subject to this Article shall be offset by reductions in the emissions of each pollutant for which the area has been designated as nonattainment and for which the source or modification is classified as major. The offset may be obtained by reductions in emissions from the source or modification, or from any other source in existence within the allowable offset area, on the startup date of the new major source or major modification. Credit for an emissions offset can be used only if it has not been relied upon in demonstrating attainment or reasonable further progress and if it has not been relied upon previously in issuing a permit or permit revision under this Article under R18-2-402 and R18-2-403 or is not otherwise required under this Chapter or under any provision of the SIP.

B. An offset shall not be sufficient unless reductions of total emissions for the particular pollutant for which the offset is required will be:

1. Obtained from sources within the allowable offset area;
2. ~~Contemporary~~ Contemporaneous with the operation of the new major source or major modification;
3. Less than the baseline of the total emissions for that pollutant, except in ozone nonattainment areas classified as moderate, serious, or severe; and
4. Sufficient to demonstrate that emissions from the new major source or major modification, together with the offset, will result in reasonable further progress for that pollutant.

C. In ozone nonattainment areas classified as marginal, total emissions of VOC and oxides of nitrogen from other sources shall offset those proposed or permitted from the major source or major modification by a ratio of at least 1.10 to 1. In ozone nonattainment areas classified as moderate, total emissions of VOC and oxides of nitrogen from other sources shall offset those proposed or permitted from the major source or major modification by a ratio of at least 1.15 to 1. New major sources and major modifications in serious and severe ozone nonattainment areas shall ~~conform to~~ comply with the requirements of this Section and R18-2-405.

D. Only intrapollutant emission offsets shall be allowed. Intrapollutant emission offsets for VOC shall only include offset reductions in emissions of VOC. Intrapollutant emission offsets for oxides of nitrogen shall only include offset reductions in emissions of oxides of nitrogen.

E. For purposes of this Section, "reasonable further progress" means compliance with the schedule of annual incremental reductions in emissions of the applicable air pollutant prescribed by the Director based on air quality modeling under R18-2-409, to provide for attainment of the applicable air quality standards by the deadlines set under Part D of Title I of the Act, or in an applicable implementation plan.

F. For purposes of this Article, "net air quality benefit" ~~shall mean~~ means that, during similar time periods, either subsection (1) or (2) below is applicable:

1. A reduction in the number of violations of the applicable Arizona ambient air quality standard within the allowable offset area has occurred and the following mathematical expression is satisfied:

$$\sum_{i=1}^{N} x_i\text{-}C \leq \sum_{j=1}^{K} x_j\text{-}C$$

~~where~~ when:

C = The applicable Arizona ambient air quality standard.
Xi = The concentration level of the violation at the i[th] receptor for the pollutant after offsets.
N = The number of violations for the pollutant after offsets ($N \leq K$).
Xj = The concentration level of the violation at the j[th] receptor for the pollutant before offsets.
K = The number of violations for the pollutant before offsets.

2. The average of the ambient concentrations within the allowable offset area ~~following~~ after the implementation of the contemplated offsets will be less than the average of the ambient concentrations within the allowable offset area without the offsets.

G. Baseline further defined:

1. For the purpose of this Section, the baseline of total emissions from any sources in existence or sources ~~which~~ that have obtained a permit or permit revision under this Article (regardless of whether or not the sources are in actual operation at the time of application for the permit or permit revision) shall be the total actual emissions at the time the application is filed. In addition, the baseline of total emissions shall consist of all emission limitations included as conditions on federally enforceable permits except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained if:
   a. No emission limitations are applicable to a source from which offsets are being sought; or
   b. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area.
2. If the emission limitations for a particular pollutant allow greater emissions than the potential emission rate of the source for that pollutant, the baseline shall be the potential emission rate at the time application for the permit or permit revision under this Article is filed, and emissions offset credit shall be allowed only for control below the potential emission rate.

H. For an existing fuel combustion source, offset credit shall be based on the allowable emissions under the regulations or permit conditions applicable to the source for the type of fuel being burned at the time the application for the permit or permit revision under this Article is filed. If an existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the actual emissions for the fuels involved shall not be acceptable unless:

1. The permit or permit revision under this Article for the source specifically requires the use of a specified alternative control measure ~~which~~ that would achieve the same degree of emissions reduction ~~should~~ if the source ~~switch~~ switches back to a dirtier fuel at some later date; and,
2. The source demonstrates to the Director that it has secured an adequate long-term supply of the cleaner fuel.

I. Offsets shall be made on either a pounds-per-hour, pounds-per-day, or tons-per-year basis, whichever is applicable, when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate and, except as otherwise provided in subsection (H), utilizing the type of fuel burned at the time the application for the permit or permit revision under this Article is filed. A tons-per-year basis shall not be used if the new or modified source or the source offsets ~~is~~ are not expected to operate throughout the entire year. No emissions credit may be allowed for replacing 1 VOC with another VOC of lesser reactivity.

J. Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, if the work force to be affected has been notified of the proposed shutdown or curtailment. No offset credit for shutdowns or curtailments shall be provided for emissions reductions that are necessary to bring a source into compliance with RACT or any other standard under an applicable implementation plan. Source shutdowns and curtailments in production or operating hours occurring before the date the new major source or major modification application is filed shall not be used for emissions offset credit except as follows: if an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than 1 year before the date of application for the permit or permit revision under this Article, whichever is earlier, and the proposed new major source or major modification is a replacement for the shutdown or curtailment, then credit for the shutdown or curtailment may be applied to offset emissions from the new source or modification.

K. The allowable offset area shall ~~refer to~~ be the geographical area in which ~~are located~~ the sources are located whose emissions are being sought ~~for purposes of offsetting~~ to offset emissions from a new major source or major modification. For the pollutants sulfur dioxide, PM-10 and carbon monoxide, the allowable offset area shall be determined by atmospheric dispersion modeling. If the emission offsets are obtained from a source on the same premises or in the immediate vicinity of the new major source or major modification, and the pollutants disperse from substantially the same effective stack height, atmospheric dispersion modeling shall not be required. The allowable offset area for all other pollutants shall be the nonattainment areas for those pollutants within which the new major source or major modification is to be located.

L. An emission reduction may only be used to offset emissions if the reduced level of emissions will continue for the life of the new source or modification and if the reduced level of emissions is federally and legally enforceable at the time of permit issuance. It shall be considered legally enforceable if the following conditions are met:

1. The emission reduction is included as a condition in the permit of the source relied upon to offset the emissions from the new major source or major modification, or in the case of reductions from sources controlled by the applicant, is included as a condition of the permit or permit revision under this Article for the new major source or major modification;
2. The emission reduction is adopted as a part of this Chapter or comparable rules of any other governmental entity or is contractually enforceable by the Department and is in effect at the time the permit is issued.

Proposed R18-2-405 was amended as shown:

R18-2-405. Special Rule for Major Sources of VOC or Oxides of Nitrogen in Ozone Nonattainment Areas Classified as Serious or Severe

A. Applicability. The provisions of this Section only apply to stationary sources of VOC or oxides of nitrogen in ozone nonattainment areas classified as serious or severe. Unless otherwise provided in this Section, all requirements of Articles 3 and 4 of this Chapter apply.

B. "Significant" means, for the purposes of a major modification of any major source of VOC or oxides of nitrogen, or for determining whether an otherwise minor source is major under R18-2-401(9), any physical ~~changes~~ change or ~~changes~~ change in the method of operations, ~~not considering de minimis changes,~~ that results in net increases in emissions of either pollutant by more than 25 tons when aggregated with all other creditable increases and decreases in emissions from the source over the ~~prior~~ previous 5 consecutive calendar years, including the calendar year in which the increase is proposed. For the purposes of this subsection, ~~a de minimis change is~~ a physical change or change in the method of operation that results in an increase of less than 1 ton per year of VOC or oxides of nitrogen ~~prior to~~ before netting does not trigger a 5-year aggregation exercise.

C. For any major source that emits or has the potential to emit less than 100 tons VOC or oxides of nitrogen per year, a significant increase in VOC, or oxides of nitrogen, respectively, shall constitute a major modification except that the increase in emissions from any discrete emissions unit, operation, or other pollutant emitting activity that is offset from other units, operations, or activities at the source at a ratio of 1.3 to 1 for the increase in VOC or oxides of nitrogen, respectively, from the unit, operation or activity shall not be considered part of the major modification. BACT shall be substituted for LAER for all major modifications under this subsection. Net emissions increases in VOC or oxides of nitrogen above the internal offset described herein shall be subject to the offset requirements in subsections (E) and (F).

D. For any stationary source that emits or has the potential to emit 100 tons or more of VOC or oxides of nitrogen per year, any significant increase in VOC, or oxides of nitrogen, respectively, shall constitute a major modification. If the increase in emissions from the modification at any discrete emissions unit, operation, or other pollutant emitting activity is offset from other units, operations or activities at the source at a ratio of 1.3 to 1 for the increase in VOC or oxides of nitrogen, respectively from the unit, operation or activity, BACT shall be substituted for LAER at the unit, operation, or activity. Net emissions increases in VOC or oxides of nitrogen above the internal offset described herein shall be subject to the offset requirements in subsections (E) and (F).

E. For any new major source or major modification ~~which~~ that is classified ~~as such~~ major because of emissions or potential to emit VOC or oxides of nitrogen in an ozone nonattainment area classified as serious, the increase in emissions of these pollutants from the source or modification shall be offset at a ratio of 1.2 to 1. The offset shall be made in accordance with the provisions of R18-2-404.

F. For any new major source or major modification ~~which~~ that is classified as such because of emissions or potential to emit VOC or oxides of nitrogen in an ozone nonattainment area classified as severe, the increase in emissions of these pollutants from the source or modification shall be offset at a ratio of 1.3 to 1. If the SIP requires all existing major sources of these pollutants in the nonattainment area to apply BACT, then the offset ratio shall be 1.2 to 1. These offsets shall be made in accordance with the provisions of R18-2-404.

Proposed Appendix 3 was amended as shown:

Appendix 3. Logging

1. Each log entry required by a change under R18-2-317.02(B) shall include at least the following information:
   a. A description of the change, including:
      i. A description of any process change.
      ii. A description of any equipment change, including both old and new equipment descriptions, model numbers and serial numbers, or any other unique equipment number.
      iii. A description of any process material change.
   b. The date and time that the change occurred.
   c. The provision of R18-2-317.02(B) that authorizes the change to be made with logging.
   d. The date the entry was made and the first and last name of the person making the entry.
2. Logs shall be kept for 5 years from the date created. Logging shall be performed in indelible ink in a bound log book with sequentially numbered pages, or in any other form, including electronic format, approved by the Director.
3. ~~A copy of all logs required pursuant to R18-2-317.02 shall be filed with the Director within 30 days of the end of the annual reporting period established in the permit. If no changes were made at the source requiring logging, a statement to that effect shall be filed instead.~~ *[This subsection modified and moved to R18-2-317.02(I)]*

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

The proposed rule was published in the *Arizona Administrative Register* on January 22, 1999. The Arizona Department of Environmental Quality (ADEQ) received written comments regarding the proposed rule from 5 interested parties during the public comment period which ended March 5, 1999. Additionally, 2 oral comments were received at the public hearing held in the ADEQ Public Meeting room on February 25, 1999. The written and oral comments received have been addressed by ADEQ and are summarized in the following paragraphs.

