



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2024-0600; FRL-12508-01-R9]

Air Plan Revisions; Arizona; Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing an approval and a limited approval and limited disapproval of a State Implementation Plan (SIP) submission made by the State of Arizona to address emissions of particulate matter 10 micrometers in diameter or smaller (PM₁₀) from agricultural operations. The SIP submission includes an amended statute, two definition rules, and two rules regulating crop and animal operations in Pinal County, Arizona. We are proposing action on local rules to regulate these emission sources under the Clean Air Act (CAA or “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-2024-0600 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 one of the people 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 one of the people identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: For general inquiries and inquiries related to the Arizona Administrative Code: Christine Vineyard, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4125; email at vineyard.christine@epa.gov. For inquiries related to the Arizona Revised Statutes: Alina Batool, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone (415) 972-3345; email at batool.alina@epa.gov.

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

Table of Contents

I. The State’s Submittal

- A. What did the State submit?
- B. Are there other versions of the statute and rules?
- C. What is the purpose of the submitted rule and statutory revisions?

II. The EPA’s Evaluation and Action

- A. How is the EPA evaluating the statute and rules?
- B. Do the statute and rules meet the evaluation criteria?
- C. What are the deficiencies?
- D. The EPA’s recommendations to further improve the statute and rules
- E. Proposed action and public comment

III. Incorporation by Reference

IV. Statutory and Executive Order Reviews

I. The State’s Submittal

A. What did the State submit?

Table 1 lists the statute and rules addressed by this proposal with the dates that they were adopted and submitted to the EPA by the Arizona Department of Environmental Quality (ADEQ

or “State”).

Table 1 - Submitted Statute and Rules

Arizona Revised Statutes (ARS)	Statute Title	Amended	Submitted
ARS section 49-457	Agricultural best management practices committee; members; powers; permits; definitions	03/26/2021	03/03/2023
Arizona Administrative Code (AAC)	AAC Title	Amended	Submitted
AAC R18-2-610	Definitions for R19-2-610.01, R18-2-610.02, and R18-2-610.03	11/26/2021	03/03/2023
AAC R18-2-610.03	Agricultural PM General Permit for Crop Operations; Pinal County PM Nonattainment Area	11/26/2021	03/03/2023
AAC R18-2-611	Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03	11/26/2021	03/03/2023
AAC R18-2-611.03	Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area	11/26/2021	03/03/2023

On September 3, 2023, the SIP submittal containing the documents listed in Table 1 was deemed complete by operation of law.

B. Are there other versions of the statute and rules?

We approved an earlier version of ARS 49-457 into the SIP on June 29, 1999 (64 FR 34726). We also approved earlier versions of AAC R18-2-610 and R18-2-610.03 into the SIP on May 1, 2017 (82 FR 20267). If we finalize this proposal to approve the submitted version of ARS 49-457 and AAC R18-2-610 and to issue a limited approval and limited disapproval of the submitted version of AAC R18-2-610.03, then these versions will replace the versions of this statute and these rules in the SIP.

We note that on October 11, 2001, we approved AAC R18-2-611, “Agricultural PM-10 General Permit; Maricopa PM₁₀ Nonattainment Area” into the Arizona SIP, which applies to Maricopa County commercial farmers (crop operations). *See* 66 FR 51869 (October 11, 2001).

The March 3, 2023 submittal of rule AAC R18-2-611, “Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03” is a separate rule that was not submitted to replace the existing SIP-approved rule AAC R18-2-611, “Agricultural PM-10 General Permit; Maricopa PM₁₀ Nonattainment Area.” If the EPA approves the new rule AAC R18-2-611, “Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03” into the Arizona SIP, there will be two different rules in the SIP with the same number, but they would be differentiated by their different titles and dates.

C. What is the purpose of the submitted rule and statutory revisions?

Emissions of PM, including 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. The CAA requires states to have SIPs that provide for attainment, maintenance, and enforcement of the PM₁₀ NAAQS, including the adoption and implementation of regulations to control PM emissions in designated PM₁₀ nonattainment areas. ADEQ's submission addresses emissions from certain sources of PM₁₀ emissions through a statutory provision and several regulations.

First, this submission would revise the existing SIP-approved version of ARS section 49-457 by, among other things, expanding the definition of “regulated agricultural activities” to include activities of dairies, beef feedlots, poultry facilities, and swine facilities. It would also expand the definition of “regulated area” to apply to any PM₁₀ nonattainment areas designated by the EPA on or after June 1, 2009, which includes the West Pinal County PM₁₀ nonattainment area.

