ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0107; FRL-9426-02-R9]

Air Plan Approval; Arizona; Maricopa County; Power Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Maricopa County Air Quality Department's (MCAQD or County) portion of the Arizona State Implementation Plan (SIP). The revision addresses Arizona's reasonably available control technology (RACT) SIP obligations for the Phoenix-Mesa ozone nonattainment area that is classified as Moderate nonattainment for the 2008 ozone national ambient air quality standards (NAAQS). We are approving a local rule that regulates emissions of oxides of nitrogen (NO_X) and particulate matter (PM) from power plants under the Clean Air Act (CAA or the Act).

DATES: This rule is effective [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-2022-0107. 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. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the

FOR FURTHER INFORMATION CONTACT section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at *gong.kevin@epa.gov*.

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

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I. Proposed Action and Interim Final Determination

On February 8, 2022 (87 FR 7069), the EPA proposed to approve MCAQD Rule 322 "Power Plant Operations," as amended on June 23, 2021, and submitted by the Arizona Department of Environmental Quality (ADEQ) to the EPA on June 30, 2021.[1] The MCAQD regulates a portion of the Phoenix-Mesa ozone nonattainment area that is classified as Moderate for the 2008 8-hour ozone national ambient air quality standard (40 CFR 81.303). Maricopa County's "Analysis of Reasonably Available Control Technology For The 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP)," adopted December 5, 2016, submitted June 22, 2017 (the "2016 RACT SIP"), found that there were major sources of NO_X within the Maricopa County portion of the Phoenix-Mesa ozone nonattainment area subject to Rule 322. Accordingly, this rule must establish RACT levels of control for applicable major sources of NO_X.

Rule 322 regulates emissions from electricity steam generating units, cogeneration steam units, and turbines. It also includes related recordkeeping, reporting, and monitoring requirements. The version of Rule 322 that we are acting on in this rule (*i.e.*, the version adopted

[1] In our February 8, 2022 proposed rule, we inadvertently cited the submittal date for this submittal as June 24, 2021, which was the date that the letters from the County and State transmitting these materials were signed. The date that these materials were received in the EPA's SPeCS for SIPs system was June 30, 2021.

on June 23, 2021, and submitted to the EPA on June 30, 2021) corrects several deficiencies in a previous version of Rule 322 that was adopted by MCAQD on November 2, 2016, and submitted to the EPA on June 22, 2017, and that resulted in the EPA's disapproval published in the *Federal Register* in February 2020.[2] The EPA has determined that this revised version of Rule 322 corrects the deficiencies in the 2017 submitted version related to flawed cost effectiveness analyses and the lack of enforceable operational restrictions in the rule itself and, further, that it meets the EPA's criteria for RACT for this source category.

We proposed to approve Rule 322 because we determined that it complies with the relevant CAA requirements in CAA sections 110, 182(b)(2), 182(f), and 193. Our proposed action contains more information on Rule 322 and our evaluation of the SIP revision. On the same day, we also made an interim final determination (87 FR 7042) that the submittal from the ADEQ corrected SIP deficiencies from a previous submittal, allowing us to defer the imposition of sanctions resulting from our disapproval of a previously submitted version of Rule 322 (85 FR 43692, July 20, 2020).

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received five comments. Four of these comments were from members of the public and were generally supportive of our proposed action or were not germane. The fifth comment was submitted by Air Law for All, Ltd. on behalf of the Center for Biological Diversity and the Sierra Club (the commenter from here on referred to as "ALFA" or "the commenter").

Low Use exemptions and RACT

ALFA asserts that Rule 322's annual operational limits cannot be used to exempt units from RACT for short-term ozone standards, that Rule 322's limits on operation are used to "artificially inflate the annualized cost-effectiveness of NO_X controls to justify not installing

[2] See EPA Region IX, "Technical Support Document for Maricopa County Air Quality Department Rule 322, Power Plant Operations," January 2022; 87 FR 7070 (February 8, 2020).

RACT-level technology," and that Rule 322 uses a long-term annual average to circumvent the installation of overall RACT level controls.