Comment: R18-2-101(63)(c)(i) (Definition of Major Modification): ADEQ proposes R18-2-101(63)(c)(i) to read: "[For purposes of this definition, the following shall not be considered a physical change or change in method of operation:] Maintenance, repair and replacement which the Director determines to be routine." EPA, in written comments dated July 10, 1998 regarding NSR/PSD rules, stated that R18-2-101(63)(c)(i) should read, "Routine maintenance, repair and replacement," so as to match 40 CFR 51.165(a)(1)(v)(C)(1). Has ADEQ considered EPA's recommendation?

Response: ADEQ has changed the language as requested, so as to match federal language.

Comment: R18-2-101(117) (Definition Of Trivial Activities): ADEQ proposes the introduction of R18-2-101(117) to read: "Trivial activities means activities and emissions units, such as the following, that may be omitted from a Class I or Class II permit application...." Per the County's Public Workshop #4 for Rule 100 (General Provisions And Definitions), attendees recommended that the text, "emitting regulated air pollutants and subject only to general/regular applicable requirements...", be added to the introduction of Rule 100, Section 299(A) (Definition Of Trivial Activities) draft December 17, 1998. Is ADEQ willing to consider adding such text to the introduction of R18-2-101(117)?

Response: ADEQ does not consider the suggested language helpful to the definition of trivial activities. Whether the activity emits regulated air pollutants or is subject only to general/regular applicable requirements is not relevant to whether it should be listed as trivial in this definition or may be left out of a permit application. The proposed trivial activities were identified from EPA's White Paper No. 1, dated July 10, 1995. The activities are considered trivial because of the nature of the activity. If an activity is subject to an applicable requirement of any sort, it clearly must be described in the permit application and cannot be a trivial activity.

Comment: R18-2-301(7) (Definition Of Fuel Oil): ADEQ proposes R18-2-301(7) to read: "Fuel oil means Number 2 through Number 6 fuel oils as specified in ASTM D-396-90a (Specification For Fuel Oils), gas turbine fuel oils Number 2-GT through 4-GT as specified in ASTM D-2880-90a (Specifications For Gas Turbine Fuel Oils), or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM D-975-90a (Specifications For Diesel Fuel Oils)." Should the references end with "96" instead of "90a?"

Response: Although the commenter requested 1996 references to match its own rules, ADEQ recently noted that there were 1997 revisions for each of these 3 ASTMs available, and ordered those in preparation for incorporating the latest revision by reference. Since the 1997 revisions arrived, even later ones have been issued by ASTM. In the meantime, ADEQ has investigated the differences in these revisions, and found no changes between the 90a and 96 versions that would make a material difference for the purposes of these rules.

Moreover, ADEQ has concluded that changing these references without a notice of proposed rulemaking showing the actual revision dates has the potential to cause unnecessary expense to those who may have recently invested in documentation and equipment based on a different revision date. ADEQ will attempt to work with all the counties and other stakeholders at the time of its next incorporation by reference rule and to develop a consistent approach for these and other ASTM references. No change to the rule.

Comment: R18-2-306(A)(4)(b) (Permit Contents): ADEQ proposes R18-2-306(A)(4)(b) to read: "[Each permit issued by the Director shall include the following elements: The permit shall incorporate all applicable recordkeeping requirements including recordkeeping requirements established under R18-2-306.01, where applicable, for the following:] 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." Per the County's Public Workshop #3 for Rule 220 (Non-Title V Permit Provisions), attendees recommended deleting, from Rule 220, Subsection 302.6 draft December 17, 1998, the term, "original," since it is difficult for sources to maintain all original strip-chart recordings. Is ADEQ willing to delete the term, "original," from R18-2-306(A)(4)(b)?

Response: The commenter did not elaborate on the difficulty in maintaining original strip-chart recordings for 5 years and ADEQ does not agree that there is any substantial difficulty. Original strip-chart recordings are often the best evidence of operating and emissions parameters at a particular point in time, and therefore important, both for the source and ADEQ, in future enforcement proceedings. No change to the rule.

Comment: R18-2-401(4)(c)(ii)(3) (Definition Of Dispersion Technique): ADEQ has <u>not</u> included the following text in R18-2-401(4)(c)(ii)(3): "[Dispersion technique means any technique which attempts to affect the concentration of a pollutant in the ambient air by any of the following: Increasing final exhaust plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into 1 stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This shall

not include any of the following: The merging of exhaust gas streams under any of the following conditions:] Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Control Officer shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source, owner or operator, that merging was not merging in calculating the allowable emissions for the source." The County has included such text in Rule 240 (Permit For New Major Sources And Major Modifications To Existing Major Sources) draft December 17, 1998, Subsection 204.3(b)(3). Is there a reason that ADEQ did not include this text in R18-2-401(4)(c)(ii)(3)?

Response: ADEQ has reached the preliminary conclusion that the missing text mentioned by the commenter, dealing with merging of exhaust streams prior to July 8, 1985, is probably an oversight. However, this issue was never discussed in any of the workshops on this rule since 1995 and adding language at this late state is not appropriate without full notice and comment. ADEQ will open a docket to propose adding this language within 30 days after this rule is approved.

Comment: R18-2-405(C) (Special Rate For Major Sources Of VOC or Oxides Of Nitrogen In Ozone Nonattainment Areas Classified As Serious Or Severe): Should ADEQ include the following text as the last sentence of R18-2-405(C): "Emissions associated with trivial activities shall not be used in netting calculations." The County is proposing to include such text in Rule 240 (Permit For New Major Sources And Major Modifications To Existing Major Sources) draft December 17, 1998, Subsection 307.3, since such text was proposed by ADEQ in R18-2-405(C) draft May 8, 1998. Why did ADEQ omit this sentence from the December 22, 1998, draft?

Response: The proposed rule, which the commenter refers to as the December 22, 1998, draft, did not include the language from the May 8, 1998, draft because discussions at later workshops focused instead on ADEQ proposing several "tons per year" rates to establish a trivial level to be implemented in R18-2-405(B). A tons per year approach is preferable to one based on trivial activities because it was not clear that only excluding emissions associated with trivial activities would produce any benefit for most sources. It also allows ADEQ and EPA to better document compliance with the federal New Source Review (NSR) program.

Comment: R18-2-405(D) (Special Rate For Major Sources Of VOC or Oxides Of Nitrogen In Ozone Nonattainment Areas Classified As Serious Or Severe): Should ADEQ include the following text as the last sentence of R18-2-405(D): "Emissions associated with trivial activities shall not be used in netting calculations." The County is proposing to include such text in Rule 240 (Permit For New Major Sources And Major Modifications To Existing Major Sources) draft December 17, 1998, Subsection 307.4, since such text was proposed by ADEQ in R18-2-405(D) draft May 8, 1998. Why did ADEQ omit this sentence from the December 22, 1998, draft?

Response: The proposed rule, which the commenter refers to as the December 22, 1998, draft, did not include the language from the May 8, 1998, draft because discussions at later workshops focused instead on ADEQ proposing several "tons per year" rates to establish a trivial level to be implemented in R18-2-405(B). A tons per year approach is preferable to one based on trivial activities in that it was not clear that only excluding emissions associated with trivial activities would produce any benefit to most sources. It also allows ADEQ and EPA better documentation of compliance with the federal NSR program.

Comment: Appendix 3 (Logging), Subsection 1(a)(ii): ADEQ proposes Appendix 3 (Logging), Subsection 1(a)(ii) to read: "[Each log entry shall include at least the following information: A description of the change, including:] A description of any equipment change, including both old and new equipment descriptions, model numbers, and serial numbers." Per Public Workshop #3 for Rule 220 (Non-Title V Permit Provisions), attendees recommended that sources be allowed to use a unique number, in addition to and/or in place of a model number and a serial number, to identify old and new equipment. Is ADEQ willing to consider adding such text to Appendix 3, Subsection 1(a)(ii)?

Response: ADEQ has changed the rule to allow for use of the model number, if any, and the serial number or another unique equipment number.

Comment: Appendix 3 (Logging), Subsection 1(a)(iii): ADEQ proposes Appendix 3 (Logging), Subsection 1(a)(iii) to read: "[Each log entry shall include at least the following information: A description of the change, including:] A description of any process material change." Per public Workshop #3 for Rule 220 (Non-Title V Permit Provisions), attendees recommended that the text, "that trigger the logging requirement," be added to the end of the sentence. Is ADEQ willing to consider this recommendation?

Response: ADEQ has modified the introductory language of the Appendix to identify what log entries are covered. This also makes it clear that the requirements apply only to events that trigger the logging requirement.

Comment: Appendix 3 (Logging), Subsection 1(b): ADEQ proposes Appendix 3 (Logging), Subsection 1(b) to read: "[Each log entry shall include at least the following information:] The date and time that the change occurred." Per Public Workshop #3 for Rule 220 (Non-Title V Permit Provisions), attendees recommended that the term, "time," be deleted, because such requirement is impractical. Is ADEQ willing to consider deleting the term, "time," from Appendix 3, Subsection 1(b)?

Response: The concept of logging is that events are recorded as they occur. Permit conditions relating to alternative operating scenarios and other critical processes at a permitted facility sometimes necessitate that not only the day of the change, but the time of day, be known. The term, "time," has been left in because knowing the time that a change occurred may be necessary for compliance and enforcement purposes.

Comment: Appendix 3 (Logging), Section 2: ADEQ proposes Appendix 3 (Logging), Section 2 to read: "Logs shall be kept for 5 years from the date created. Logging shall be performed in indelible ink in a bound book with sequentially numbered pages, or in any form, including electronic format, approved by the Director." Per Public Workshop #3 for Rule 220 (Non-Title V Permit Provisions), attendees recommended that the text, "if a source makes a change that requires logging, then the source shall keep such log for 5 years from the date the source creates such log," be added. Is ADEQ willing to consider adding the suggested text to Appendix 3, Section 2?

Response: ADEQ has changed language at the beginning of the Appendix to clarify that the logging requirements apply only when a change occurs at the source that requires logging under R18-2-317.02(B). As the commenter suggests, this clarifies that the 5 year requirement only applies to these logs.

Comment: Appendix 3 (Logging), Section 3: ADEQ proposes Appendix 3 (Logging), Section 3 to read: "A copy of all logs required pursuant to R18-2-317.02 shall be filed with the Director within 30 days of the end of the annual reporting period established in the permit. If no changes were made at the source requiring logging, a statement to that effect shall be filed instead." Per Public Workshop #3 for Rule 220 (Non-Title V Permit Provisions), attendees recommended that the last sentence, "If no changes were made at the source requiring logging, a statement to that effect shall be filed instead," be deleted. Is ADEQ willing to consider deleting the text, as suggested, from Appendix 3, Section 3?

Response: This statement is the company's only form of certification that it either had logging changes, or that no changes were made that required logging. Without this statement, ADEQ is unable to tell if the annual filing was forgotten, or if there actually were no changes requiring logging. ADEQ has kept the statement in the rule.

Comment: Require 7 day notice for changes that increase actual emissions more than 0.1% of the major source threshold rather than the 10% proposed; if 10% is used the agency should make written findings under A.R.S. § 49-426(B).

Response: The 10% of major source threshold (MST) number was arrived at after many workshops and extensive stakeholder discussion. (See "Background" in #5 of the preamble) The number is a compromise, and establishes a notice requirement for emission increases when currently there is none. It benefits sources by providing predictability, and ADEQ by providing new information.

Requiring a source to give prior notice to ADEQ for actual emission increases more than 0.1% of the major source threshold is asking that a source delay making a facility change that will result in a meaningless emissions increase. Much of the argument for this low number is based on the commenter's conclusion that requiring notice for a greater than 10% increase means "complete regulatory exclusion" or "do nothing" for increases of 10% or below. The language of the rule does not support this conclusion.

