



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2016-0702; FRL-9961-36-Region 9]**

**Approval of Arizona Air Plan Revisions, Arizona Department of Environmental Quality  
and Pinal County Air Quality Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Arizona State Implementation Plan (SIP). These revisions include a state statute and certain state rules that govern air pollution sources under the Arizona Department of Environmental Quality (ADEQ) and the Pinal County Air Quality Control District (PCAQCD). These revisions concern emissions of particulate matter (PM) from construction sites, agricultural activity and other fugitive dust sources. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

**DATES:** These rules will be effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2016-0702. All documents in the docket are listed on the <http://www.regulations.gov>

web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly-available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Nancy Levin, EPA Region IX, (415) 972-3848, [levin.nancy@epa.gov](mailto:levin.nancy@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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#### **I. Final Action**

On January 9, 2017, 82 FR 2305, the EPA proposed to approve the following rules into the Arizona SIP:

<b>Local Agency</b>	<b>Rule #</b>	<b>Rule Title</b>	<b>Adopted</b>	<b>Submitted</b>
PCAQCD	Chapter 4- Article 1	Fugitive Dust	10/28/15	12/21/15
PCAQCD	Chapter 4-	Construction Sites – Fugitive	10/28/15	12/21/15

	Article 3	Dust		
<b>Arizona Revised Statutes (ARS)</b>	<b>Statute #</b>	<b>Statute Title</b>	<b>Effective Date</b>	<b>Submitted</b>
ARS	§49-424	Duties of Department	4/18/14	12/21/15
<b>Arizona Administrative Code (AAC) Rule Number</b>	<b>AAC #</b>	<b>AAC Title</b>	<b>Amended/Effective Date</b>	<b>Submitted</b>
AAC	R18-2-210	Attainment, Nonattainment, and Unclassifiable Area Designations	07/02/15	12/21/15
AAC	R18-2-610	Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03	07/02/15	12/21/15
AAC	R18-2-610.03	Agricultural PM General Permit for Crop Operations; Pinal County PM Nonattainment Area	07/02/15	12/21/15
AAC	R18-2-612	Definitions for R18-2-612.01	07/02/15	12/21/15
AAC	R18-2-612.01	Agricultural PM General Permit for Irrigation Districts; PM Nonattainment Areas Designated After June 1, 2009	07/02/15	12/21/15
AAC	Appendix 2	Test Methods and Protocols	07/02/15	12/21/15

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

## **II. Public Comments and EPA Responses**

The EPA's proposed action provided a 30-day public comment period. We received no comments during this period.

## **III. EPA Action**

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act,

the EPA is fully approving these rules into the Arizona SIP.

EPA notes that R18-2-610.03, Section F, and R18-2-612.01, Section E, allow commercial farmers and irrigation districts to develop BMPs different than those in the July 2, 2015 version of the rules and to submit alternatives “that are proven effective through on-farm demonstration trials” to the AgBMP Committee. These provisions also state that alternative BMPs “shall not become effective unless submitted as described in A.R.S. § 49-457(L),” and ARS § 49-457(L) in turn provides that approved alternative BMPs must be submitted to EPA as a SIP revision.<sup>1</sup> EPA understands these provisions to establish the point at which alternative BMPs may take effect as a matter of state law. For alternative BMPs to take effect as a matter of federal law, the State of Arizona must submit them to EPA as a revision to the SIP, and EPA must complete a notice and comment rulemaking process approving them as part of the SIP.<sup>2</sup>

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Arizona statute and rules, and PCAPCD rules, described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final

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<sup>1</sup>ARS 49-457(L) provides: “The [Ag BMP] committee may periodically reexamine, evaluate and modify best management practices. Any approved modifications shall be submitted to the United States environmental protection agency (*sic*) as a revision to the applicable implementation plan.”

<sup>2</sup>See 42 USC §7410(i); *see also, Safe Air for Everyone v. United States EPA*, 488 F.3d 1088, 1097 (9<sup>th</sup> Cir. 2007) (“[A] SIP, once approved by EPA, has ‘the force and effect of federal law.’ In accord with this general proposition, a state may not unilaterally alter the legal commitments of its SIP once EPA approves the plan.” (Internal citations omitted)).

rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>3</sup> The EPA has made, and will continue to make, these documents available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT**" section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

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<sup>3</sup> 62 FR 27968 (May 22, 1997)

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the

U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**insert date 60 days after date of publication in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 29, 2017.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart D—Arizona**

2. In §52.120:

a. In table 2 of paragraph (c):

i. Revise the entry for “R18-2-210”.

ii. Add a second entry for “R18-2-610” and add entries for “R18-2-610.03”, “R18-2-612”, and “R18-2-612.01” in numerical order.

iii. Revise the first entry for “Appendix 2”.

b. In table 9 of paragraph (c):

i. Add entries for “4-1-010”, “4-1-015”, “4-1-020”, “4-1-030”, “4-1-040”, “4-1-045”, “4-1-050”, “4-1-060”, “4-3-160”, “4-3-170”, “4-3-180”, and “4-3-190” in numerical order.

c. In table 3 of paragraph (e), revise the entry “49-424”.