We do not agree with the commenter's assertions. As discussed further below, and contrary to the statements in the comment letter, Rule 322 satisfies RACT requirements for NO_X emissions from power plants in two ways. First, it includes RACT-level NO_X emission limits in section 306 that apply to electric utility steam generating turbines rated greater than 100 MMBtu/hr and electric utility stationary gas turbines rated greater than 10 MMBtu/hr.[3] Second, Rule 322 provides an exemption from the RACT-level NOx emission limit only for emissions units that meet certain criteria that are set forth in section 104.4. In particular, for units that operate at or below 10 percent annual capacity factor, Rule 322 allows an exemption from NO_X RACT limits only if the facility demonstrates through an analysis that RACT-level controls are not economically or technologically feasible. Rule 322's provisions for low use equipment are an important component of EPA's determination that Rule 322 satisfies the RACT obligation under the CAA for this source category.[4] We note that the EPA has approved rules that exempt certain units from RACT requirements based on low use in other SIPs.[5]

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[3] We note that the limits in the submitted rule are more stringent than the NO_X emission limits that are currently in the SIP. (The current SIP-approved rule was adopted by MCAQD in 2007 and approved by the EPA in 2009. 74 FR 52693 (October 14, 2009).) For example, the current SIP-approved version of Rule 322 does not contain any NO_X limit for electric utility stationary gas turbines, whereas the submitted version of Rule 322 establishes a NO_X limit of 42 ppm for these units, if they are fired by gaseous fossil fuel, and 65 ppm if they are fired by liquid fossil fuel. This notice provides additional discussion comparing the submitted and currently SIP-approved versions of Rule 322 below.

[4] In the 1992 General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, EPA stated that "it is possible that a state could demonstrate that an existing source in an area should not be subject to a control technology especially where such control is unreasonable in light of the area's attainment needs or infeasible." 57 FR 13498, 13541, note 20 (April 16, 1992). Appendix C4 to the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (titled "RACT Determinations for Stationary Sources") further elaborates on this point, clarifying that "States may give substantial weight to cost effectiveness in evaluating the economic feasibility of an emission reduction technology." 82 FR 18070, 18074 (Apr. 28, 1992). Appendix C4 refers to the General Preamble discussion on particulate matter, but its discussion on economic feasibility also applies to considerations for NO_X RACT emissions controls. That is what the State has done in this instance; when the facilities operate at or below 10 percent annual capacity factor, there is no requirement to install RACT because it is not cost effective.

[5] See, for example: Colorado's 5 CCR 1001-9, Regulation 7, part E, section II.A.2.a, approved at 86 FR 11125 (February 24, 2021); Massachusetts 310 CMR 7.19, section (1)(d), approved at 85 FR 65236 (October 15, 2020); Ventura County Air Pollution Control District Rule 74.15.1 section C.2 as low a heat input exemption approved at 81 FR 50348 (August 1, 2016); Wisconsin's NR 428.21, section (1)(d) paragraph 2 and section (2)(d) paragraph 2, approved at 75 FR 64155 (October 19, 2010); Sacramento Metropolitan Air Quality Management District Rule 411, section 113, approved at 74 FR 20880 (May 6, 2009).

Section 104.4 of Rule 322 now allows for equipment that operates at or below 10 percent of the unit's calendar year annual capacity factor[6] to be exempt from NO_X and CO emissions limitations in sections 306 and 307 if the equipment meets the criteria specified in section 104.4(a), (b) and (c).[7] To qualify for the exemption from the NO_X and CO emissions limits in sections 306 and 307, section 104.4(a) requires an owner or operator to submit an analysis to the MCAQD Control Officer and EPA Administrator demonstrating that conventional commercially available control technology is not technically or economically feasible. In addition, section 104.4(b) requires an owner or operator to submit, within 60 days of MCAQD approval, an application to modify the equipment's permit to include an annual heat input limit (*i.e.*, a limit on the amount of fuel that can be used in the unit annually), and section 104.4(c) specifies that owners and operators must demonstrate compliance with the heat input limit by multiplying the higher heating value (expressed in terms of either MMBtu/mass or MMBtu/volume by fuel use (mass or volume)).