A key provision in this new system for facility changes is that, unlike the former rule, this rule expressly states when a change is completely excluded from regulatory consequences. R18-2-317.02(A) states that in order for a change to have no regulatory consequence, it must not be 1 of the 10 categories of changes that need a revision under R18-2-317.01, nor 1 of the 11 categories that need notice or logging at R18-2-317.02(B) and (C). It is not sufficient (for exclusion) that the change increase actual emissions less than 10%; that is only 1 of the conditions. Therefore, the proposed rules do not mean a "do nothing" approach for increases of 10% or below. If anything, it is the current rules that allow "do nothing." For actual emission increases of 9%, 11%, and even 50% of the major source threshold, the current rules are silent.

The commenter is also incorrect in construing which type of exemption requires written findings under A.R.S. § 49-426(B). A.R.S. § 49-426(B) covers which sources, or groups of sources require permits, and which units and activities are required to be "included" under a permit. The types of facility changes covered by this rule require an already existing permit, and the rule begins with changes and activities that do not require a revision to that permit. Activities that trigger permitting are different phenomena than changes that trigger permit revisions. The subject matter of this

rule (changes that trigger revisions,) isn't covered by A.R.S. § 49-426(B). The next section, A.R.S. § 49-426.01, covers permit revisions, and there is no requirement for "written findings with supporting facts."

Comment: Requiring notice for "actual" emission increases of more than 10% of major source threshold may mislead sources into overlooking requirements linked to increases in "potential to emit (PTE)."

Response: At R18-2-317.02(C), ADEQ proposed to use "actual emissions" to measure emission increases at Class II sources, requiring notice for a change that increases actual emissions more than 10% of the major source threshold (MST). ADEQ and most workshop participants agreed on actual emissions in this situation, because actual increases are more environmentally significant than potential, and in most situations, easier to measure. For these reasons, ADEQ is retaining the use of actual emissions.

Under the final rule, both sources and ADEQ have increased opportunity to examine both actual and potential emission changes. Numerous changes at facilities will require prior notice or minor permit revisions. Under R18-2-317.02(D)(3), the notice must include the change in emissions of any regulated air pollutant. At a source that might be overlooking a requirement linked to potential to emit, these changes can be checked and evaluated by ADEQ even before the change takes place. If logged changes at a source lead to increases in "potential to emit" that are overlooked by the source and that trigger other requirements, the logs required by this rule and sent to ADEQ annually, present an added opportunity for spotting the oversight and an extra safeguard that does not exist under the current system. In this way, this rule decreases the likelihood that sources are overlooking PTE requirements. Finally, ADEQ's outreach and enforcement programs are also in place to prevent overlooked PTE requirements. ADEQ believes that the extra oversight afforded by the logging system, and the more detailed requirements for notice, more than make up for those sources that the commenter asserts might be misled by concentrating too much on actual emissions.

Comment: Given the apparent ongoing problem with ozone impacts on Pinal County, we object to the relaxations of emissions limitations on ozone precursors in proposed R18-2-401(9)(d) and R18-2-405.

Response: The commenter refers to the changes in R18-2-401(9)(d) and R18-2-405 as relaxations, but taking into account the consequences of the area's redesignation to serious, sources will be subject to much more stringent control of ozone precursors than before. Redesignation has caused the major source threshold for VOC and NOx to be cut in half and the "significant increase" level to be reduced from 40 to 25 tons per year. (See R18-2-405(B)) In addition, the rule changes apply to a very narrow range of sources, and still leave the rules as strict or stricter than EPA requirements.

The change in R18-2-401 applies to:

1) ozone nonattainment area sources;

2) that change from minor source emission levels to a major source emission level;

3) for either of 2 pollutants;

4) but with a less than "significant" increase.

This change keeps these few sources from being subject to the NSR process, which is extremely expensive and time consuming. ADEQ knows of no other state besides Arizona that currently subjects these sources to NSR. The change does not prevent the source from being considered major for Title V purposes; it would still be required to apply for a Title V, or Class I, permit, which is a significant revision requiring a public hearing.

Similar to the change in R18-2-401, the changes in R18-2-405 are also narrow in scope and approvable under the federal system. The change(s) in R18-2-405 apply to:

1) major sources;

2) of VOC or NOx;

3) in serious or severe ozone nonattainment areas;

4) that add or modify an emissions unit(s) that would result in a "significant" net emission increase.

The 1st change in R18-2-405(B) removes the requirement that any emission decreases used to determine a net emission increase be "simultaneous" with the proposed modification and replaces it with language using the 5 year federal "contemporaneous" period. (See 40 CFR 52.24(f)(6)(ii)). This allows the source to "net" a particular change out of NSR review if the new emission increase plus the sum of all other contemporaneous increases and decreases at the source is less than significant. It encourages sources to make changes that decrease emissions earlier than they would

otherwise because the decreases will count against emission increases for 5 years, not only when simultaneous with the change.

The 2nd change in R18-2-405(B) is a related, common sense limitation on the smallest increase at the source that will trigger an aggregation exercise. The concept of increases too trivial to be tracked for netting was introduced by EPA in response to state inquiries in the recent proposed rule on NSR. (See the discussion on "trivial increases" at 61 FR 38300, June 29, 1996).

All 3 of these changes are minor adjustments, far overshadowed by the many more sources that will be potentially subject to NSR because the major source threshold has been cut in half, and the significant increase level has been reduced from 40 to 25 tons per year. Given these overriding changes, it is hardly a relaxation to make the size of the increase required for a particular type of modification, as well as the period allowed for netting, the same as federal requirements, or, to adjust the "resolution" of the netting exercise itself. No change.

Comment: In R18-2-306.02(C)(2)(c), change "or" to "and" to allow sources the choice to rely on both operational limits and air pollution control equipment in making the cap enforceable as a practical matter.

Response: ADEQ agrees with the commenter that sources should be able to choose both operational limits and air pollution control equipment in making their cap enforceable as a practical matter. However, the cited language does not require a choice of one at the exclusion of the other, but can be easily read to allow both. In contrast, the word "and" would require that the source employ both operational limits and control equipment in every circumstance to make the cap enforceable, which is not a practical or desirable result. No change.

Comment: The language in R18-2-306.02(C)(2)(e) should be changed to allow permit conditions supporting an emissions cap to invoke or rely on limitations that already exist under applicable requirements.

Response: The cited provision requires that the permit conditions supporting an emissions cap be independent of other applicable limitations because the cap itself is an independent requirement. Should applicable requirements that exist outside of the permit be vacated or repealed, the permit conditions supporting the cap, even if identical, need to remain in existence independently and enforceable. No change.

Comment: The reference to emissions trading practices in R18-2-306.02(E) should be somewhere else besides this section.

Response: The placement is appropriate. The provision clarifies that trades under a cap in a Class I permit need to follow specific procedures conforming to already existing Part 70 language in place at R18-2-306(A)(14). Trades under a cap in a Class II permit are covered under R18-2-317.02(B)(2) and (5).

Comment: A class II source should provide notice to ADEQ before replacing an air pollution control device with an identical device so that the Director can make a decision on performance testing at or near the time of the change itself.

Response: If a source knows that it is going to replace air pollution control equipment 7 days ahead of time, there is no essential difference in burden to the source between logging and 7 days notice. However, the decision to replace is often due to unplanned breakdowns or substandard performance in other equipment; when a work stoppage due to other reasons makes it a convenient time to replace air pollution control equipment that is still performing normally, but perhaps in the 2nd half of its useful life. In these circumstances, it is not sound public policy to force sources into choosing between continuing operation with equipment they want or need to replace versus remaining shut down to wait for an automatic approval. This is a facility change that requires very little oversight. Providing this flexibility to the source greatly benefits sources with no environmental impact and frees up ADEQ resources that would be better spent on more environmentally significant facility changes.

Comment: Delete R18-2-306.02(B) because:

1) The limit of actual plus significant for emission caps puts too much restriction on a source's ability to expand because:
   a) Many pollutants do not have established significance levels, effectively limiting caps to actual emissions for the vast majority of regulated pollutants.
   b) Some established significance levels are too low (PM10 is 15 tpy)
2) The limit on caps encourages sources to maximize emissions before accepting a cap.

Response: After carefully evaluating the commenters' arguments for deleting R18-2-306.02(B), ADEQ has decided to keep the provision. As stated in 1 of the comments, the main purpose of these rules is to increase operating flexibility without sacrificing protection of the environment. ADEQ will set caps to provide flexibility without sacrificing environmental protection whether or not this upper limit on emission caps is in rule. However, the best way to provide assurance that this will happen is to set the initial cushion for growth at "significant." This is not an unduly burdensome restriction; there are still ways for the source to expand if that cushion is used up. One is to find other ways

to reduce emissions. In this way, this rule is "an incentive for source owners and operators to create room for growth under the cap by implementing pollution prevention and other pollution reduction strategies on existing emissions units;" (EPA, 61 FR 38264). Having an upper limit on the cap encourages the source to be proactive in this regard. Another way is for the source to come back to ADEQ to revise its cap and permit with a significant revision.

Without a limit of actual plus significant, the rules would allow ADEQ to set a cap so that a source could double or triple in size without a significant revision. For example, if ADEQ could set a VOC cap for a 20 ton source at 80 tons, the source could expand to 70 tons without a revision (40 tons is "significant.") It is doubtful that such a provision would be approved by EPA into the State Implementation Plan (SIP).

The actual plus significant limit in the emission cap section was determined early in the workshops and discussions leading to this rule. Broad agreement among many parties on many of the provisions of this rule was to a large degree based on the cap limits as proposed. ADEQ is reluctant to change such a basic provision. As ADEQ, sources, and the public gain experience with caps, this provision can be revisited.

As a clarification, the absence of significance levels for certain pollutants does not limit caps to actual emissions for the vast majority of pollutants. R18-2-101(97)(a) defines "significant" for 16 of the more common pollutants. Although subsection (c) of the same definition sets "significant" for other pollutants at "any" emission rate, it specifically excludes hazardous air pollutants (HAP), leaving the significant rate for the 189 federal HAP undefined. ADEQ will interpret the R18-2-306.02(B)(2) limit for HAP as undefined. This, in effect, allows caps for HAP to be set using the other 3 limits, but without an actual plus significant limit. ADEQ expects that there will be little demand for emission caps for those uncommon pollutants that are not HAP and not listed in R18-2-101(97).

ADEQ recognizes that there may be incentive for some sources to maximize emissions before seeking a cap. However, this is not due only to the actual plus significant limit on caps, but also because caps are set in a public process and the public is less likely to object to caps that are set closer to actual emissions. ADEQ has significant discretion on where to set a cap and, under R18-2-101(2), actual emissions for existing units is to be determined based on the 2-year period that precedes the action, and which is representative of normal source operation. ADEQ expects that emission variations at sources are more likely to be based on business decisions.

Comment: No air-conditioning unit used for human comfort would qualify as trivial under proposed R18-2-101(117)(b) because all air-conditioning units have applicable requirements under title VI of the Act. For example, section 608(c) prohibits venting of a refrigerant while maintaining, servicing, repairing air conditioning units.

Response: ADEQ consulted with EPA, Region IX. EPA developed the list of trivial activities proposed in this rule in a white paper for title V purposes. EPA's response to ADEQ was that permits should include "boilerplate" language for title VI requirements (such as a prohibition on the venting of a refrigerant to the atmosphere, see § 608(c)), and that the applicable requirements that govern these units would be referenced in the permit, but that there would be no need to reference any units individually in the permit. Under this guidance, it appears that individual units would be trivial and not included in the permit, but that A/C units in general would not be trivial.

