



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0599; FRL-11591-01-R9]

Air Plan Approval; Arizona; Maricopa County Air Quality Department

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) portion of the Arizona State Implementation Plan (SIP). These revisions concern a rule that includes definitions for certain terms that are necessary for the implementation of local rules that regulate sources of air pollution. We are proposing to approve the rule 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 date of publication in the *Federal Register***].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0599 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>. If you need assistance in a language other than English or if you are a person with a disability 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: Kira Wiesinger, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3827 or by email at wiesinger.kira@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 rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ) to the EPA.

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Revised	Submitted on
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MCAQD	100	General Provisions and Definitions	8/9/2023	8/23/2023 ¹
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Under CAA section 110(k)(1), the EPA must determine whether a SIP submittal meets the minimum completeness criteria established in 40 CFR part 51, appendix V for an official SIP submittal on which the EPA is obligated to take action. We find that the ADEQ’s August 23, 2023 SIP submittal for MCAQD Rule 100 meets the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. *Are there other versions of this rulemaking?*

We approved an earlier version of MCAQD Rule 100 into the SIP on February 15, 2022.² The Maricopa County Board of Supervisors adopted revisions to the SIP-approved version on August 9, 2023, and the ADEQ submitted them to us on August 23, 2023. If we take final action to approve the August 9, 2023 version of Rule 100, this version will replace the previously approved version of this rule in the SIP.

C. *What is the purpose of the submitted rule revisions?*

The purpose of the submitted rule revisions is to clarify and update definitions in Rule 100 of the Maricopa County portion of the Arizona SIP as part of the MCAQD’s Title V permit program revision. Revisions include the following, but a more complete list and discussion can be found in the technical support document (TSD) for this action found in the docket:

- The addition of definitions for the terms “alternative operating scenario” and “business day or working day” and a revision of the definition of “major source.” A definition for the term “alternative operating scenario” was added to allow MCAQD Title V permit applications the opportunity to submit an alternative operating scenario for their source.

The “major source” definition has been revised to make it consistent with the Title V permit program definition of “major source,” by including language describing a 100 tons

¹ ADEQ submitted the amendment to MCAQD Rule 100 electronically on August 23, 2023. ADEQ’s submittal letter is dated August 23, 2023.

² See 87 FR 8418 (February 15, 2022).

per year emission threshold.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rulemaking?

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).

Since Rule 100 sets forth the legal authority for the Maricopa County Air Pollution Rules, which include MCAQD's Federal new source review (NSR) rules in Rule 240 for stationary sources located in nonattainment areas and in attainment and/or unclassifiable areas, the revisions must be more stringent, or at least as stringent, in all respects as the corresponding SIP definitions in 40 CFR Part 51.165(a)(1) and 51.166(b), which are the implementing regulations for CAA parts C and D of title I. 40 CFR Part 51.165(a)(1) contains the SIP definitions applicable to Federal NSR operating permit programs for stationary sources located in nonattainment areas, and 40 CFR 51.166(b) contains the SIP definitions for stationary sources located in attainment and/or unclassified areas. 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).

B. *Does the rule meet the evaluation criteria?*

This rule meets CAA requirements and relevant guidance regarding enforceability. The TSD has more information on our evaluation.

C. *The EPA's recommendations to further improve the rule*

The TSD includes a recommendation for the next time the local agency modifies Rule 100.

D. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills 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 rule, our final action will incorporate this rule 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 the MCAQD's Rule 100, General Provisions and Definitions, revised on August 9, 2023, which sets forth the legal authority for the Maricopa County Air Pollution Rules, and provides definitions of terms used throughout these rules. 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 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 14094 (88 FR 21879, April 11, 2023);
- 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;
- 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.

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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this 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. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 20, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