Appendix 12 to Maricopa County's 2021 submittal includes a set of three analyses of technical feasibility and cost effectiveness (*i.e.*, economic feasibility) for thirteen emissions units at four different facilities owned by Arizona Public Service (APS) and Salt River Project (SRP).[8] APS and SRP seek to comply with Rule 322 by operating these units subject to the 10 percent annual capacity factor limit in section 104.4.[9] The analyses present available NO_X control technologies, including water injection, steam injection, low NO_X burners, dry low NO_X combustion, selective

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[6] The U.S. Energy Information Administration defines "capacity factor" as: "The ratio of the electrical energy produced by a generating unit for the period of time considered to the electrical energy that could have been produced at continuous full power operation during the same period." Available: *https://www.eia.gov/tools/glossary/index.php*.

[7] Equipment that operates at less than 10 percent of its annual capacity is also subject to provisions in Rule 322 that require compliance with good combustion practices, particulate limits, and requirements for recordkeeping and reporting. See e.g., Rule 322, sections 301, 302, 303, 304 and 500. A more complete description of these provisions is included later in this notice.

[8] 2021 Submittal, Appendix 12.

[9] Besides the thirteen emissions units that seek to comply with Rule 322 by operating subject to the 10 percent annual capacity factor limit in section 104.4, there are 40 units that must comply with the emissions limits in sections 306 and 307. Of the nine facilities subject to Rule 322, four operate units seeking the low use exemption from sections 306 and 307 of the rule.

non-catalytic reduction (SNCR) and selective catalytic reduction (SCR).[10] The analyses next determine which available technologies are technically feasible for the various emissions units. The analyses then assess the cost effectiveness of the technically feasible options by considering the capital and annual costs compared to the NO_X reductions that would be expected to result from the controls. For this last step, each analysis assumed that the emissions unit would operate at 10 percent of its rated capacity.

It is important to note that the analyses state, for each emissions unit analyzed, actual operation of each unit was far below ten percent of capacity. For example, Table 3-2 of the analysis for APS Ocotillo and West Phoenix power plants presents the capacity factor for each of the four units analyzed in the document in the years 2015, 2016 and 2017, the most recent three years at the time the analysis was developed; of the twelve data points, only two units were operated above 1 percent annual capacity, and eight were below 0.5 percent annual capacity.[11] Similarly, the analysis for SRP Agua Fria generating station's units 1-3 states that the units "have a very low utilization, with a typical capacity factor of approximately 5 percent,"[12] and the analysis for SRP Agua Fria units 4-6 states that the annual capacity factor is less than 1 percent.[13] Moreover, the analysis for SRP Kyrene units 4-6 states that the units have "very low utilization, with a typical capacity factor less than 0.1 percent."[14]

The fact that actual usage of the emissions units that will be regulated pursuant to the low use exemption has historically been well below the 10 percent capacity factor imposed by the exemption contradicts the commenter's point that "the limits on operation are used to artificially

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[10] The range of NO_X control technologies evaluated varied according to the specifics of the emissions units. For more detailed information, see our 2022 TSD, 9-11; 2021 Submittal at 64-189.
[11] 2021 Submittal at 71 ("Reasonably Available Control Technology (RACT) Analysis for the control of nitrogen oxides (NO_X) emission from the Arizona Public Service Ocotillo and West Phoenix Power Plants" (October 2018) at 8).
[12] 2021 Submittal at 106 ("Reasonably Available Control Technology (RACT) Analysis for the control of nitrogen oxides (NO_X) emissions from the Salt River Project Agua Fria Generating Station" (July 2020) at 14).
[13] 2021 Submittal at 167 ("Reasonably Available Control Technology (RACT) Analysis for the control of nitrogen oxides (NO_X) emissions from simple-cycle combustion turbine generators at the Salt River Project Agua Fria and Kyrene Generating Stations" (July 2020) at 15).
[14] 2021 Submittal at 176, 182; ("Reasonably Available Control Technology (RACT) Analysis for the control of nitrogen oxides (NO_X) emissions from simple-cycle combustion turbine generators at the Salt River Project Agua Fria and Kyrene Generating Stations" (July 2020) at 24, 30.)