Comment: No plant maintenance or maintenance shop activities would qualify as trivial under proposed R18-2-101(117)(m) or (n) since those activities would always be related to the source's primary business activity.

Response: ADEQ consulted with EPA, Region IX. EPA developed the list of trivial activities proposed in this rule in a white paper for title V purposes. EPA provided 2 examples of maintenance that would not be related to the source's business activity: janitorial activities, and building maintenance, such as painting.

Comment: The U.S. EPA commented that, based on how they understood the proposed rule:

1. The emission cap proposed under R18-2-306.02 would be used to limit a source's potential to emit to avoid triggering an applicable requirement;

2. The emission cap would not allow a source to establish a plantwide applicability limit (PAL);

3. The emissions cap would not relieve a source of its obligation to comply with NSR, that is, if a change under an emissions cap would result in an emissions increase that otherwise triggers NSR, the source must go through the NSR review process.

Based on this, EPA's opinion was that the section did not appear to be problematic with respect to Class I sources.

Response: ADEQ agrees with EPA's understanding on the 3 points above.

Comment: EPA commented that the proposed definition of "significant" in R18-2-405(B) applies only to major sources, and would not apply to minor sources for the purposes of R18-2-401(9)(d).

Response: To clarify this, ADEQ has added "or for determining whether an otherwise minor source is major under R18-2-401(9)(d)," after the phrase "oxides of nitrogen."

Comment: EPA commented that they understood the proposed rule to allow the trivial increase/decrease exemption to be used in 2 ways. First, that emission increases below the de minimis amount would never trigger a 5 year aggregation exercise. EPA stated that this way was much more workable. According to the EPA, the 2nd use of the de minimis exemption allowed by the proposed rule, that all such trivial increases and decreases would be excluded from any aggregation calculation, "could allow a source to perform a series of changes that qualify as de minimis, to the point where the source should have otherwise triggered NSR but is exempt." Two other commenters supported the 3 ton de minimis level based on the difficulty of measuring emissions at levels lower than 3 tons per year.

Response: A review of materials related to the workshop discussions of this provision indicates that sources were primarily concerned that a netting analysis would need to be conducted for any change that would produce an emission increase. ADEQ has clarified the rule to provide that increases below the de minimis level will not trigger a netting analysis, but that once a netting analysis was triggered, all emission increases and decreases would need to be tracked by the source. ADEQ selected a 1 ton rate to trigger the netting exercise because this rate can be measured successfully. In Maricopa County, for example, the minor source permitting threshold for VOC is as low as 1/2 ton per year (3 lbs/day). In addition, 2 tons is 4% of the major source threshold for these sources.

ADEQ changes without comments

1. Define "major source threshold." ADEQ has defined it to mean "the lowest applicable emissions rate for a pollutant that would cause the source to be a major source at the particular time and location, under R18-2-101(61)."

In PSD/NSR (Title I), the major source threshold can sometimes be either 100 tons or 250 tons, depending on the type of source. With this definition, ADEQ intends to clarify that "major source threshold," as used in R18-2-306.02 and R18-2-317.02(B), would never be 250 tons per year. This will prevent absurd situations, such as a source not having to submit a notice for an actual emissions increase of PM10 of 24 tons per year, when a 16 ton increase in potential to emit PM10 requires a significant revision.

2. Language specifying the annual filing requirement for facility change logs has been moved from Appendix 3 to R18-2-317.02(I). The required filing date for these logs was also clarified. The phrase "annual reporting period" could be confusing since the normal permit reporting period is commonly thought to be 6 months. ADEQ has used the phrase "anniversary date of the permit" instead.

3. A citation was corrected in R18-2-306.02(B)(2); "standard" was made plural in R18-2-101(63) to match federal rule.

Note: Existing R18-320(D) was inadvertently omitted from the published proposed rule. It would have been shown with no changes. It is shown in the final rule with a technical correction only.

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

Not applicable.

13. Incorporations by reference and their location in the rules:

None.

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

No.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

Sections

R18-2-101. Definitions

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Sections
R18-2-301. Definitions
R18-2-306. Permit Contents
R18-2-306.02. Establishment of an Emissions Cap
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
R18-2-318.01. Annual Summary Permit Amendments for Class II Permits
R18-2-319. Minor Permit Revisions
R18-2-320. Significant Permit Revisions

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

Sections
R18-2-401. Definitions
R18-2-404. Offset and Net Air Quality Benefit Standards
R18-2-405. Special Rule for Major Sources of VOC or Oxides of Nitrogen in Ozone Nonattainment Areas Classified as Serious or Severe
Appendix 3. Logging

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. "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in ~~accordance with~~ subsections (a) through ~~(e)~~(e).
   a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a 2-year period ~~which~~that precedes the particular date and ~~which~~that is representative of normal source operation. The Director may allow the use of a different time period upon a demonstration that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
   b. If there is inadequate information to determine actual historical emissions, the Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
   c. For any emissions unit at a Class I source, other than an electric utility steam generating unit in subsection (e), ~~which~~that has not begun normal operations on the particular date, actual emissions shall equal the unit's potential to emit ~~of the unit~~ on that date.
   d. For any emissions unit at a Class II source that has not begun normal operations on the particular date, actual emissions shall be based on applicable control equipment requirements and projected conditions of operation.
   e. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, if the source owner or operator maintains and submits to the Director, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the Director if the Director determines the longer period to be more representative of normal source post-change operations.
3. No change.
4. No change.
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21. No change.
22. No change.
23. "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam, that was not in widespread use as of November 15, 1990.
24. "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

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~~30~~32. No change.
~~31~~33. No change.
~~32~~34. No change.

35. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than 1/3 of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

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~~58~~61. No change.
~~59~~62. No change.

~~60~~63. "Major modification" means any physical change or change in the method of operation of a major source that would result in a significant net emissions increase of any regulated air pollutant.

a. Any net emissions increase that is significant for volatile organic compounds ~~shall be considered~~is significant for ozone.

b. Any net emissions increase that is significant for oxides of nitrogen ~~shall be considered~~is significant for ozone for ozone nonattainment areas classified as marginal, moderate, serious, or severe.

c. For the purposes of this definition the following ~~shall~~are not ~~be considered~~ a physical change or change in the method of operation:

i. ~~Maintenance~~Routine maintenance, repair, and replacement ~~which the Director determines to be routine.~~;

ii. Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 792, or by reason of a natural gas curtailment plan ~~pursuant to~~ under the Federal Power Act, 16 U.S.C. 792 - 825r~~.~~;

iii. Use of an alternative fuel by reason of an order or rule under Section 125 of the Act~~.~~;

iv. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste~~.~~;

v. Use of an alternative fuel or raw material by a stationary source ~~which~~that either:

(1) The source was capable of accommodating before December 12, 1976, unless ~~such~~ the change would be prohibited under any federally enforceable permit condition ~~which was~~ established after December 12, 1976, ~~pursuant to~~ under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter~~.~~; or

(2) The source is approved to use under any permit issued under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter~~.~~;

vi. An increase in the hours of operation or in the production rate, unless ~~such~~ the change would be prohibited under any federally enforceable permit condition ~~which was~~ established after December 12, 1976, ~~pursuant to~~ under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter~~.~~;

vii. Any change in ownership at a stationary source~~.~~;

viii. The addition, replacement, or use of a pollution control project at an existing electric utility steam generating unit, unless the Director determines that the addition, replacement, or use renders the unit less environmentally beneficial, or except:

(1) When the Director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent title I air quality impact analysis in the area, if any, and

(2) The Director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation;

ix. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with:

(1) The SIP, and

(2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

x. For electric utility steam generating units located in attainment and unclassifiable areas only, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit any regulated pollutant emitted by the unit. This exemption applies on a pollutant-by-pollutant basis; and

xi. For electric utility steam generating units located in attainment and unclassifiable areas only, the reactivation of a very clean coal-fired electric utility steam generating unit.

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~~78~~81. No change.
~~79~~82. No change.
83. "Pollution control project" means any activity or project undertaken at an existing electric utility steam generating unit to reduce emissions from the unit. The activities or projects are limited to:
    a. The installation of conventional or innovative pollution control technology, including advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls, and electrostatic precipitators;
    b. An activity or project to accommodate switching to a fuel less polluting than the fuel used before the activity or project, including natural gas or coal reburning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;
    c. A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (42 U.S.C. 5903(d)), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency, or
    d. A permanent clean coal technology demonstration project that constitutes a repowering project.
~~80~~84. No change.
~~81~~85. No change.
~~82~~86. No change.
~~83~~87. No change.
~~84~~88. No change.
~~85~~89. No change.
~~86~~90. No change.
~~87~~91. No change.
~~88~~92. No change.
~~89~~93. No change.
94. "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with commencing commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:
    a. Has not been in operation for the 2-year period before enactment of the Clean Air Act Amendments of 1990, and the emissions from the unit continue to be carried in the Director's emissions inventory at the time of enactment;
    b. Was equipped before shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;
    c. Is equipped with low-NOx burners before commencement of operations following reactivation; and
    d. Is otherwise in compliance with the Act.
~~90~~95. No change.
~~91~~96. No change.
~~92~~97. No change.
98. "Repowering" means:
    a. Replacing an existing coal-fired boiler with 1 of the following clean coal technologies:
        i. Atmospheric or pressurized fluidized bed combustion;
        ii. Integrated gasification combined cycle;
        iii. Magnetohydrodynamics;
        iv. Direct and indirect coal-fired turbines;
        v. Integrated gasification fuel cells; or
        vi. As determined by the Administrator, in consultation with the United States Secretary of Energy, a derivative of 1 or more of the above technologies; and
        vii. Any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.
    b. Repowering also includes any oil, gas, or oil and gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the United States Department of Energy.
    c. The Director shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Act.
99. "Representative actual annual emissions" means the average rate, in tons per year, at which a source is projected to emit a pollutant for the 2-year period after a physical change or change in the method of operation of a unit, (or a different consecutive 2-year period within 10 years after that change, if the Director determines that the different period is more representative of source operations), considering the effect the change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Director shall:

a. Consider all relevant information, including historical operational data, the company's representations, filings with Arizona or federal regulatory authorities, and compliance plans under title IV of the Act; and

b. Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

~~93~~100. No change.
~~94~~101. No change.
~~95~~102. No change.
~~96~~103. No change.
~~97~~104. No change.
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~~100~~107. No change.
~~101~~108. No change.
~~102~~109. No change.
~~103~~110. No change.
~~104~~111. No change.
~~105~~112. No change.

113. "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project operated for 5 years or less, and that complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

~~106~~114. No change.
~~107~~115. No change.
~~108~~116. No change.

