



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2026-1684; FRL-13268-01-R9]

Air Plan Revisions; Arizona; Maricopa County Air Quality Department; New Source Review; Emission Reduction Credits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Maricopa County Air Quality Department (MCAQD or “Department”) portion of the Arizona State Implementation Plan (SIP). This revision establishes a federally enforceable program allowing fleet owners/operators to generate emission reduction credits (ERCs) by either retrofitting or replacing existing fleet vehicles with lower emitting vehicles while meeting other Clean Air Act (CAA or “Act”) requirements. These ERCs are intended for use as offsets for major stationary sources under the Department’s Nonattainment New Source Review (NNSR) program. We are proposing to approve a local rule to allow for the generation of ERCs through voluntary on-road mobile source emission reductions under the CAA. 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-2026-1684 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: Elijah Gordon, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; telephone number: (415) 972-3158; email address: gordon.elijah@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?

The Arizona Department of Environmental Quality (ADEQ), the governor’s designee for Arizona SIP submittals, submitted a SIP revision to the EPA on behalf of the MCAQD. Table 1

lists the rule, which the ADEQ included in the submittal with the Department’s technical support materials, addressed by this proposal with the dates that it was adopted by the MCAQD and submitted to the EPA by the ADEQ.

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Revised	Submitted
MCAQD	205	Emission Offsets Generated by Voluntary Mobile Source Emission Reductions	05/21/25	05/30/25

On November 30, 2025, the submittal for MCAQD Rule 205, “Emission Offsets Generated by Voluntary Mobile Source Emission Reductions,” (revised May 21, 2025) (“Rule 205”) became complete by operation of law with respect to the completeness criteria in 40 CFR part 51, appendix V.

B. Are there other versions of this rule?

There are no previous versions of Rule 205 approved in the Arizona SIP, however the MCAQD adopted an earlier version of this rule on April 26, 2023, and the ADEQ submitted it to the EPA on May 4, 2023 (“2023 submittal”). The EPA proposed conditional approval of the 2023 submittal on August 22, 2024.¹ On May 30, 2025, the ADEQ submitted a SIP revision requesting the EPA approve the revised version of Rule 205 (“2025 submittal”) into the Arizona SIP. In the 2025 submittal, the ADEQ also withdrew the 2023 submittal, including the April 26, 2023 version of Rule 205. Because the 2023 submittal was withdrawn and superseded by the 2025 submittal, and due to other changes to the rule, as explained in our TSD, the EPA is not finalizing our 2024 proposed conditional approval.

C. What is the purpose of the submitted rule?

Portions of Maricopa County are currently designated as “Moderate” nonattainment for the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS) and as “Serious”

¹ 89 FR 67919 (August 22, 2024).

nonattainment for the 1987 particulate matter equal to or less than 10 micrometers (PM₁₀) NAAQS.² Sections 110(a) and 173 of the CAA require States with areas designated nonattainment to submit regulations that include a preconstruction permit program for new or modified major stationary sources of air pollutants within the applicable nonattainment areas (NAAs), referred to as the NNSR program. Therefore, the MCAQD is required to implement a NNSR program, which requires new or modified sources emitting ozone precursors or PM₁₀ exceeding specific thresholds to provide surplus emissions reductions to offset the proposed project's projected emissions increases.^{3,4}

The MCAQD states that the quantity of surplus emissions reductions currently available for use as NNSR offsets does not appear sufficient to support current and projected economic growth. The MCAQD developed Rule 205 to generate NNSR offsets for oxides of nitrogen (NO_x) and volatile organic compounds (VOC), which are ozone precursors. Rule 205 creates a regulatory structure for the generation and use of nontraditional ERCs from on-road mobile sources for the Department's NNSR program. When ERCs are generated from on-road mobile sources, they are referred to as mobile ERCs or "MERCs." The rule allows on-road mobile source fleet owners/operators that permanently reduce NO_x or VOC emissions from their fleets to trade those reductions to stationary sources, or "credit users," who can then use them to offset their proposed NO_x or VOC emissions increases for the purpose of meeting NNSR requirements. Rule 205 outlines the requirements a "generator" of emissions reductions must meet before the Department can certify the emissions reductions as meeting the offset requirements specified for NNSR programs. In general, the rule requires the generator to submit certain information in its MERC application; provides procedures for processing an application; provides methodologies to calculate emissions reductions; requires the issuance of MERC certificates; and provides

² 40 CFR 81.303.

³ 40 CFR 51.165(a)(1)(iv). The major source threshold for both VOC and NO_x, which are precursors of ozone, is 100 tons per year for the portions of Maricopa designated as Moderate nonattainment for the 2008 and 2015 ozone NAAQS. Rule 205 applies to ozone precursors only and cannot be used to generate NNSR offsets for the PM₁₀ NAAQS.

⁴ 40 CFR 51.165(a)(9)(ii). The offset ratio for Moderate nonattainment ozone areas is at least 1.15 to 1.

ongoing monitoring, recordkeeping, and reporting requirements for MERC generators. The rule also contains certain requirements for the credit user and the Department's Control Officer. The EPA's technical support document (TSD) includes more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

In evaluating Rule 205, we reviewed it for compliance with the NNSR offset requirements found in CAA section 173 and 40 CFR 51.165 and the substantive CAA requirements for SIPs and SIP revisions as set forth in CAA sections 110(a)(2), 110(l), and 193.