inflate the annualized cost-effectiveness of NO_X controls to justify not installing RACT-level technology." Arguably, because the cost effectiveness analyses conservatively assumed higher levels of operation than actually occur, the analyses overestimated NO_X emissions and therefore overestimated NO_X reductions that would result from use of NO_X control equipment. Because cost effectiveness is expressed as dollars (capital and operational costs of controls) per ton of emissions (emissions reductions resulting from the controls), an overestimation of emissions reductions would effectively make controls appear more cost effective, not less.

The commenter also points to a 1984 guidance document[15] to assert that "the averaging time for ozone plan emission limitations should match the standards, that is, should be short term." We note, however, that section 104.4's 10 percent heat input limit differs from the emission limits addressed in the 1984 guidance in that it is also a criterion that must be met to qualify for and maintain an exemption from Rule 322's NO_X and CO limits. Further, to qualify for the exemption, section 104.4 also requires sources to submit, for Control Officer and EPA approval, a RACT analysis that demonstrates that "conventional commercially-available control technology is not technologically and/or economically feasible." EPA has long considered what is technologically and economically feasible in determining RACT controls.[16] And, as explained above, the analyses in Appendix 12 of the 2021 submittal package demonstrate that the installation of RACT control technologies for units operating at 10 percent of their annual capacity factors exceeds established cost effectiveness values.

Contrary to the commenter's assertion, section 104.4's annual capacity limit does not allow sources to "circumvent the installation of RACT level controls." Rather, as evidenced by

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[15] See "Averaging Times for Compliance with VOC Emission Limits – SIP Revision Policy," (also referred to as the "O'Connor Memorandum"). 51 FR 43857 (December 4, 1986). It is conceivable that this guidance pertains to limits on direct emissions of air pollutants only, not operational standards. We note that the 1990 Clean Air Act Amendments added the phrase "work practice or operational standard" to the definition of the terms "emission limit" and "emission standard" at CAA section 302(k).

[16] Since the 1970s, EPA has consistently defined "RACT" as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility. See December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, "Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas." 44 FR 53762 (September 17, 1979).

the analyses in Appendix 12 of the 2021 submittal package, sources regulated by Rule 322 appear to understand section 104.4 to require not only a standard approach to evaluating the cost effectiveness of pollution controls, but also application of this approach to all emissions units, even those that are used at one percent (or even lower) of their rated capacity.[17]

It is also important to note that units regulated by the low use provisions in section 104.4 must comply with requirements in section 500, "Monitoring and Records," including section 501.1 that requires owners and operators to maintain records of days and hours of operation and monthly fuel usage that will ensure that regulators, members of the public, and facility owners and operators can determine compliance with section 104.4's fuel input cap. In addition, the units regulated by the low use provisions in section 104.4 must still comply with other provisions in Rule 322, such as particulate matter emissions limitations (section 301), good combustion practice obligations for turbines (section 302), opacity limits (section 304), and fuel sulfur limits (section 305).

We acknowledge the commenter's point that the equipment for which power generators are seeking an exemption from NO_X and CO limits pursuant to section 104.4 are likely operated as peaking units and are therefore expected to operate primarily during hot summer days when ozone formation is typically high. The Clean Air Act provides states with primary responsibility for developing pollution control strategies discretion to attain the NAAQS. The states also have "broad authority to determine the methods and particular control strategies they will use to achieve the statutory requirements."[18] Because we find that Rule 322 is consistent with federal standards for RACT, we believe it is appropriate for the State to use its discretion to allow these units to operate, even during high ozone periods, as long as the State can demonstrate attainment

[17] We note further that Rule 322 does not allow "circumvention" of RACT by units that do not seek to qualify as exempt pursuant to section 104.4. Rule 322 applies to electric utility steam generating units and cogeneration steam generating units with rated heat input capacity greater than or equal to 100 million Btu/hour. Rule 322 clearly requires any unit that does not submit to section 104.4's limit on heat input to comply with the NO_X and CO limits in sections 306 and 307, which EPA has determined to be RACT.