117. "Trivial activities" means activities and emissions units, such as the following, that may be omitted from a Class I or Class II permit application. Certain of the following listed activities include qualifying statements intended to exclude similar activities:

a. Combustion emissions from propulsion of mobile sources;
b. Air-conditioning units used for human comfort that do not have applicable requirements under title VI of the Act;
c. Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing, industrial or commercial process;
d. Non-commercial food preparation;
e. Janitorial services and consumer use of janitorial products;
f. Internal combustion engines used for landscaping purposes;
g. Laundry activities, except for dry-cleaning and steam boilers;
h. Bathroom and toilet vent emissions;
i. Emergency or backup electrical generators at residential locations;
j. Tobacco smoking rooms and areas;
k. Blacksmith forges;
l. Plant maintenance and upkeep activities, including grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots, if these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit revision. Cleaning and painting activities qualify as trivial activities if they are not subject to VOC or hazardous air pollutant (HAP) control requirements;
m. Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating, de-greasing, or solvent metal cleaning activities, and not otherwise triggering a permit revision;
n. Portable electrical generators that can be moved by hand from 1 location to another. "Moved by hand" means capable of being moved without the assistance of any motorized or non-motorized vehicle, conveyance, or device;
o. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal, or plastic;
p. Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of HAP metals. Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that emit HAP metals are insignificant activities based on size or production level thresholds. Brazing, soldering, and welding equipment, and cutting torches directly

related to plant maintenance and upkeep and repair or maintenance shop activities that emit HAP metals are treated as trivial and listed separately in this definition;

q. Air compressors and pneumatically operated equipment, including hand tools;
r. Batteries and battery charging stations, except at battery manufacturing plants;
s. Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any VOC or HAP;
t. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, if appropriate lids and covers are used;
u. Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, if appropriate lids and covers are used;
v. Drop hammers or hydraulic presses for forging or metalworking;
w. Equipment used exclusively to slaughter animals, not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment;
x. Vents from continuous emissions monitors and other analyzers;
y. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities;
z Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation;
aa. Equipment used for surface coating, painting, dipping or spraying operations, except those that will emit VOC or HAP;
bb. CO(2) lasers used only on metals and other materials that do not emit HAP in the process;
cc. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam;
dd. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants;
ee. Laser trimmers using dust collection to prevent fugitive emissions;
ff. Bench-scale laboratory equipment used for physical or chemical analysis, but not laboratory fume hoods or vents;
gg. Routine calibration and maintenance of laboratory equipment or other analytical instruments;
hh. Equipment used for quality control, quality assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis;
ii. Hydraulic and hydrostatic testing equipment;
jj. Environmental chambers not using HAP gases;
kk. Shock chambers;
ll. Humidity chambers;
mm. Solar simulators;
nn. Fugitive emissions related to movement of passenger vehicles, if the emissions are not counted for applicability purposes under R18-2-101(61)(c) and any required fugitive dust control plan or its equivalent is submitted with the application;
oo. Process water filtration systems and demineralizes;
pp. Demineralized water tanks and demineralizer vents;
qq. Oxygen scavenging or de-aeration of water;
rr. Ozone generators;
ss. Fire suppression systems;
tt. Emergency road flares;
uu. Steam vents and safety relief valves;
ww. Steam leaks; and
xx. Steam cleaning operations and steam sterilizers.

~~109~~118. No change.
~~110~~119. No change.
~~111~~120. No change.
~~112~~121. No change.
~~113~~122. No change.
~~114~~123. No change.
~~115~~124. No change.
~~116~~125. "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, ~~which~~that participates in atmospheric photochemical reactions. This includes any such organic compound other than the following:
a. Methane~~.~~;
b. Ethane~~.~~;
c. Methylene chloride (dichloromethane)~~.~~;
d. 1,1,1-trichloroethane (methyl chloroform)~~.~~;
e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)~~.~~;

f. Trichlorofluoromethane (CFC-11)~~.~~;
g. Dichlorodifluoromethane (CFC-12)~~.~~;
h. Chlorodifluoromethane (HCFC-22)~~.~~;
i. Trifluoromethane (HFC-23)~~.~~;
j. 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114)~~.~~;
k. Chloropentafluoroethane (CFC-115)~~.~~;
l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123)~~.~~;
m. 1,1,1,2-tetrafluoroethane (HFC-134a)~~.~~;
n. 1,1-dichloro 1-fluoroethane (HCFC-141b)~~.~~;
o. 1-chloro 1,1-difluoroethane (HCFC-142b)~~.~~;
p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)~~.~~;
q. Pentafluoroethane (HFC-125)~~.~~;
r. 1,1,2,2-tetrafluoroethane (HFC-134)~~.~~;
s. 1,1,1-trifluoroethane (HFC-143a)~~.~~;
t. 1,1-difluoroethane (HFC-152a)~~.~~;
u. Parachlorobenzotrifluoride (PCBTF)~~.~~;
v. Cyclic, branched, or linear completely methylated siloxanes~~.~~;
w. Acetone~~.~~;
x. Perchloroethylene (tetrachloroethylene)~~.~~;
y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
bb. Difluoromethane (HFC-32);
cc. Ethylfluoride (HFC-161);
dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
ee. 1,1,2,2,3-pentafluoropropane (HFC-245ca);
ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);
gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);
hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);
ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);
kk. Chlorofluoromethane (HCFC-31);
ll. 1 chloro-1-fluoroethane (HCFC-151a);
mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C4F9OCH3);
oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3);
pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C4F9OC2H5);
qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OC2H5;
rr. Methyl acetate; and
~~y~~ss. Perfluorocarbon compounds ~~which~~that fall into these classes:
i. Cyclic, branched, or linear, completely fluorinated alkanes~~.~~;
ii. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations~~.~~;
iii. Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations~~.~~; or
iv. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

~~117~~126. No change.

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-301. Definitions

The following definitions, and the definitions contained in Article 1 of this Chapter and A.R.S. § 49-401.01 shall apply to this Article unless the context otherwise requires:

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.
6. No change.
7. "Fuel oil" means Number 2 through Number 6 fuel oils as specified in ASTM D-396-90a (Specification for Fuel Oils), gas turbine fuel oils Numbers 2-GT through 4-GT as specified in ASTM D-2880-90a (Specification for Gas

Turbine Fuel Oils), or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM D-975-90a (Specification for Diesel Fuel Oils).

8. "Major source threshold" means the lowest applicable emissions rate for a pollutant that would cause the source to be a major source at the particular time and location, under R18-2-101(61).

~~7~~9. No change.

~~8~~10. No change.

~~9~~11. No change.

~~10~~12. No change.

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~~ensure compliance with all applicable requirements at the time of issuance and operational requirements and limitations that have been voluntarily accepted ~~pursuant to~~ under 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~~ if 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~~ under 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~~ under sections 114(a)(3) or 504(b) of the Act, and including any monitoring and analysis procedures or test methods required ~~pursuant to~~ under R18-2-306.01;
   b. ~~Where~~ If 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~~ under subsection (A)(4). ~~Such~~ The monitoring requirements shall ~~assure~~ensure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement, and as otherwise required under R18-2-306.01. Recordkeeping provisions may be sufficient to meet the requirements of this subsection ~~3(b)~~; and
   c. As necessary, requirements concerning the use, maintenance, and, ~~where~~ if appropriate, installation of monitoring equipment or methods.
4. The permit shall incorporate all applicable recordkeeping requirements including recordkeeping requirements established 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~~measurement;
      ii. The ~~date(s) analyses were~~ date any analysis was performed;
      iii. The name of the company or entity that performed the ~~analyses~~analysis;
      iv. A description of the analytical ~~techniques~~technique or ~~methods~~method used;
      v. The results of ~~such analyses~~any analysis; 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. The permit shall incorporate all applicable reporting requirements, including reporting requirements established 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~~ the reports. All required reports shall be certified by a responsible official consistent with R18-2-304(H) and 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~~ the deviations, and any corrective actions or preventive mea-

sures taken. Notice ~~in accordance~~ that complies with subsection (E)(3)(d) shall be considered prompt for the purposes of this 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~~A permit revision ~~shall be~~is not required for increases in emissions that are authorized by allowances acquired ~~pursuant to~~ under the acid rain program, ~~provided that~~ if ~~such~~ the increases do not require a permit revision under any other applicable requirement.
   b. ~~No~~A limit shall not be placed on the number of allowances held by the source. The source ~~may~~shall not, however, use allowances as a defense to ~~non-compliance~~ 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~~ under 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~~ owner or operator of the unit or the designated representative of the ~~owners or operators~~ owner or operator,
      ii. Exceedances of applicable emission rates,
      iii. Use of any allowance ~~prior to~~ before the year for which it 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~~ portion 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~~ is 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~~the 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 to the permit holder.
   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~~ the 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)~~ all pollutants 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 under A.R.S. § 49-426(E), R18-2-326 and R18-2-511.
10. A provision stating that ~~no~~a permit revision shall not be required~~,~~ under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes provided for in the permit.
11. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. ~~Such~~ The terms and conditions shall:
   a. ~~Shall require~~Require the source, contemporaneously with making a change from 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~~Extend the permit shield described in R18-2-325 to all terms and conditions under each such operating scenario; and
   c. ~~Shall ensure~~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, and 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~~ the increases and decreases without a case-by-case approval of each emissions trade. ~~Such~~ The terms and conditions:
   a. Shall include all terms required under subsections (A) and (C) to determine compliance;

b. Shall not extend the permit shield ~~described in~~ subsection (D) to all terms and conditions that allow ~~such~~ the increases and decreases in emissions;
c. Shall not include trading ~~which~~that 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~~ the terms and conditions are included, the state's emissions inventory shall not reflect the zero emissions associated with the periods of downtime.
14. ~~If~~Upon request of a permit applicant ~~requests it~~, the Director shall issue ~~permits~~ a permit that ~~contain~~contains 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 Class I sources, for notice that conforms to R18-2-317(D) and (E), and for Class II sources, for logging that conforms to R18-2-317.02(B)(5). In addition, the notices for Class I and Class II sources shall describe ~~and that describes~~ how the increases and decreases in emissions will comply with the terms and conditions of the permit.
15. ~~Such other~~Other terms and conditions as are required by the Act, A.R.S. Title 49, Chapter 3, Articles 1 and 2 and the rules 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), all terms and conditions in a Class I permit, including any ~~provisions~~ provision 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 entered into voluntarily 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. Each permit shall contain a compliance plan as specified in R18-2-309.

D. Each permit shall include the applicable permit shield provisions 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~~that 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~~ the technology-based emission limitations if the conditions of 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)~~ cause or causes of the emergency;
   b. At the time of the emergency the~~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 I permit issued to a major source shall require that revisions be made ~~pursuant to~~ under R18-2-321 to incorporate additional applicable requirements adopted by the Administrator ~~pursuant to~~ under the Act that become applicable to a

source with a permit with a remaining permit term of 3 or more years. ~~No~~A revision shall not 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 18 months after the promulgation of ~~such~~ the standards and regulations. Any permit revision required ~~pursuant to~~ under this subsection shall comply with R18-2-322 for permit renewal and shall reset the 5 year permit term.

R18-2-306.02. Establishment of an Emissions Cap

A. An applicant may, in its application for a new permit, renewal of an existing permit, or as a significant permit revision, request an emissions cap for a particular pollutant expressed in tons per year as determined on a 12-month rolling average, or any shorter averaging time necessary to enforce any applicable requirement, for any emissions unit, combination of emissions units, or an entire source to allow operating flexibility including emissions trading for the purpose of complying with the cap. This Section shall not apply to sources that hold an authority to operate under a general permit pursuant to Article 5 of this Chapter.

B. An emissions cap for a Class II source that limits the emissions of a particular pollutant for the entire source shall not exceed any of the following:

1. The applicable requirement for the pollutant if expressed in tons per year;
2. The source's actual emissions plus the applicable significance level for the pollutant established in R18-2-101(104);
3. The applicable major source threshold for the pollutant; or
4. A sourcewide emission limitation for the pollutant voluntarily agreed to by the source under R18-2-306.01.

C. In order to incorporate an emissions cap in a permit the applicant must demonstrate to the Director that terms and conditions in the permit will:

1. Ensure compliance with all applicable requirements for the pollutant;
2. Contain replicable procedures to ensure that the emissions cap is enforceable as a practical matter and emissions trading conducted under it is quantifiable and enforceable as a practical matter. For the purposes of this Section, "enforceable as a practical matter" shall include the following criteria:
   a. The permit conditions are permanent and quantifiable;
   b. The permit includes a legally enforceable obligation to comply;
   c. The limits impose an objective and quantifiable operational or production limit or require the use of in-place air pollution control equipment;
   d. The permit limits have short-term averaging times consistent with the averaging times of the applicable requirement;
   e. The permit conditions are enforceable and are independent of any other applicable limitations; and
   f. The permit conditions for monitoring, record keeping, and reporting requirements are sufficient to comply with R18-2-306(A)(3),(4), and (5).
3. For a Class I permit, include all terms required under R18-2-306(A) and R18-2-309.

