



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0633; FRL-10011-25-Region 9]

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

Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Maricopa County Air Quality Department (MCAQD) and Pima County Department of Environmental Quality (PCDEQ) portions 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 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-2019-0633. All documents in the docket are listed on the <https://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 <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. **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. Proposed Action

On May 1, 2020 (85 FR 25379), the EPA proposed to approve the following rules into the Arizona SIP.

Local Agency	Rule #	Rule Title	Adopted/ Revised	Submitted
MCAQD	316	Nonmetallic Mineral Processing	11/07/18	11/19/18
PDEQ	Pima County Code	Inactive Mineral Tailings	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”

Local Agency	Rule #	Rule Title	Adopted/ Revised	Submitted
	Section 17.16.125	Impoundment and Slag Storage Area within the Ajo PM ₁₀ Planning Area		

We proposed to approve these rules because we determined that they comply with the relevant CAA requirements. More specifically, with respect to MCAQD Rule 316, we previously determined that the rule implemented Best Available Control Measures 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 Pima County Code (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 Particulate Matter equal to or less than 10 microns in diameter (PM₁₀) National Ambient Air Quality Standards (NAAQS). Our proposed action and related technical support documents (TSDs) contain 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. During this period, we received no comments.

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 is taking final action on the PCC Section 17.16.125 portion of the Ajo PM₁₀ SIP. The EPA is taking action on the rest of the Ajo PM₁₀ Plan in a separate action (85 FR 34381 (June 4, 2020)).

III. EPA Action

Pursuant to section 110(k)(3) of the CAA, and for the reasons discussed in detail in our proposed rule and TSDs, and summarized above, the EPA is fully approving MCAQD Rule 316, as submitted on November 19, 2018, and PCC Section 17.16.125, as submitted on May 10, 2019, as revisions to the Arizona SIP.

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 MCAQD and PCDEQ rules described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.³ The EPA has made, and will continue to make, these documents available through *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,

³ 62 FR 27968 (May 22, 1997).

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);
- 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, 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: June 23, 2020.

John Busterud,
Regional Administrator,
Region IX.

Part 52, 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. Section 52.120(c) is amended as follows:

a. In Table 4, under the table headings “Post-July 1988 Rule Codification” and “Regulation III - Control of Air Contaminants,” by revising the entry for “Rule 316.”

b. In Table 7, under the table heading “Post-1993 Rule Codification,” by adding the subheadings “Chapter 17.16. Emission Limiting Standards” and “Article III. Emissions from Existing and New Nonpoint Sources” and an entry for “17.16.125” after the entry for “17.12.480.”

The revision and additions read as follows:

§ 52.120 Identification of plan.

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(c) * * *

TABLE 4--EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * *	* * *	* * *	* * *	* * *
Post-July 1988 Rule Codification				
* * *	* * *	* * *	* * *	* * *
Regulation III—Control of Air Contaminants				
* * *	* * *	* * *	* * *	* * *
Rule 316	Nonmetallic Mineral Processing	November 7, 2018	[INSERT DATE OF PUBLICATION IN THE FEDERAL	Submitted on November 19, 2018.

			REGISTER], [INSERT Federal Register CITATION]	
*	*	*	*	*

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TABLE 7--EPA-APPROVED PIMA COUNTY AIR POLLUTION CONTROL REGULATIONS

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Post-1993 Rule Codification				
*	*	*	*	*
Chapter 17.16. Emission Limiting Standards				
Article III. Emissions from Existing and New Nonpoint Sources				
17.16.125	Inactive Mineral Tailings Impoundment and Slag Storage Area within the Ajo PM ₁₀ Planning Area	February 21, 2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT <u>Federal Register</u> CITATION]	Submitted on May 10, 2019.

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