[18] *BCCA Appeal Grp. v. EPA*, 355 F.3d 817, 822 (5th Cir. 2003) (as amended on denial of rehearing and rehearing en banc Jan. 8, 2004) (citing *Union Elec. Co. v. EPA,* 427 U.S. 246, 266 (1976) ("So long as the national standards are met, the state may select whatever mix of control devices it desires.")

with applicable ozone NAAQS. The EPA has approved the State's attainment demonstration and the associated reasonably available control measures (RACM) demonstration for the Phoenix 2008 ozone nonattainment area,[19] and has determined that this area attained the 2008 ozone NAAQS by the applicable attainment date.[20] The U.S. Court of Appeals for the Ninth Circuit has upheld both of these actions.[21] With respect to the 2015 ozone NAAQS, which is more stringent than the 2008 ozone NAAQS, the EPA has recently determined that the Phoenix-Mesa nonattainment area failed to attain the standard by the attainment date for areas classified as Marginal and therefore it has been reclassified to the next highest classification, Moderate.[22] This "bump up" action means that the State of Arizona and MCAQD are subject to CAA section 182(b)(2)'s requirement to demonstrate RACT and to section 182(b)(1)'s requirement to submit a plan demonstrating reasonable further progress towards attainment for the 2015 ozone NAAQS and providing for attainment by the Moderate area attainment date.

Discretionary authority in SIP actions

ALFA asserts that the EPA's statement that we do not have the "discretionary authority to address disproportionate human health or environmental effects with practical, appropriate and legally permissible methods under Executive Order 12898" is incorrect, and that the EPA has the discretion to interpret the requirements of the Act with regard to SIP submissions, demonstrated by our application of Agency guidance in interpreting requirements for averaging times in emission limitations. The commenter further asserts that the EPA does in fact have the discretionary authority to address impacts to environmental justice communities in this context.

While the EPA may in certain circumstances have discretion to consider environmental justice in implementing the requirements of the Act, EO 12898 does not provide any independent authority for action. For the reasons described in our proposal, our Technical Support Document

[19] 85 FR 33571 (June 2, 2020).
[20] 84 FR 60920 (November 12, 2019).
[21] *Bahr v. Regan,* 6 F.4th 1059 (9th Cir. 2021) *Matusow v. Wheeler*, Case No. 20-72279 (9th Cir. Apr. 21, 2022).
[22] 87 FR 60897 (October 7, 2022).

(TSD), and this notice, we have determined that the submittal satisfies the obligation to implement RACT under sections 110 and 182 of the Act. Under the CAA, the EPA is required to approve a SIP submission that meets the minimum requirements of the CAA and applicable federal regulations. Moreover, we note that while we are approving Rule 322 as meeting RACT under the requirements of the 2008 ozone NAAQS, we are not making any determinations as to whether this submittal meets requirements applicable to the Phoenix-Mesa nonattainment area for the 2015 ozone NAAQS.

Although Executive Order 12898 does not provide us with an independent basis to disapprove the County's SIP submission, we conducted an environmental justice analysis to provide additional context and information about this rulemaking to the public. To identify environmental burdens and susceptible populations in underserved communities in the areas surrounding units operating under the low use exemption in Rule 322, we performed a screening analysis using the EPA's environmental justice screening and mapping tool ("EJSCREEN") and the Power Plants and Neighboring Communities mapping tool ("PPNC") that includes EJSCREEN data in addition to facility emissions data collected by the EPA.[23, 24] We used these tools to assess the areas within a three-mile radius of the four facilities operating under the low use provisions of Rule 322. We selected a three-mile buffer because these facilities on their own have fairly large geographic footprints, and a three-mile radius was appropriate to capture potentially impacted communities that may be located nearby. We focused our analysis of the area on the two demographic indicators explicitly named in Executive Order 12898, the area's percentage of people of color and the percentage of low-income population.[25] Based on our

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[23] U.S. Environmental Protection Agency. "EJScreen (Version 2.0), 2022." Environmental Justice index and Socioeconomic Indicator tables, and EJSCREEN American Community Survey (ACS) Summary reports 2015-2019 data. Retrieved August 12, 2022 from *https://www.epa.gov/ejscreen*.