D. Class I sources shall log an increase or decrease in actual emissions authorized as a trade under an emissions cap unless an applicable requirement requires notice to the Director. The log shall contain the information required by the permit including, at a minimum, when the proposed emissions increase or decrease occurred, a description of the physical change or change in method of operation that produced the increase or decrease, the change in emissions from the physical change or change in method of operation, and how the increase or decrease in emissions complies with the permit. Class II sources shall comply with R18-2-317.02(B)(5).

E. The Director shall not include in an emissions cap or emissions trading allowed under a cap any emissions unit for which the emissions are not quantifiable or for which there are no replicable procedures or practical means to enforce emissions trades.

R18-2-317. Facility Changes Allowed Without Permit Revisions - Class I

A. A facility with a Class I permit may make changes without a permit revision if all of the following apply:

1. The changes are not modifications under any provision of title I of the Act or under A.R.S. § 49-401.01(17)~~.~~;
2. The changes do not exceed the emissions allowable under the permit whether expressed therein as a rate of emissions or in terms of total emissions~~.~~;
3. The changes do not violate any applicable requirements or trigger any additional applicable requirements~~.~~;
4. The changes satisfy all requirements for a minor permit revision under R18-2-319(A)~~.~~; and
5. The changes do not contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

B. The substitution of an item of process or pollution control equipment for an identical or substantially similar item of process or pollution control equipment shall qualify as a change that does not require a permit revision, if ~~it~~ the substitution meets all of the requirements of subsections (A), (D) and (E)~~of this Section~~.

C. Except for sources with authority to operate under general permits, permitted sources may trade increases and decreases in emissions within the permitted facility, as established in the permit ~~pursuant to~~ under R18-2-306(A)(12), ~~where~~ if an applicable implementation plan provides for ~~such~~ the emissions trades~~,~~ without applying for a permit revision and based

on the 7 working days notice prescribed in subsection (D) ~~below~~. This provision is available ~~in those cases where~~if the permit does not ~~already~~ provide for ~~such~~ the emissions trading as a minor permit revision.

D. For each ~~such~~ change under subsections (A) through (C)~~of this Section~~, a written notice by certified mail or hand delivery shall be received by the Director and~~, for Class I permits,~~ the Administrator~~,~~ a minimum of 7 working days in advance of the change. Notifications of changes associated with emergency conditions, such as malfunctions necessitating the replacement of equipment, may be provided less than 7 working days in advance of the change but must be provided as far in advance of the change, or if advance notification is not practicable, as soon after the change as possible.

E. Each notification shall include:

1. When the proposed change will occur~~.~~;
2. A description of ~~each such~~ the change~~.~~;
3. Any change in emissions of regulated air pollutants~~.~~;
4. The pollutants emitted subject to the emissions trade, if any~~.~~;
5. The provisions in the implementation plan that provide for the emissions trade with which the source will comply and any other information as may be required by the provisions in the implementation plan authorizing the trade~~.~~;
6. If the emissions trading provisions of the implementation plan are invoked, then the permit requirements with which the source will comply~~.~~; and
7. Any permit term or condition that is no longer applicable as a result of the change.

F. The permit shield described in R18-2-325 shall not apply to any change made ~~pursuant to~~ under subsections (A) through (C) ~~of this Section~~. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the implementation plan authorizing the emissions trade.

G. Except as otherwise provided for in the permit, making a change from ~~one~~1 alternative operating scenario to another as provided under R18-2-306(A)(11) shall not require any prior notice under this Section.

H. Notwithstanding any other part of this Section, the Director may require a permit to be revised for any change that, when considered together with any other changes submitted by the same source under this Section over the term of the permit, do not satisfy subsection (A).

I. The Director shall make available to the public monthly summaries of all notices received under this Section.

R18-2-317.01. Facility Changes that Require a Permit Revision - Class II

A. The following changes at a source with a Class II permit shall require a permit revision:

1. A change that triggers a new applicable requirement or violates an existing applicable requirement.
2. Establishment of, or change in, an emissions cap;
3. A change that will require a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or a visibility or increment analysis;
4. A change that results in emissions that are subject to monitoring, recordkeeping or reporting under R18-2-306(A)(3),(4), or (5) if the emissions cannot be measured or otherwise adequately quantified by monitoring, recordkeeping, or reporting requirements already in the permit;
5. A change that will authorize the burning of used oil, used oil fuel, hazardous waste or hazardous waste fuel, or any other fuel not currently authorized by the permit;
6. A change that requires the source to obtain a Class I permit;
7. Replacement of an item of air pollution control equipment listed in the permit with 1 that does not have the same or better pollutant removal efficiency;
8. Establishment or revision of a limit under R18-2-306.01;
9. Increasing operating hours or rates of production above the permitted level; and
10. A change that relaxes monitoring, recordkeeping or reporting requirements, except when the change results:
    a. From removing equipment that results in a permanent decrease in actual emissions, if the source keeps on-site records of the change in a log that satisfies Appendix 3 of this Chapter and if the requirements that are relaxed are present in the permit solely for the equipment that was removed; or
    b. From a change in an applicable requirement.

B. A source with a Class II permit may make any physical change or change in the method of operation without revising the source's permit unless the change is specifically prohibited in the source's permit or is a change described in subsection (A). A change that does not require a permit revision may still be subject to requirements in R18-2-317.02.

R18-2-317.02. Procedures for Certain Changes that do not Require a Permit Revision - Class II

A. Except for a physical change or change in the method of operation at a Class II source requiring a permit revision under R18-2-317.01, or a change subject to logging or notice requirements in subsection (B) or (C), a change at a Class II source shall not be subject to revision, notice, or logging requirements under this Chapter.

B. Except as otherwise provided in the conditions applicable to an emissions cap created under R18-2-306.02, the following changes may be made if the source keeps on site records of the changes according to Appendix 3:

1. Implementing an alternative operating scenario, including raw material changes;

2. Changing process equipment, operating procedures, or making any other physical change if the permit requires the change to be logged;
3. Engaging in any new insignificant activity listed in R18-2-101(54)(a) through (i) but not listed in the permit;
4. Replacing an item of air pollution control equipment listed in the permit with an identical (same model, different serial number) item. The Director may require verification of efficiency of the new equipment by performance tests; and
5. A change that results in a decrease in actual emissions if the source wants to claim credit for the decrease in determining whether the source has a net emissions increase for any purpose. The logged information shall include a description of the change that will produce the decrease in actual emissions. A decrease that has not been logged is creditable only if the decrease is quantifiable, enforceable, and otherwise qualifies as a creditable decrease.

C. Except as provided in the conditions applicable to an emissions cap created under R18-2-306.02, the following changes may be made if the source provides written notice to the Department in advance of the change as provided below:
1. Replacing an item of air pollution control equipment listed in the permit with one that is not identical but that is substantially similar and has the same or better pollutant removal efficiency: 7 days. The Director may require verification of efficiency of the new equipment by performance tests;
2. A physical change or change in the method of operation that increases actual emissions more than 10% of the major source threshold for any conventional pollutant but does not require a permit revision: 7 days;
3. Replacing an item of air pollution control equipment listed in the permit with one that is not substantially similar but that has the same or better efficiency: 30 days. The Director may require verification of efficiency of the new equipment by performance tests;
4. A change that would trigger an applicable requirement that already exists in the permit: 30 days unless otherwise required by the applicable requirement;
5. A change that amounts to reconstruction of the source or an affected facility: 7 days. For purposes of this subsection, reconstruction of a source or an affected facility shall be presumed if the fixed capital cost of the new components exceed 50% of the fixed capital cost of a comparable entirely new source or affected facility and the changes to the components have occurred over the 12 consecutive months beginning with commencement of construction; and
6. A change that will result in the emissions of a new regulated air pollutant above an applicable regulatory threshold but that does not trigger a new applicable requirement for that source category: 30 days. For purposes of this requirement, an applicable regulatory threshold for a conventional air pollutant shall be 10% of the applicable major source threshold for that pollutant.

D. For each change under subsection (C), the written notice shall be by certified mail or hand delivery and shall be received by the Director the minimum amount of time in advance of the change. Notifications of changes associated with emergency conditions, such as malfunctions necessitating the replacement of equipment, may be provided with less than required notice, but must be provided as far in advance of the change, or if advance notification is not practicable, as soon after the change as possible. The written notice shall include:
1. When the proposed change will occur,
2. A description of the change,
3. Any change in emissions of regulated air pollutants, and
4. Any permit term or condition that is no longer applicable as a result of the change.

E. A source may implement any change in subsection (C) without the required notice by applying for a minor permit revision under R18-2-319 and complying with R18-2-319(D)(2) and (G).

F. The permit shield described in R18-2-325 shall not apply to any change made under this Section, other than implementation of an alternate operating scenario under subsection (B)(1).

G. Notwithstanding any other part of this Section, the Director may require a permit to be revised for any change that, when considered together with any other changes submitted by the same source under this Section over the term of the permit, constitutes a change under R18-317.01(A).

H. If a source change is described under both subsections (B) and (C), the source shall comply with subsection (C). If a source change is described under both subsection (C) and R18-2-317.01(B), the source shall comply with R18-2-317.01(B).

I. A copy of all logs required under subsection (B) shall be filed with the Director within 30 days after each anniversary of the permit issue date. If no changes were made at the source requiring logging, a statement to that effect shall be filed instead.

R18-2-318.01. Annual Summary Permit Amendments For Class II Permits

The Director may amend any Class II permit annually without following R18-2-321 in order to incorporate changes reflected in logs or notices filed under R18-2-317.02. The amendment shall be effective to the anniversary date of the permit. The Director shall make available to the public for any source:
1. A complete record of logs and notices sent to the Department under R18-2-317.02; and
2. Any amendments or revisions to the source's permit.

R18-2-319. Minor Permit Revisions

A. Minor permit revision procedures may be used only for those changes at a Class I source that satisfy all of the following:

1. Do not violate any applicable requirement;
2. Do not involve substantive changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or a visibility or increment analysis;
4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. ~~Such~~ The terms and conditions include:
   a. A federally enforceable emissions cap ~~which~~that the source would assume to avoid classification as a modification under any provision of Title I of the Act; and
   b. An alternative emissions limit approved ~~pursuant to~~ under regulations promulgated under the section 112(i)(5) of the Act.
5. Are not modifications under any provision of title I of the Act~~, or regulations promulgated pursuant to A.R.S. § 49-426.06.~~;
6. Are not changes in fuels not represented in the permit application or provided for in the permit~~.~~;
7. The increase in the source's potential to emit any regulated air pollutant is not significant as defined in R18-2-101~~.~~; and
8. Are not required to be processed as a significant revision under R18-2-320.

