



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0633; FRL-10008-01-Region 9]

Air Plan Approval; Arizona; Maricopa County Air Quality Department and Pima County Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Maricopa County Air Quality Department (MCAQD) and Pima County Department of Environmental Quality (PDEQ) portion of the Arizona State Implementation Plan (SIP). These revisions concern emissions of particulate matter (PM) from nonmetallic mineral processing, inactive mineral tailings and slag storage. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [**Insert date 30 days after the date of publication in the *Federal Register***].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0633 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4125 or by email at vineyard.christine@epa.gov.

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

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I. The State's Submittal

A. *What rules did the State submit?*

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agencies and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1 - SUBMITTED RULES

Local Agency	Rule #	Rule Title	Adopted/ Revised	Submitted
MCAQD	316	Nonmetallic Mineral Processing	11/07/18	11/19/18
PDEQ	Pima County Code (PCC) Section 17.16.125	Inactive Mineral Tailings Impoundment and Slag Storage Area within the Ajo PM ₁₀ Planning Area	01/22/19 ¹	05/10/19 ²

¹ Pima County Board of Supervisors adopted PCC Section 17.16.125 on January 22, 2019 with an effective date of February 21, 2019.

² ADEQ submitted PCC Section 17.16.125 as part of a larger SIP revision submittal titled "SIP Revision: Ajo PM₁₀ Redesignation Request and Maintenance Plan (May 3, 2019)" (herein referred to as the "Ajo PM₁₀ SIP"). More specifically, appendix C of the Ajo PM₁₀ SIP includes PCC Section 17.16.125 and the related adoption materials. ADEQ submitted the Ajo PM₁₀ SIP electronically on May 10, 2019 under cover of a transmittal letter dated May 8, 2019. Herein, EPA proposes action on the PCC Section 17.16.125 portion of the Ajo PM₁₀ SIP. The EPA will be taking action on the rest of the Ajo PM₁₀ Plan in a separate action.

On October 22, 2019, the EPA determined that the submittal for PCC Section 17.16.125 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

On May 19, 2019, the submittal for MCAQD Rule 316 was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. *Are there other versions of these rules?*

There is no previous version of PCC Section 17.16.125 in the SIP.

We approved an earlier version of MCAQD Rule 316 into the SIP on November 13, 2009 (74 FR 58553). The MCAQD adopted a revision to the SIP-approved version on November 7, 2018, and ADEQ submitted it to us on November 19, 2019.

C. *What is the purpose of the submitted rule and rule revision?*

Emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM_{2.5}) and PM equal to or less than 10 microns in diameter (PM₁₀), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control PM emissions. MCAQD Rule 316 controls emissions of PM from commercial and/or industrial nonmetallic mineral processing plants and related operations. MCAQD adopted amendments to Rule 316 in 2018 to clarify the requirements and applicability of the rule and to improve the overall effectiveness of the rule. The Pima County Board of Supervisors adopted PCC Section 17.16.125 to provide permanence and enforceability for control measures that have already been

implemented in the Ajo PM₁₀ nonattainment area. Under PCC Section 17.16.125, the owner or operator of the mineral tailings impoundment and slag storage area in the Ajo PM₁₀ planning area is required to implement and maintain PM₁₀ control measures to meet visible emissions and stabilization requirements to ensure continued PM emissions reductions. The EPA's technical support documents (TSDs) have more information about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must implement reasonably available control measures (RACM), including reasonably available control technology (RACT), in Moderate PM₁₀ nonattainment areas (see CAA sections 172(c)(1) and 189(a)(1)(C)) and Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in Serious PM₁₀ nonattainment areas (see CAA section 189(b)(1)(B)). The PDEQ regulates two PM₁₀ nonattainment areas classified as Moderate for the PM₁₀ national ambient air quality standards (NAAQS) (40 CFR 81.303), one of which is the Ajo PM₁₀ planning area. A RACM and RACT evaluation is generally performed in context of a broader attainment plan. The MCAQD regulates the Maricopa County portion of a PM₁₀ nonattainment area (i.e., the Phoenix planning area) classified as Serious for the PM₁₀ NAAQS (40 CFR 81.303). A BACM and BACT evaluation is

generally performed in context of a broader attainment plan.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
 2. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
 3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
 4. “State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 59 FR 41998 (August 16, 1994).
 5. “PM-10 Guideline Document,” EPA 452/R-93-008, April 1993.
 6. “Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures,” EPA 450/2-92-004, September 1992.
- B. *Do the rules meet the evaluation criteria?*

These rules are consistent with CAA requirements and relevant guidance regarding enforceability, RACM or BACM, and SIP revisions. More specifically, with respect to MCAQD Rule 316, we previously determined that the rule implemented BACM for nonmetallic mineral

processing within the Phoenix planning area, and we find that the 2018 amendments to the rule relax no control requirements and generally clarify and enhance the effectiveness of the rule. With respect to PCC Section 17.16.125, we find that the rule provides a means to ensure the permanence and enforceability of the fugitive dust controls that have already been implemented in the Ajo PM₁₀ planning area and that have brought the area into attainment of the PM₁₀ NAAQS. The TSDs have more information on our evaluation.

C. *Public Comment and Proposed Action*

Pursuant to section 110(k)(3) of the Act, the EPA proposes to fully approve MCAQD Rule 316,³ as submitted on November 19, 2018, and PCC Section 17.16.125, as submitted on May 10, 2019, because they fulfill all relevant requirements. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the Federal Register]**. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference PCC Section 17.16.125 and MCAQD Rule 316 described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this

³ Final approval of MCAQD Rule 316, as submitted on November 19, 2018, would replace the version of MCAQD Rule 316 that was approved by the EPA at 74 FR 58553 (November 13, 2009) in the Maricopa County portion of the applicable SIP for the State of Arizona.

preamble for more information).

IV. 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 proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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);
- 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 disproportionate human health or environmental effects with practical, appropriate, 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).

List of Subjects in 40 CFR Part 52

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

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

Dated: April 17, 2020.

John Busterud,
Regional Administrator,
Region IX.

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