[24] U.S. Environmental Protection Agency. 2022. "Power Plants and Neighboring Communities (PPNC), 2020" Washington, DC: Office of Atmospheric Programs, Clean Air Markets Division. Available from EPA's PPNC web site: *https://www.epa.gov/airmarkets/power-plants-and-neighboring-communities*.The reports generated for this analysis are available in the rulemaking docket.

[25] Executive Order 12898 focuses explicitly on these two demographic indicators, which it refers to as "minority populations" and "low-income populations." EJSCREEN reports environmental indicators (e.g., air toxics cancer

screening analysis, we found that two of the four areas had higher percentages for the People of Color indicator living in the buffer zone than the state average of 45 percent (the area around the Agua Fria Generating Station reported 60 percent and the area around the West Phoenix Power Plant reported 91 percent), and three of the four areas had higher percentages for the Low Income indicator than the state average of 35 percent (Agua Fria Generating Station reported 44 percent, Ocotillo Power Plant reported 49 percent, and West Phoenix Power Plant reported 77 percent). Selected metrics from that analysis are presented below in Table 1.

Table 1 – Selected Environmental Justice Demographic Indicators

	Agua Fria Generating Station	Kyrene Generating Station	Ocotillo Power Plant	West Phoenix Power Plant
Estimated population in 3-mile buffer zone[26]	154,817	130,571	145,867	107,697
People of Color (AZ average 45%)	60%	43%	46%	91%
Low Income (AZ average 35%)	44%	26%	49%	77%

As discussed in the EPA's "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis," people of color and low-income populations often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[27] Underserved communities can also experience reduced access to health care, nutritional, and fitness resources, further increasing their susceptibility. We also note that the Phoenix-Mesa area is currently designated as non-

risk, lead paint exposure, and traffic proximity and volume) and demographic indicators (e.g., people of color, low income, and linguistically isolated populations). Depending on the indicator, a community that scores highly for an indicator may have a higher percentage of its population within a demographic group or a higher average exposure or proximity to an environmental health hazard compared to the state, region, or national average. EJSCREEN also reports EJ indexes, which are combinations of a single environmental indicator with the EJSCREEN Demographic Index. For additional information about environmental and demographic indicators and EJ indexes reported by EJSCREEN, see EPA, "EJSCREEN Environmental Justice Mapping and Screening Tool—EJSCREEN Technical Documentation," section 2, September 2019.

[26] Estimates from EJSCREEN, 2015-2019 American Community Survey, U.S. Census.

[27] U.S. EPA, "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis," section 4, June 2016.

attainment for the 2008 and 2015 ozone standards.[28] Areas in nonattainment typically face other air pollution and environmental health challenges, which may especially impact these underserved communities. Such impacts are seen in the EJSCREEN data for these areas, including indexes for fine particulate matter exposure, diesel particulate matter, air toxics risks, underground storage tank, Superfund site and hazardous waste facility proximity, all being higher than the State's average. Because the APS West Phoenix Power Plant and the SRP Agua Fria Generating Station are both located near communities, which the EJSCREEN data shows is higher than the state's average for EJ demographic indicators that may indicate the presence of underserved communities, it is possible that these facilities contribute to disproportionate pollution impacts.