B. Minor permit revision procedures shall be used for the following changes at a Class II source:

1. A change that triggers a new applicable requirement if all of the following apply:
   a. For emissions units not subject to an emissions cap, the net emissions increase is less than the significant level defined in R18-2-101(104);
   b. A case-by-case determination of an emission limitation or other standard is not required; and
   c. The change does not require the source to obtain a Class I permit;
2. Increasing operating hours or rates of production above the permitted level unless the increase otherwise creates a condition that requires a significant permit revision;
3. A change in fuel from fuel oil or coal, to natural gas or propane, if not authorized in the permit;
4. A change that results in emissions subject to monitoring, recordkeeping or reporting under R18-2-306(A)(3),(4), or (5) and that cannot be measured or otherwise adequately quantified by monitoring, recordkeeping or reporting requirements already in the permit;
5. A decrease in the emissions permitted under an emissions cap unless the decrease requires a change in the conditions required to enforce the cap or to ensure that emissions trades conducted under the cap are quantifiable and enforceable; and
6. Replacement of an item of air pollution control equipment listed in the permit with 1 that does not have the same or better efficiency.

~~B.~~C. As approved by the Director, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that ~~such~~the minor permit revision procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by the Administrator.

~~C.~~D. An application for minor permit revision shall be on the standard application form contained in Appendix 1 and include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
2. For Class I sources, and any source that is making the change immediately after it files the application, the source's suggested draft permit;
3. Certification by a responsible official, consistent with standard permit application requirements, that the proposed revision meets the criteria for use of minor permit revision procedures and a request that ~~such~~ the procedures be used;

~~D.~~E. EPA and affected State notification. For Class I permits, within 5 working days of receipt of an application for a minor permit revision, the Director shall notify the Administrator and affected states of the requested permit revision in accordance with R18-2-307.

~~E.~~F. The Director shall follow the following timetable for action on an application for a minor permit revision:

1. For Class I permits, the Director shall not issue a final permit revision until after the Administrator's 45-day review period or until the Administrator has notified the Director that the Administrator will not object to issuance of the permit revision, whichever is first, although the Director may approve the permit revision ~~prior to~~ before that time. Within 90 days of the Director's receipt of an application under minor permit revision procedures, or 15 days after the end of the Administrator's 45-day review period, whichever is later, the Director shall do ~~one~~1 or more of the following:
   a. Issue the permit revision as proposed~~.~~,

b. Deny the permit revision application~~.~~,
c. Determine that the proposed permit revision does not meet the minor permit revision criteria and should be reviewed under the significant revision procedures~~.~~, or
d. Revise the proposed permit revision and transmit to the Administrator the new proposed permit revision as required in R18-2-307.

2. Within ~~90~~ 60 days of the Director's receipt of an application for a revision of a Class II permit under this Section, the Director shall do ~~one~~1 or more of the following:
a. Issue the permit revision as proposed~~.~~,
b. Deny the permit revision application~~.~~,
c. Determine that the permit revision does not meet the minor permit revision criteria and should be reviewed under the significant revision procedures~~.~~, or
d. Revise and issue the proposed permit revision.

~~F.~~G. ~~Source's ability to make change.~~ The source may make the change proposed in its minor permit revision application immediately after it files the application. After the source makes the change allowed by the preceding sentence, and until the Director takes any of the actions specified in subsection ~~(E)~~(F) ~~of this Section~~, the source shall comply with both the applicable requirements governing the change and the proposed revised permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to revise may be enforced against it.

~~G.~~H. The permit shield under R18-2-325 shall not extend to minor permit revisions.

~~H.~~I. Notwithstanding any other part of this Section, the Director may require a permit to be revised under R18-2-320 for any change that, when considered together with any other changes submitted by the same source under this Section or ~~R18-2-317~~ R18-2-317.02 over the life of the permit, do not satisfy subsection (A) for Class I sources or subsection (B) for Class II sources.

~~I.~~J. The Director shall make available to the public monthly summaries of all applications for minor permit revisions.

R18-2-320. Significant Permit Revisions

A. ~~Significant~~For Class I sources, 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. A source with a Class II permit shall make the following changes only after the permit is revised following the public participation requirements of R18-2-330:
1. Establishing or revising a voluntarily accepted emission limitation or standard as described by R18-2-306.01 or R18-2-306.02, except a decrease in the limitation authorized by R18-2-319(B)(5);
2. Making any change in fuel not authorized by the permit and that is not fuel oil or coal, to natural gas or propane;
3. A change to or addition of an emissions unit not subject to an emissions cap that will result in a net emission increase of a pollutant greater than the significance level in R18-2-101(104);
4. A change that relaxes monitoring, recordkeeping or reporting requirements, except when the change results:
a. From removing equipment that results in a permanent decrease in actual emissions, if the source keeps on-site records of the change in a log that satisfies Appendix 3 of this Chapter and if the requirements that are relaxed are present in the permit solely for the equipment that was removed; or
b. From a change in an applicable requirement.
5. A change that will cause the source to violate an existing applicable requirement including the conditions establishing an emissions cap;
6. A change that will require any of the following:
a. A case-by-case determination of an emission limitation or other standard;
b. A source-specific determination of ambient impacts, or a visibility or increment analysis; or
c. A case-by-case determination of a monitoring, recordkeeping and reporting requirement; or
7. The change requires the source to obtain a Class I permit.

~~B.~~C. Any modification to a major 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 significant permit revision procedures and any rules adopted ~~pursuant to~~ under A.R.S. § 49-426.03.

~~C.~~D. 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~~that apply to permit issuance and renewal.

~~D~~E. When an existing source applies for a significant permit revision to revise its permit ~~form~~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.~~F. 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~~ under R18-2-326(N) shall not be included for this requirement.

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

R18-2-401. Definitions

In addition to the definitions contained in Article 1 of this Chapter and A.R.S. § 49-401.01, the following definitions apply to this Article:

1. "Adverse impact on visibility" means visibility impairment ~~white~~that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of a Class I area, as determined according to R18-2-410.
2. "Categorical sources" means the following classes of sources:
   a. Coal cleaning plants with thermal dryers;
   b. Kraft pulp mills;
   c. Portland cement plants;
   d. Primary zinc smelters;
   e. Iron and steel mills;
   f. Primary aluminum ore reduction plants;
   g. Primary copper smelters;
   h. Municipal incinerators capable of charging more than 50 tons of refuse per day;
   i. Hydrofluoric, sulfuric, or nitric acid plants;
   j. Petroleum refineries;
   k. Lime plants;
   l. Phosphate rock processing plants;
   m. Coke oven batteries;
   n. Sulfur recovery plants;
   o. Carbon black plants using the furnace process;
   p. Primary lead smelters;
   q. Fuel conversion plants;
   r. Sintering plants;
   s. Secondary metal production plants;
   t. Chemical process plants;
   u. Fossil-fuel boilers, or ~~combination~~combinations thereof, totaling more than 250 million Btu's per hour heat input;
   v. Petroleum storage and transfer units with a total storage capacity ~~exceeding~~more than 300,000 barrels;
   w. Taconite preprocessing plants;
   x. Glass fiber processing plants;
   y. Charcoal production plants;
   z. Fossil-fuel-fired steam electric plants and combined cycle gas turbines of more than 250 million Btu's per hour heat input.
3. "Complete" means, in reference to an application for a permit or permit revision, that the application contains all the information necessary for processing the application.
4. "Dispersion technique" means any technique ~~which~~that attempts to affect the concentration of a pollutant in the ambient air by any of the following:
   a. Using that portion of a stack ~~which~~that exceeds good engineering practice stack height;
   b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
   c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into ~~one~~1 stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This shall not include any of the following:
      i. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
      ii. The merging of exhaust gas streams under any of the following conditions:
      (1) The source owner or operator demonstrates that the facility was originally designed and constructed with ~~such~~ the merged gas streams;
      (2) ~~Such~~ The merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant, applying only to the emission limitation for that pollutant; or

iii. Smoke management in agricultural or silvicultural prescribed burning programs.
iv. Episodic restrictions on residential woodburning and open burning.
v. Techniques ~~which~~that increase final exhaust gas plume rise ~~where~~ if the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

5. "High terrain" means any area having an elevation of 900 feet or more above the base of the stack of a source.
6. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice, or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.
7. "Low terrain" means any area other than high terrain.
8. "Lowest achievable emission rate" (LAER) means, for any source, the more stringent rate of emissions based on ~~one~~ 1 of the following:
   a. The most stringent emissions limitation ~~which~~that is contained in the SIP of any state for ~~such~~ the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that ~~such~~ the limitations are not achievable; or,
   b. The most stringent emissions limitation ~~which~~that is achieved in practice by ~~such~~ the class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standards of performance ~~as contained~~ in Articles 9 and 11 of this Chapter.
9. "Major source" means:
   a. Any stationary source located in a nonattainment area ~~which~~that emits, or has the potential to emit, 100 tons per year or more of any conventional air pollutant, except as follows:

Pollutant Emitted	Nonattainment Pollutant and Classification	Quantity Threshold tons/year or more
Carbon Monoxide (CO)	CO, Serious, with stationary sources as more than 25% of source inventory	50
Volatile Organic Compounds (VOC)	Ozone, Serious	50
VOC	Ozone, Severe	25
PM_{10}	PM_{10} Serious	70
NOx	Ozone, Serious	50
NOx	Ozone, Severe	25
or		

   b. Any stationary source located in an attainment or unclassifiable area ~~which~~that emits, or has the potential to emit, 100 tons per year or more of any conventional air pollutant if the source is classified as a Categorical Source, or 250 tons per year or more of any pollutant subject to regulation under the Act if the source is not classified as a Categorical Source; or
   c. Any change to a minor source, except for VOC or NOx emission increases at minor sources in serious or severe ozone nonattainment areas, ~~which~~that would increase its emissions to the qualifying levels ~~specified under subparagraphs~~ in subsections (a) or (b);
   d. Any change in VOC or NOx at a minor source in serious or severe ozone nonattainment areas that would be "significant" under R18-2-405(B) and that would increase its emissions to the qualifying levels in subsection (a);
   ~~d~~e. Any stationary source ~~which~~that emits, or has the potential to emit, ~~five~~ 5 or more tons of lead per year; ~~or~~
   ~~e~~f. Any source classified as major undergoing modification that meets the definition of reconstruction~~.~~;
   ~~f~~g. A major source that is major for ~~volatile organic compounds~~ VOC shall be considered major for ozone~~.~~; or
   ~~g~~h. A major source that is major for oxides of nitrogen shall be considered major for ozone in nonattainment areas classified as marginal, moderate, serious, or severe.

10. "Reconstruction" of sources located in nonattainment areas shall be presumed to have taken place ~~where~~ if the fixed capital cost of the new components exceeds 50~~ percent~~% of the fixed capital cost of a comparable entirely new stationary source, as determined in accordance with the provisions of 40 CFR 60.15(f)(1) through (3).
11. "Resource recovery project" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Only energy conversion facilities that utilize solid waste ~~which~~that provides more than 50~~ percent~~% of the heat input shall be considered a resource recovery project under this Article.
12. "Significance levels" means the following ambient concentrations for the enumerated pollutants:

Averaging Time

Pollutant	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO2	1 µg/m[3]	5 µg/m[3]		25 µg/m[3]	
NO2	1 µg/m[3]				
CO			0.5 mg/m[3]		2 mg/m[3]
PM10	1 µg/m[3]	5 µg/m[3]			

Except for the annual pollutant concentrations, exceedance of significance levels shall be deemed to occur when the ambient concentration of the above pollutant is exceeded more than once per year at any ~~one~~1 location. If ~~such~~ the concentration occurs at a specific location and at a time when Arizona ambient air quality standards for ~~such~~ the pollutant ~~is~~are not violated, the significance level does not apply.