Second, this submission would revise existing regulations in the Arizona SIP. AAC R18-2-610 makes largely administrative updates to the existing crop operations definitions rule and adds a definition for “unpaved vehicle or equipment traffic area.” AAC R18-2-610.03 amends the existing crop operations rule applicable to the West Pinal County PM₁₀ nonattainment area,

primarily adding a requirement for operators to implement two, as opposed to one, best management practices (BMPs) from the list of options for different areas.

Third, this submission would add a new regulation to the Arizona SIP. AAC R18-2-611.03 requires that commercial dairy operations, beef cattle feedlots, poultry facilities, and swine facilities implement BMPs to reduce PM₁₀ emissions from those sources. The new AAC R18-2-611 provides definitions for AAC R18-2-611.03 and other animal operations BMP rules in the State.

The EPA's technical support documents (TSDs) have more information about the statute and rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the statute and rules?

SIP rules must meet applicable substantive requirements, e.g., must be sufficiently stringent (see CAA sections 172(c)(1) and 189(a)(1)(C)), 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)).

States must adopt and implement reasonably available control measures (RACM), including reasonably available control technology (RACT), in Moderate PM₁₀ nonattainment areas (see CAA section 189(a)(1)(C)). Nonattainment areas that are classified as Serious must also demonstrate that they have implemented best available control measures (BACM). (see CAA section 189(b)(1)(B)). In addition, each attainment plan must “provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.” (see CAA section 172(c)(1)). RACM and BACM findings are generally made in the context of an overall attainment demonstration. Because this submission is not being evaluated at this time as part of

an attainment plan submission, we will not evaluate these rules for RACM and BACM in this action and will instead do so as part of a future attainment planning action.

Guidance and policy documents that we use to evaluate control rules submitted for PM₁₀ nonattainment areas, including enforceability, revision/relaxation, and rule stringency requirements, 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.

B. Do the statute and rules meet the evaluation criteria?

The EPA is proposing to conclude that the submitted statute, ARS §49-457 meets the evaluation criteria. We note that ARS §49-457 is not intended to regulate agricultural activities in isolation. Although it establishes a number of substantive requirements (for example, the requirement that a person who commences a regulated agricultural activity must comply with the permit), it does not specify, in detail, the requirements for regulated entities. As a result, our evaluation of enforceability is not an evaluation of whether the statute in isolation establishes specific enforceable requirements on agricultural activities, but is instead an evaluation of whether the requirements of the statute are sufficiently clear and enforceable that, when

combined with specific local rules implementing the statute (which also have been or will be submitted into the SIP), these rules can be enforced. We propose to find that the rule provisions regarding applicability, BMPs, recordkeeping, reporting and other requirements in the statute are clear. These and other provisions are sufficient to establish a framework under which, in combination with local rules, affected sources and regulators can evaluate and determine compliance with ARS §49-457 consistently as required by CAA section 110(a).

The EPA is proposing to conclude that the submitted regulations, AAC R18-2-610, R18-2-610.03, AAC R18-2-611, and R18-2-611.03 largely meet the evaluation criteria. The provisions of the rule are generally clear and mostly specify requirements in a manner that sufficiently specifies what is necessary in order to comply. The updated regulations also strengthen the SIP, adding additional control requirements for both animal and crop operations. Rule provisions that do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the deficiencies?

EPA is proposing to conclude that R18-2-610.03 and R18-2-611.03 do not satisfy the requirements of section 110 and part D of title I of the Act, because they are not sufficiently enforceable and therefore prevent full approval of the SIP revision.

The crop and animal operation rules require operators to complete a Best Management Practices Program General Permit Record Form annually. This form is not submitted to the Director but must instead be provided to the Director within two business days of notice to the operator. The form must contain the name of the operator, signature, date signed, and the mailing or physical address of the operation. For animal operations, the form must contain a specification of the BMPs selected for each category. For crop operations the requirement is less clear. Paragraph C.3 of R18-2-610.03 states that the form shall include “The following information for each best management practice selected for tillage, ground operations and harvest, cropland, noncropland, commercial farm roads, and significant earth moving activities (if applicable).”

However, there is no list of “following information” so it is not clear what, if anything, must be included pursuant to this requirement.

The rules also require operators to maintain records demonstrating compliance for three years. The records must include a copy of the BMP Program General Permit Record Form, but the rules do not otherwise specify any records that must be maintained or reported. Finally, the rules require operators to complete a survey every three years that includes the number of animals for each type of operation, the total miles of unpaved roads, the total acreage of access connections and equipment areas, the chosen BMPs, and, for some operators, whether water was applied on a high risk day. The survey is sent out by ADEQ and responses are submitted to the Arizona Department of Agriculture (ADA). The survey results are aggregated by the ADA and reported to ADEQ. The rules prohibit the report from including any operator’s name (that is, the results are anonymous).