Even though some of the facilities that are operating units under Rule 322's partial exemption for low use units are located in or near underserved communities, approval of this rule into the SIP strengthens the Arizona SIP by incorporating more stringent requirements for power plants operating in Maricopa County into the SIP, making them enforceable by the EPA and the public. For example, the version of Rule 322 we are approving into the SIP contains more stringent NO_X limits for more emissions units compared to the version of Rule 322 currently in the SIP, which EPA approved in 2009. The 2007 version of Rule 322 does not impose NO_X limits for stationary gas turbines at all, whereas the submitted version of Rule 322 limits NO_X emissions to 42 ppm and 65 ppm when burning gaseous and liquid fossil fuels, respectively.[29] Moreover, the 2007 version of Rule 322 only limits NO_X for steam generating units for which construction commenced between May 30, 1972, and May 10, 1996; as a result, the 2007 version of Rule 322 does not regulate at least some of the units covered by the low use exemption in the

[28] The EPA determined that the Phoenix-Mesa attained the 2008 ozone NAAQS by the Moderate area attainment date of July 20, 2018. 84 FR 60920 (November 12, 2019). This determination is not a redesignation to attainment and therefore it does not relieve the State from its obligations to implement RACT for this standard.

[29] The submitted rule also expands the applicability of CO limits to each electric utility or cogeneration steam generating unit with a rated heat input capacity greater than or equal to 100 MMBtu per hour, and to each electric utility stationary gas turbine with a rated heat input capacity at peak load greater than or equal to 10 MMBtu per hour. The 2007 version of Rule 322 limited CO emissions to the same equipment, but only if construction commenced prior to May 10, 1996.

2021 version of Rule 322.[30] The 2021 version of the rule now requires all units, regardless of construction date or type, to comply with the RACT limits or demonstrate compliance with the low use provisions by limiting annual operations. Also, the units operating under the submitted version of Rule 322's partial exemption for low use units must still comply with the updated operating requirements controlling sulfur, particulate matter, and opacity, even if they are exempt from the RACT NO_X and CO limits. Therefore, we expect that this action and the codification of Rule 322's more stringent requirements into the federally enforceable SIP will contribute to reduced environmental and health impacts on all populations in Maricopa County, including people of color and low-income populations in Maricopa County. For these reasons, this action is not expected to have a disproportionately high or adverse human health or environmental effect on a particular group of people.

The EPA remains committed to working with the State of Arizona and Maricopa County to ensure that the ozone attainment requirements for this area satisfy applicable CAA requirements and thereby protect all populations in the area, including minority, low income, and indigenous populations, from disproportionately high or adverse air pollution impacts.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving Rule 322 into the Arizona SIP and, pursuant to the requirements in section 104.4 of Rule 322, also approving the RACT cost effectiveness demonstrations in Appendix 12 of the State's submittal for the facilities seeking to operate under the low use partial exemption. The June 23, 2021 version of Rule 322 will replace the October 17, 2007 version of this rule in the SIP. As a result of this action, the sanctions that were deferred in our interim final determination are now rescinded, and a federal implementation plan to resolve the deficiency is no longer

[30] Per the RACT analyses submitted with the 2021 version of Rule 322, the APS Ocotillo and West Phoenix low use units were constructed at some point in 1972 and at least three of the SRP Agua Fria low use units were constructed well before 1972.

required under section 110(c) of the Act. We will also delete our previous disapproval codified at 40 CFR 52.133 (Rules and regulations) since a subsequent version of Rule 322 is being approved.

Relatedly, we are also making a correction in 40 CFR 52.124. In our final rule of August 23, 2021 (86 FR 46986), approving revisions to the Pinal County Air Quality District's RACT demonstrations for the 2008 8-hour ozone NAAQS, we should have deleted only the codified language noting our previous disapproval of portions of Pinal County's demonstration. However, we instead inadvertently deleted all the codified disapprovals for RACT demonstrations in Arizona. This action will correct that error and revise 40 CFR 52.124 to recodify the disapprovals for Maricopa County's RACT demonstration. This is relevant to our action here because the previous disapproval for Rule 322 was a contributing factor to our overall disapproval on Maricopa County's demonstration for implementing RACT at major sources of NO_X. This language should remain in 40 CFR 52.124 until a future action addresses the remaining deficiencies that prevent us from fully approving Maricopa County's demonstration of this requirement.