R18-2-404. Offset and Net Air Quality Benefit Standards

A. Increased emissions by a major source or major modification subject to this Article shall be offset by reductions in the emissions of each pollutant for which the area has been designated as nonattainment and for which the source or modification is classified as major. ~~Such~~ The offset may be obtained by reductions in emissions from the source or modification, or from any other source in existence within the allowable offset area, on the startup date of the new major source or major modification. Credit for an emissions offset can be used only if it has not been relied upon in demonstrating attainment or reasonable further progress and if it has not been relied upon previously in issuing a permit or permit revision under this Article ~~pursuant to~~ under R18-2-402 and R18-2-403 or is not otherwise required under this Chapter or under any provision of the SIP.

B. An offset shall not be sufficient unless reductions of total emissions for the particular pollutant for which the offset is required will be:
1. Obtained from sources within the allowable offset area;
2. ~~Contemporary~~Contemporaneous with the operation of the new major source or major modification;
3. Less than the baseline of the total emissions for that pollutant, except in ozone nonattainment areas classified as moderate, serious, or severe; and
4. Sufficient to demonstrate that emissions from the new major source or major modification, together with the offset, will result in reasonable further progress for that pollutant.

C. In ozone nonattainment areas classified as marginal, total emissions of VOC and oxides of nitrogen from other sources shall offset those proposed or permitted from the major source or major modification by a ratio of at least 1.10 to 1. In ozone nonattainment areas classified as moderate, total emissions of VOC and oxides of nitrogen from other sources shall offset those proposed or permitted from the major source or major modification by a ratio of at least 1.15 to 1. New major sources and major modifications in serious and severe ozone nonattainment areas shall ~~conform to the requirements of~~comply with this Section and R18-2-405.

D. Only intrapollutant emission offsets shall be allowed. Intrapollutant emission offsets for ~~volatile organic compounds~~ VOC shall only include offset reductions in emissions of ~~volatile organic compounds~~ VOC. Intrapollutant emission offsets for oxides of nitrogen shall only include offset reductions in emissions of oxides of nitrogen.

E. For purposes of this Section, "reasonable further progress" means compliance with the schedule of annual incremental reductions in emissions of the applicable air pollutant prescribed by the Director based on air quality modeling under R18-2-409, to provide for attainment of the applicable air quality standards by the deadlines set under Part D of Title I of the Act, or in an applicable implementation plan.

F. For purposes of this Article, "net air quality benefit" ~~shall mean~~means that, during similar time periods, either ~~paragraph~~ subsection (1) or (2) below is applicable:
1. A reduction in the number of violations of the applicable Arizona ambient air quality standard within the allowable offset area has occurred and the following mathematical expression is satisfied:

$$\sum_{i=1}^{\overline{N}} x_i - C \leq \sum_{j=1}^{\overline{K}} x_j - C$$

~~where~~when:
C = The applicable Arizona ambient air quality standard.
Xi = The concentration level of the violation at the i[th] receptor for ~~such~~ the pollutant after offsets.
N = The number of violations for ~~such~~ the pollutant after offsets ($N \leq K$).

Xj = The concentration level of the violation at the j[th] receptor for ~~such~~ the pollutant before offsets.

K = The number of violations for ~~such~~ the pollutant before offsets.

2. The average of the ambient concentrations within the allowable offset area ~~following~~after the implementation of the contemplated offsets will be less than the average of the ambient concentrations within the allowable offset area without the offsets.

G. Baseline further defined:

1. For the purpose of this Section, the baseline of total emissions from any sources in existence or sources ~~which~~that have obtained a permit or permit revision under this Article (regardless of whether or not ~~such~~ the sources are in actual operation at the time of application for the permit or permit revision) shall be the total actual emissions at the time the application is filed. In addition, the baseline of total emissions shall consist of all emission limitations included as conditions on federally enforceable permits except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained ~~where~~ if:
   a. No emission limitations are applicable to a source from which offsets are being sought; or
   b. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area.
2. ~~Where~~ If the emission limitations for a particular pollutant allow greater emissions than the potential emission rate of the source for that pollutant, the baseline shall be the potential emission rate at the time application for the permit or permit revision under this Article is filed, and emissions offset credit shall be allowed only for control below the potential emission rate.

H. For an existing fuel combustion source, offset credit shall be based on the allowable emissions under the regulations or permit conditions applicable to the source for the type of fuel being burned at the time the application for the permit or permit revision under this Article is filed. If an existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the actual emissions for the fuels involved shall not be acceptable unless:

1. The permit or permit revision under this Article for the source specifically requires the use of a specified alternative control measure ~~which~~that would achieve the same degree of emissions reduction ~~should~~if the source ~~switch~~switches back to a dirtier fuel at some later date; and,
2. The source demonstrates to the Director that it has secured an adequate long-term supply of the cleaner fuel.

I. Offsets shall be made on either a pounds-per-hour, pounds-per-day, or tons-per-year basis, whichever is applicable, when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate and, except as otherwise provided in subsection (H)~~ of this Section~~, utilizing the type of fuel burned at the time the application for the permit or permit revision under this Article is filed. A tons-per-year basis shall not be used if the new or modified source or the source offsets ~~is~~are not expected to operate throughout the entire year. No emissions credit may be allowed for replacing ~~one~~1 VOC with another VOC of lesser reactivity.

J. Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, ~~provided that~~ if the work force to be affected has been notified of the proposed shutdown or curtailment. No offset credit for shutdowns or curtailments shall be provided for emissions reductions that are necessary to bring a source into compliance with RACT or any other standard under an applicable implementation plan. Source shutdowns and curtailments in production or operating hours occurring ~~prior to~~ before the date the new major source or major modification application is filed shall not be used for emissions offset credit except as follows: ~~where~~ if an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than ~~one~~1 year ~~prior to~~ before the date of application for the permit or permit revision under this Article, whichever is earlier, and the proposed new major source or major modification is a replacement for the shutdown or curtailment, then credit for ~~such~~ the shutdown or curtailment may be applied to offset emissions from the new source or modification.

K. The allowable offset area shall ~~refer to~~be the geographical area in which ~~are located~~ the sources are located whose emissions are being sought ~~for purposes of offsetting~~to offset emissions from a new major source or major modification. For the pollutants sulfur dioxide, PM-10 and carbon monoxide, the allowable offset area shall be determined by atmospheric dispersion modeling. If the emission offsets are obtained from a source on the same premises or in the immediate vicinity of the new major source or major modification, and the pollutants disperse from substantially the same effective stack height, atmospheric dispersion modeling shall not be required. The allowable offset area for all other pollutants shall be the nonattainment areas for those pollutants within which the new major source or major modification is to be located.

L. An emission reduction may only be used to offset emissions if the reduced level of emissions will continue for the life of the new source or modification and if the reduced level of emissions is federally and legally enforceable at the time of permit issuance. It shall be considered legally enforceable if the following conditions are met~~ by the time such source or modification commences operation~~:

1. The emission reduction is included as a condition in the permit of the source relied upon to offset the emissions from the new major source or major modification, or in the case of reductions from sources controlled by the applicant, is included as a condition of the permit or permit revision under this Article for the new major source or major modification~~, or;~~

2. The emission reduction is adopted as a part of this Chapter or comparable rules ~~and regulations~~ of any other governmental entity or is contractually enforceable by the Department and is in effect at the time the permit is issued.

~~2. The permit conditions, rules or contractual conditions containing, governing or otherwise describing the emission reduction have been approved by the Administrator for inclusion in the State Implementation Plan adopted pursuant to Section 110 of the Act.~~

R18-2-405. Special Rule for Major Sources of VOC or Oxides of Nitrogen in Ozone Nonattainment Areas Classified as Serious or Severe

A. Applicability. The provisions of this Section only apply to stationary sources of VOC or oxides of nitrogen in ozone nonattainment areas classified as serious or severe. Unless otherwise provided in this Section, all requirements of Articles 3 and 4 of this Chapter apply.

B. "Significant" means, for the purposes of a major modification of any ~~stationary~~ major source of VOC or oxides of nitrogen, or for determining whether an otherwise minor source is major under R18-2-401(9)(d), any physical ~~changes~~ change or ~~changes~~ change in the method of operations, that results in net increases in emissions of either pollutant by more than 25 tons when aggregated with all other creditable increases and decreases in emissions from the source over the ~~prior five~~ previous 5 consecutive calendar years, including the calendar year in which the increase is proposed. ~~Emissions decreases shall only be creditable if they are simultaneous with the proposed modification.~~ For the purposes of this subsection, a physical change or change in the method of operation that results in an increase of less than 1 ton per year of VOC or oxides of nitrogen before netting does not trigger a 5-year aggregation exercise.

C. For any ~~stationary~~ major source that emits or has the potential to emit less than 100 tons VOC or oxides of nitrogen per year, a significant increase in VOC, or oxides of nitrogen, respectively, ~~from any discrete emissions unit, operation, or other pollutant emitting activity~~ shall constitute a major modification ~~unless~~ except that the increase in emissions from any discrete emissions unit, operation, or other pollutant emitting activity that is offset from other units, operations or activities at the source at a ratio of 1.3 to ~~one~~1 for the increase in VOC or oxides of nitrogen, respectively, from ~~such~~ the unit, operation, or activity ~~within the facility only~~ shall not be considered part of the major modification. ~~If such a change qualifies as a major modification under this Section,~~ BACT shall be substituted for LAER for all major modifications under this subsection. Net emissions increases in VOC or oxides of nitrogen above the internal offset described herein shall be subject to the offset requirements in subsections (E) and (F) ~~of this Section~~.

D. For any stationary source that emits or has the potential to emit 100 tons or more of VOC or oxides of nitrogen per year, any significant increase in VOC, or oxides of nitrogen, respectively, ~~from any discrete emitting unit, operation, or other pollutant emitting activity~~ shall constitute a major modification. If the increase in emissions from ~~such~~ the modification at any discrete emissions unit, operation, or other pollutant emitting activity is offset from other units, operations or activities at the source at a ratio of 1.3 to ~~one~~1 for the increase in VOC or oxides of nitrogen, respectively from ~~such~~ the unit, operation, or activity, BACT shall be substituted for LAER at the unit, operation or activity. Net emissions increases in VOC or oxides of nitrogen above the internal offset described herein shall be subject to the offset requirements in subsections (E) and (F) ~~of this Section~~.

E. For any new major source or major modification ~~which~~that is classified ~~as such~~major because of emissions or potential to emit VOC or oxides of nitrogen in an ozone nonattainment area classified as serious, the increase in emissions of these pollutants from ~~such~~the source or modification shall be offset at a ratio of 1.2 to ~~one~~1. ~~Such~~ The offset shall be made in accordance with the provisions of R18-2-404.

F. For any new major source or major modification ~~which~~that is classified as such because of emissions or potential to emit VOC or oxides of nitrogen in an ozone nonattainment area classified as severe, the increase in emissions of these pollutants from ~~such~~ the source or modification shall be offset at a ratio of 1.3 to ~~one~~1. If the SIP requires all existing major sources of these pollutants in the nonattainment area to apply BACT, then the offset ratio shall be 1.2 to ~~one~~1. ~~All such~~ These offsets shall be made in accordance with the provisions of R18-2-404.

Appendix 3. Logging

1. Each log entry required by a change under R18-2-317.02(B) shall include at least the following information:
   a. A description of the change, including:
      i. A description of any process change.
      ii. A description of any equipment change, including both old and new equipment descriptions, model numbers and serial numbers, or any other unique equipment number.
      iii. A description of any process material change.
   b. The date and time that the change occurred.
   c. The provision of R18-2-317.02(B) that authorizes the change to be made with logging.
   d. The date the entry was made and the first and last name of the person making the entry.
2. Logs shall be kept for 5 years from the date created. Logging shall be performed in indelible ink in a bound log book with sequentially numbered pages, or in any other form, including electronic format, approved by the Director.