



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0620; FRL-11601-02-R9]

Air Plan Revisions; Arizona; Arizona Department of Environmental Quality; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing two revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). In this action, we are finalizing the approval of revisions submitted by the ADEQ governing the issuance of permits for stationary sources in accordance with changes that EPA has made to its New Source Review (NSR) program regulations under the Clean Air Act (CAA or “the Act”). We are also finalizing the determination that with these revisions, the ADEQ’s NSR program satisfies the requirements for the preconstruction review and permitting of major sources and major modifications under part D of title I of the Act for areas designated nonattainment with the 2015 ozone National Ambient Air Quality Standards (NAAQS) with a Marginal classification, for areas and sources within the ADEQ’s permitting jurisdiction.

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 No. EPA-R09-OAR-2023-0620. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information the disclosure of which 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. 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: Camille Cassar, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947-4164; or by email to cassar.camille@epa.gov.

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

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I. Proposed Action

The rules that are the subject of the EPA’s current action were adopted by the ADEQ and submitted to the EPA on December 6, 2022 (“December 2022 NSR submittal”). On January 2, 2024 (89 FR 39), the EPA proposed to approve these rules, listed in Table 1 below, into the ADEQ portion of the Arizona SIP.

Table 1 – SIP Submittal

Rule Citation	Title	State Effective Date of Rule to be Added
R18-2-101 (except 20)	Definitions	05/04/2022
R18-2-404	Offset Standards	05/04/2022

The ADEQ’s December 2022 NSR submittal also requested that, as part of this action, the EPA remove from the ADEQ portion of the Arizona SIP the previous SIP-approved versions of the

same rules. The rules that the ADEQ requested be removed from the SIP, and which the EPA proposed to remove from the SIP, are listed in Table 2 below.

Table 2 – Current SIP Approved Rules

Rule Addressed in this Rulemaking	Title	Existing SIP Rule(s) Requested to be Removed from SIP (State Effective Date)
R18-2-101 (except 20)	Definitions	R18-2-101 (except 20) (02/01/2020)
R18-2-404	Offset Standards	R18-2-404 (03/21/2017)

In our proposed action, we also proposed to determine that with these rule revisions, the ADEQ’s SIP-approved NSR program satisfies the requirements for the preconstruction review and permitting of major sources and major modifications under part D of title I of the Act for areas designated nonattainment with the 2015 ozone NAAQS with a Marginal classification, for areas and sources within the ADEQ’s permitting jurisdiction. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Action

The EPA’s proposed action provided a 30-day public comment period. During this period, no comments were submitted on our proposal. Therefore, the EPA continues to find that the submitted rules should be approved into the Arizona SIP because they fulfill all relevant CAA requirements. We have concluded that our approval of the submitted rules will comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 165, 172(c)(5), 173, and 193, and 40 CFR 51.160–51.166. We also find that with the submitted rule revisions, the ADEQ’s NSR program satisfies the requirements for the preconstruction review and permitting of major sources and major modifications under part D of title I of the Act for areas designated nonattainment with the 2015 ozone NAAQS with a Marginal classification, for the areas and sources within ADEQ’s permitting jurisdiction. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving the submitted rules listed in Table 1 into the Arizona SIP and removing the versions listed in Table 2 from the SIP.

III. 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 incorporating by reference the following ADEQ rules: A.A.C. R18-2-101 (except 20) (effective 5/4/2020) and R18-2-404 (effective 5/4/2022), which govern the issuance of permits for stationary sources. These rules are intended to address the CAA's statutory and regulatory requirements for New Source Review permit programs for major sources emitting nonattainment air pollutants and their precursors under parts C and D of title I of the CAA. 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 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 CAA. 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 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 (Public Law 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 approves 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, February 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. 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.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 27, 2024.

Martha Guzman Aceves,
Regional Administrator,
Region IX

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations 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, paragraph (c), Table 2 is amended by revising the entries for “R18-2-101 (except 20)” and “R18-2-404” to 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
ARIZONA ADMINISTRATIVE CODE				

Title 18 (Environmental Quality)				
Chapter 2 (Department of Environmental Quality Air Pollution Control)				
Article 1 (General)				
R18-2-101 (except 20)	Definitions	May 4, 2022	[INSERT DATE OF PUBLICATION], [INSERT FEDERAL REGISTER CITATION]	Submitted electronically on December 6, 2022, as an attachment to a letter dated November 30, 2022.

Article 4 (Permit Requirements for New Major Sources and Major Modifications to Existing Major Sources)

R18-2-404	Offset Standards	May 4, 2022	[INSERT DATE OF PUBLICATION], [INSERT FEDERAL REGISTER CITATION]	Submitted electronically on December 6, 2022, as an attachment to a letter dated November 30, 2022.

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[FR Doc. 2024-06878 Filed: 4/2/2024 8:45 am; Publication Date: 4/3/2024]