Under Rules R18-2-610.03 and R18-2-611.03, absent a specific request from the Director (upon which an operator would have two business days to provide records), source-specific compliance information is only obtained through the survey. This process is not enforceable because compliance information is only available if ADEQ sends out the survey and the ADA subsequently reports the information to ADEQ or the ADEQ exercises its discretion to request records. Further, because the report from ADA to ADEQ is aggregated so that the individual operators remain anonymous, it is not clear whether the survey results would be sufficient to verify or incentivize compliance. Moreover, because these rules require operators to select from a menu of compliance options, it is not clear how compliance could be determined without knowing the chosen compliance options. While it may be possible to verify whether a particular BMP is being implemented, for example, cessation of night tilling, access restrictions, reduced vehicle speeds, or watering, if there is no record of which BMPs have been selected, a determination of noncompliance with the rules would essentially require an exhaustive demonstration that none of the BMPs are being implemented. In the absence of the Director

exercising their discretion to request records, it becomes nearly impossible to enforce the requirements in these rules.

D. The EPA's recommendations to further improve the statute and rules

The TSDs include recommendations for the next time the State modifies the statute and rules.

E. Proposed action and public comment

The EPA is proposing to approve the statute, ARS §49-457, and the definition rules, AAC R18-2-610 and R18-2-611. The statute sets out the basic framework of the statewide agricultural BMP program, strengthening the program by expanding its geographic scope and strengthening its substantive requirements, particularly in nonattainment areas classified as Serious. The crop operations definitions rule, AAC R18-2-610 updates a number of definitions, largely with administrative updates. The animal operations definitions rule, AAC R18-2-611 does not itself contain substantive requirements but lays out definitions to support animal operation BMP rules in Arizona. The statute and definitions rules do not contain deficiencies that prevent our approval, and we therefore propose to approve them as authorized in section 110(k)(3) of the Act.

The EPA is also proposing a limited approval and limited disapproval of the submitted Pinal County crop operation, AAC R18-2-610.03, and animal operation, AAC R18-2-611.03, rules. The EPA is proposing a limited approval because the EPA's analysis demonstrates that the rules would strengthen the SIP. The crop operations rule strengthens existing requirements, and the animal operations rule establishes new requirements for agricultural PM₁₀ sources in Pinal County. The EPA is proposing a simultaneous limited disapproval for these rules based on the enforceability issues identified in section II.C. of this notice and described in detail in the rule TSD.

If we finalize this approval and limited approval and limited disapproval as proposed, we will replace the existing version of ARS §49-457 and AAC R18-2-610 and AAC R18-2-610.03

in the SIP, as well as add the new AAC R18-2-611 and AAC R18-2-611.03 to the SIP. We will accept comments from the public on this proposal until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval. If we finalize this disapproval as proposed, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months unless we approve subsequent SIP revisions that correct the deficiencies identified in our final action.

In addition, final disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction would not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline. The EPA intends to work with the State to correct the deficiencies in a timely manner.

Note that the submitted rules have been adopted as Arizona State law, and the EPA's final limited disapproval would not prevent the State from enforcing them. The limited disapproval also would not prevent any portion of the rules from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at:

<https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>.

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 ARS §49-457, "Agricultural best management practices committee; members; powers; permits; definitions" revised on March 26, 2021, which establishes a framework for an agricultural best management practice permit in Arizona, and AAC R18-2-610, "Definitions for R19-2-610.01, R18-2-610.02, and R18-2-610.03," AAC R18-

2-610.03, “Agricultural PM General Permit for Crop Operations; Pinal County PM Nonattainment Area,” AAC R18-2-611, “Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03,” and AAC R18-2-611.03, “Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area,” which establish agricultural best management practice permits for crop and animal operations in Pinal County. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact one of the people identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. 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 review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action is proposing an approval, limited approval, and limited disapproval of state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175, because 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, and will not impose substantial direct costs on Tribal governments or preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it is merely proposing a limited approval and limited disapproval of state law as meeting

federal requirements. Furthermore, the EPA's Policy on Children's Health does not apply to this action.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 12898 and defines EJ as, among other things, "the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment."

The State did not evaluate EJ 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 Orders 12898 and 14096 of achieving EJ for communities with EJ concerns.

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: January 2, 2025.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

[FR Doc. 2025-00115 Filed: 1/16/2025 8:45 am; Publication Date: 1/17/2025]