CAA section 173(a)(1)(A) states that "...permits to construct and operate may be issued if (1) ...the permitting agency determines that (A) by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained...." CAA section 173(a) concludes that "[a]ny emission reductions required as a precondition of the issuance of a permit under paragraph (1) shall be federally enforceable before such permit may be issued." CAA section 173(c)(1) requires emissions reductions to be "by the time a new or modified source commences operation, in effect and enforceable." Collectively, CAA section 173 requires permitting authorities to determine that offsets have been obtained and are federally enforceable before an NNSR permit is issued and that such offsets will be in effect before the source commences operation. These requirements, which mostly pertain to NNSR permit issuance, are generally met by the requirements in the MCAQD's SIP-approved NNSR program.⁵ In our evaluation, we also considered whether Rule 205 would interfere with these requirements.

Regarding whether emissions reductions qualify as offsets, CAA section 173(c)(1) requires that emissions increases "shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area," meaning the emissions reductions must be "real" and not a theoretical reduction in the source's potential

⁵ MCAQD Rule 240, "Federal Major New Source Review (NSR)," revised December 11, 2019, contains the majority of the MCAQD's NNSR program. 87 FR 8418 (February 15, 2022).

to emit; in other words, it requires that each offset represents emissions that have been taken out of the air. CAA section 173(c)(2) only allows emissions reductions to be creditable as offsets if they are not otherwise required by the CAA, meaning they must be “surplus” to other CAA requirements. Building on this, 40 CFR 51.165(a)(3)(ii)(C)(1)(i) requires offsets for SIP-approved NNSR programs to be surplus, permanent, quantifiable, and federally enforceable. Collectively, CAA section 173(c) and 40 CFR 51.165 require offsets to be real, surplus, quantifiable, permanent, and federally enforceable. We refer to these requirements colloquially as the offset “integrity elements” or “integrity criteria.” Generally, emissions reductions meet these requirements if they are based on reductions in actual emissions, have not been relied upon in any air quality-related programs under the CAA, can be reliably calculated using methods that can be replicated, will last in the NAA for the life of the source utilizing the credits, and are legally and practicably enforceable by the EPA.

CAA section 110(a)(2) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable. CAA section 110(l) requires that states provide public notice and an opportunity for public hearing of SIP revisions prior to their submittal and prohibits the EPA from approving any SIP revisions that would interfere with attainment or maintenance of a NAAQS, reasonable further progress, or other applicable requirements of the CAA. CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990, in a nonattainment area, unless the modification ensures equivalent or greater emissions reductions of the relevant pollutants.

Throughout our evaluation, we also referred to the EPA’s 2001 Economic Incentive Programs (EIPs) guidance document titled “Improving Air Quality with Economic Incentive Programs” (“2001 EIP guidance”), which sets out the EPA’s non-binding guidelines on discretionary EIPs.⁶ An EIP is a regulatory program that implements market-based strategies to achieve an air quality objective. Rule 205 is classified as an EIP because it provides a framework

⁶ A discretionary EIP is not subject to the requirements for mandatory EIPs found in 40 CFR part 51, subpart U.

for generating ERCs from mobile sources. The ERCs generated under the EIP may be traded with stationary sources to provide the offsets required under a NNSR program.⁷ The 2001 EIP guidance document does not represent final EPA action on the requirements for EIPs, but it identifies several different types of EIPs and proposed elements for each type that, if met, could assure that the program meets the applicable CAA requirements.

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. "Improving Air Quality with Economic Incentive Programs," EPA-452/R-01-001, OAQPS, January 2001.
2. "MOVES5 Technical Guidance: Using MOVES to Prepare Emission Inventories for State Implementation Plans and Transportation Conformity," EPA-420-B-24-043, OTAQ, November 2024.

B. Does the rule meet the evaluation criteria?

As stated previously, the EPA proposed conditional approval of the 2023 submittal for Rule 205 on August 22, 2024, but the submittal was later withdrawn, and the EPA did not finalize that action. The TSD from that proposed conditional approval action informs our analysis and is included in the docket for this action. We primarily focus on the revisions to the 2025 version of Rule 205 and supplemental information⁸ provided in the 2025 submittal and how it addresses comments and concerns we previously provided to the MCAQD on Rule 205.

We find that Rule 205 complies with the applicable CAA requirements and is consistent with relevant guidance. We find that the rule ensures offsets will meet the offset requirements in CAA section 173 and 40 CFR 51.165, including the criteria for being real, surplus, quantifiable, permanent, and federally enforceable. For generators that are issued MERCs, the rule contains

⁷ See *Id.*

⁸ See the Department's EIP Support document in Appendix 18 of the 2025 submittal.

monitoring, recordkeeping, and reporting requirements and other implementation and enforcement provisions to ensure that compliance is consistently evaluated and determined. Finally, we find that the rule meets the substantive requirements for SIPs and SIP revisions set forth in CAA sections 110(a)(2), 110(l), and 193. Our TSD, which is in the docket for this action, contains a detailed and complete evaluation of how Rule 205 satisfies CAA requirements.

C. Proposed action and public comment

As authorized in section 110(k)(3) of the Act, the EPA proposes to approve the Rule 205 submittal 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 Rule 205 submittal, our final action will incorporate Rule 205 into the federally enforceable SIP and codify revisions to 40 CFR 52.120.

III. Incorporation by Reference

In this document, 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 Maricopa County Air Quality Department Rule 205, “Emission Offsets Generated by Voluntary Mobile Source Emission Reductions,” revised May 21, 2025, which establishes a program allowing fleet owners/operators to generate ERCs by either retrofitting or replacing existing fleet vehicles with lower emitting vehicles and meeting other ongoing requirements. 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 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 criteria of the CAA. 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 Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 CAA.

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).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 7, 2026.

Michael Martucci,
Acting Regional Administrator, Region IX.

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