The additions and revisions read as follows:

**§52.120 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

TABLE 2 – EPA-APPROVED ARIZONA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
<b>Article 2 (Ambient Air Quality Standards; Area Designations; Classifications)</b>				

* R18-2-210	* Attainment, Nonattainment, and Unclassifiable Area Designations	* July 2, 2015	* [Insert date of publication in the Federal Register], [Insert Federal Register citation]	* Submitted on December 21, 2015.
* <b>Article 6 (Emissions from Existing and New Nonpoint Sources)</b> *				
* R18-2-610	* Definitions for R18-2-610.01, R18-2-610.02, and R18-2- 610.03	* July 2, 2015	* [Insert date of publication in the Federal Register], [Insert Federal Register citation]	* Submitted on December 21, 2015.
* R18-2-610.03	* Agricultural PM General Permit for Crop Operations; Pinal County PM Nonattainment Area	* July 2, 2015	* [Insert date of publication in the Federal Register], [Insert Federal Register citation]	* Submitted on December 21, 2015.
* R18-2-612	* Definitions for R18-2-612.01	* July 2, 2015	* [Insert date of publication in the Federal Register], [Insert Federal Register citation]	* Submitted on December 21, 2015.
* R18-2-612.01	* Agricultural PM General Permit for Irrigation Districts; PM Nonattainment Areas Designated After June 1, 2009	* July 2, 2015	* [Insert date of publication in the Federal Register], [Insert Federal Register citation]	* Submitted on December 21, 2015.

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<b>Appendices to Title 18 (Environmental Quality), Chapter 2 (Department of Environmental Quality Air Pollution Control)</b>				
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Appendix 2	Test Methods and Protocols	July 2, 2015	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	Submitted on December 21, 2015.
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TABLE 9 – EPA-APPROVED PINAL COUNTY AIR POLLUTION CONTROL REGULATIONS

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
<b>Chapter 4. Emissions from Existing and New Non-Point Sources</b>				
4-1-010	General Applicability	January 1, 2016	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	Submitted on December 21, 2015 as “Chapter 4, Article 1”.
4-1-015	Exemptions	January 1, 2016	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	Submitted on December 21, 2015 as “Chapter 4, Article 1”.
4-1-020	Definitions	January 1, 2016	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	Submitted on December 21, 2015 as “Chapter 4, Article 1”.
4-1-030	Standards	January 1, 2016	<b>[Insert date of publication in</b>	Submitted on December 21,

			<b>the Federal Register], [Insert Federal Register citation]</b>	2015 as “Chapter 4, Article 1”.
4-1-040	Recordkeeping	January 1, 2016	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	Submitted on December 21, 2015 as “Chapter 4, Article 1”.
4-1-045	Reporting Requirements	January 1, 2016	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	Submitted on December 21, 2015 as “Chapter 4, Article 1”.
4-1-050	Records Retention	January 1, 2016	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	Submitted on December 21, 2015 as “Chapter 4, Article 1”.
4-1-060	Violations	January 1, 2016	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	Submitted on December 21, 2015 as “Chapter 4, Article 1”.
*	*	*	*	*
4-3-160	General Provisions – West Pinal PM10 Nonattainment Area	January 1, 2016	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	Submitted on December 21, 2015 as “Chapter 4, Article 3”.
4-3-170	Definitions	January 1, 2016	<b>[Insert date of publication in</b>	Submitted on December 21,

			<b>the Federal Register], [Insert Federal Register citation]</b>	2015 as “Chapter 4, Article 3”.
4-3-180	Dust Generating Operations Standards, Application, Permit and Recordkeeping Requirements	January 1, 2016	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	Submitted on December 21, 2015 as “Chapter 4, Article 3”.
4-3-190	Violations	January 1, 2016	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	Submitted on December 21, 2015 as “Chapter 4, Article 3”.
*	*	*	*	*

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(e) \* \* \*

TABLE 3 – EPA-APPROVED ARIZONA STATUTES - NON-REGULATORY

State citation	Title/subject	State submittal date	EPA approval date	Explanation
<b>Article 2 (State Air Pollution Control)</b>				
*	*	*	*	*
49-424	Duties of Department	April 18, 2014	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	Submitted on December 21, 2015.
*	*	*	*	*

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