The EPA has determined that this correction falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action is unnecessary because the underlying rule for which this correcting amendment has been prepared was already subject to a 30-day comment period, and this action merely adds amendatory instructions that reverts the errors made in the underlying rule. Further, this action is consistent with the purpose and rationale of the final rule, which is corrected herein. Because this action does not change the EPA's analyses or overall actions, no purpose would be served by additional public notice and comment. Consequently, additional public notice and comment are unnecessary.

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 Maricopa County Rule 322 as described in Section I of this preamble and as set forth below in the amendments to 40 CFR part 52. 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.[31] 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 CAA, 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 minimum criteria of the Act. Accordingly, this action approves a County rule 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.*);

[31] 62 FR 27968 (May 22, 1997).

- 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); and
- 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.

The state did not evaluate environmental justice considerations as part of its SIP submittal. The EPA performed an environmental justice analysis for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the final action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Thus, there is no information in the record inconsistent with the stated goals of Executive Order 12898 (59 FR 7629, February 16, 1994) of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 21, 2022.

Martha Guzman Aceves,
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. In § 52.120, in paragraph (c), amend Table 4 by revising the entry for "Rule 322," and in paragraph (e), amend Table 1 by adding an entry for "Revision of Rule 322 of the Maricopa County Air Pollution Control Regulations, Appendix 12: RACT Analyses Submitted to the Maricopa County Air Quality Department from the Arizona Public Service and the Salt River Project, only" after the entry for "Reasonably Available Control Technology (RACT) Analysis, Negative Declaration and Rules Adoption" to read as follows:

§52.120 Identification of plan.

* * * * *

(c) * * *

Table 4 to Paragraph (c) - EPA-Approved Maricopa County Air Pollution Control Regulations

County citation	Title/subject	State effective date	EPA Approval Date	Additional explanation
*******				
Rule 322	Power Plant Operations	June 23, 2021	[**INSERT *Federal Register* CITATION], [INSERT DATE OF PUBLICATION**]	Submitted on June 30, 2021 under an attached letter dated June 24, 2021.
*******				

* * * * *

(e) * * *

Table 1 - EPA-Approved Non-Regulatory and Quasi-Regulatory Measures

Name of SIP provision	Applicable geographic or nonattainment	State submittal date	EPA approval date	Explanation

	area or title/subject			
*******				
Revision of Rule 322 of the Maricopa County Air Pollution Control Regulations, Appendix 12: RACT Analyses Submitted to the Maricopa County Air Quality Department from the Arizona Public Service and the Salt River Project, only	Maricopa County portion of Phoenix-Mesa nonattainment area for 2008 8-hour ozone NAAQS. Demonstrations for Equipment Under Rule 322, section 104.4, paragraph b	June 30, 2021	[**INSERT *Federal Register* CITATION], [INSERT DATE OF PUBLICATION**]	Submitted on June 30, 2021 under a letter dated June 24, 2021, as a part of the SIP revision for Maricopa County Rule 322. Required demonstrations from facilities that operate equipment seeking partial exemption from the rule through compliance with annual heat input limits.
*******				

* * * * *

3. Amend § 52.124 by adding paragraph (b) to read as follows.

§52.124 Part D disapproval.

* * * * *

(b) The following Reasonably Available Control Technology (RACT) determinations are disapproved because they do not meet the requirements of Part D of the Clean Air Act.

(1) [Reserved]

(2) *Maricopa County Air Quality Department*. (i) RACT determinations for major sources of NO_X, and CTG source categories for Aerospace Coating and Industrial Adhesives ("National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework" (59 FR 29216), "Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations" (EPA-453/R-97-004), and "Control Techniques Guidelines for Miscellaneous Industrial Adhesives" (EPA-453/R-

08-005)), in the submittal titled "Analysis of Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP)," dated December 5, 2016, as adopted on May 24, 2017 and submitted on June 22, 2017.

(ii) [Reserved]

* * * * *

4. Amend §52.133 by removing and reserving paragraph (h).

[FR Doc. 2022-28272 Filed: 12/29/2022 8:45 am; Publication Date: 12/30/2022]