

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0352; FRL-9463-01-R9]

Approval of Arizona State Implementation Plan Revisions; Maricopa County Air Quality Department; Stationary Source Permits; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Maricopa County Air Quality Department’s (MCAQD or Department) portion of the state implementation plan (SIP) for the State of Arizona. We are finalizing full approval of six MCAQD rules for the Department’s New Source Review (NSR) preconstruction permitting program for new and modified stationary sources of air pollution under the Clean Air Act (CAA or the Act). The revisions update the MCAQD’s NSR permitting program for new and modified sources of air pollution.

DATES: This rule is effective on March 17, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2020-0352. 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 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.

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

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.
- (ii) The initials *BACT* mean or refer to Best Available Control Technology.
- (iii) The word or initials *CAA* or *Act* mean or refer to the Clean Air Act.
- (iv) The initials *CFR* mean or refer to Code of Federal Regulations.

(v) The initials or words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(vi) The initials *FIP* mean or refer to Federal Implementation Plan.

(vii) The initials *FR* mean or refer to **Federal Register**.

(viii) The word or initials *MCAQD*, *County*, *Maricopa County*, or *Department* mean or refer to the Maricopa County Air Quality Department, the agency with jurisdiction over stationary sources within Maricopa County, Arizona.

(ix) The phrase *minor NSR* means the permit program applicable to new or modified sources that do not result in a new major source or a major modification.

(x) The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.

(xi) The initials *NSR* mean or refer to New Source Review, which includes NNSR, PSD and minor NSR.

(xii) The initials *NNSR* mean or refer to nonattainment New Source Review.

(xiii) The initials *PM_{2.5}* mean or refer to particulate matter less than 2.5 micrometers.

(xiv) The initials *PM₁₀* mean or refer to particulate matter less than 10 micrometers.

(xv) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(xvi) The initials *SIP* mean or refer to State Implementation Plan.

(xvii) The word *State* means or refers to the State of Arizona.

(xviii) The initials *TSD* mean or refer to the Technical Support Document.

I. Proposed Action

On February 23, 2021, the EPA proposed to approve the rules listed in Table 1 for incorporation into the Arizona SIP. See 86 FR 10903. Although MCAQD Rule 230 was included in the December 20, 2019 SIP Submittal, and the EPA proposed approval in the February 23, 2021 action, we are deferring action on Rule 230 at this time. Therefore, except for Rule 230, the rules listed in Table 1 constitute the MCAQD’s EPA-approved air quality preconstruction NSR permit program.

TABLE 1—MCAQD SUBMITTED RULES

Regulation & rule No.	Rule title	Adoption or amendment date	Submitted
Regulation I, Rule 100	General Provisions; General Provisions and Definitions	12/11/2019	12/20/2019
Regulation II, Rule 200	Permits and Fees; Permit Requirements	12/11/2019	12/20/2019
Regulation II, Rule 210 ¹	Permits and Fees; Title V Permit Provisions	12/11/2019	12/20/2019
Regulation II, Rule 220	Permits and Fees; Non-Title V Permit Provisions	12/11/2019	12/20/2019
Regulation II, Rule 230*	Permits and Fees; General Permits	12/11/2019	12/20/2019
Regulation II, Rule 240	Permits and Fees; Federal Major New Source Review	12/11/2019	12/20/2019
Regulation II, Rule 241	Permits and Fees; Minor New Source Review	12/11/2019	12/20/2019

*The EPA is deferring action on Rule 230 at this time.

We proposed to approve these rules as part of the MCAQD’s general and major

¹ Rule 210 also contains provisions to address requirements under title V of the Act for operating

permit programs, but we are not evaluating the rule for title V purposes at this time. We will evaluate Rule 210 for compliance with the requirements of title V of the Act and the EPA’s implementing regulations in 40 CFR part 70 following receipt of

source NSR permitting programs because we determined that these rules

an official part 70 program revision submittal from Maricopa County.

satisfy the substantive statutory and regulatory requirements for NSR permit programs as contained in (1) part C of title I (section 165) of the Act for Prevention of Significant Deterioration (PSD) program; (2) part D of title I (sections 172 and 173) of the Act for the nonattainment NSR program; (3) section 110(a)(2) of the Act for the general permitting requirements; (4) sections

110(l) and 193 of the Act for SIP revisions and the general savings clause; (5) the regulatory provisions in 40 CFR part 51, subpart I (Review of New Sources and Modifications) (40 CFR 51.160–51.166); and (6) subpart P (Protection of Visibility) (40 CFR 51.307).

We also proposed to approve these rules because we determined that they

address the deficiencies identified in our conditional approval of Rules 100 and 200 in the EPA’s April 5, 2019 action. See 84 FR 13543. Finally, we proposed that the rules listed in Table 1 will replace the SIP-approved NSR program rules listed in Table 2, in their entirety.

TABLE 2—MCAQD RULES TO BE REMOVED OR REPLACED

Regulation & rule No.	Rule title	Adoption or amendment date	SIP approval date	Federal Register citation
Regulation I, Rule 2, No. 11 “Alteration or Modification”.	General Provisions; Definitions	June 23, 1980	June 18, 1982	47 FR 26382
Regulation I, Rule 2, No. 27 “Dust” ..	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation I, Rule 2, No. 29 “Emission”.	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation I, Rule 2, No. 34 “Existing Source Performance Standards”.	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation I, Rule 2, No. 37 “Fly Ash”.	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation I, Rule 2, No. 39 “Fuel” ...	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation I, Rule 2, No. 42 “Fume”	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation I, Rule 2, No. 55 “Motor Vehicle”.	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation I, Rule 2, No. 59 “Non-Point Source”.	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation I, Rule 2, No. 60 “Odors”	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation I, Rule 2, No. 64 “Organic Solvent”.	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation I, Rule 2, No. 70 “Plume”	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation I, Rule 2, No. 80 “Smoke”	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation I, Rule 2, No. 91 “Vapor”	General Provisions; Definitions	June 23, 1980	April 12, 1982	47 FR 15579
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 52 “Dust”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 56 “Emission”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 63 “Existing Source Performance Standards”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 70 “Fuel”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 71 “Fuel Burning Equipment”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 74 “Fume”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 103 “Motor Vehicle”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 114 “Non-Point Source”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 122 “Photochemically Reactive Solvent”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 123 “Plume”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 128 “Process”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 129 “Process Source”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 150 “Smoke”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 151 “Soot”) ² .	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219

TABLE 2—MCAQD RULES TO BE REMOVED OR REPLACED—Continued

Regulation & rule No.	Rule title	Adoption or amendment date	SIP approval date	Federal Register citation
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 160 “Supplementary Control System (SCS)”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 166 “Vapor”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 167 “Vapor Pressure”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation II, Rule 21, Section D.1 (AZ R9–3–101, Paragraph 168 “Visible Emissions”).	Permits and Fees; Procedures for Obtaining an Installation Permit.	October 25, 1982	August 10, 1988; Vacated; restored on January 29, 1991.	53 FR 30224; 56 FR 3219
Regulation I, Rule 100 (except Sections 200.24, 200.73, 200.104(c)).	General Provisions; General Provisions and Definitions.	February 3, 2016	April 5, 2019	84 FR 13543
Regulation II, Rule 200	Permits and Fees; Permit Requirements.	February 3, 2016	April 5, 2019	84 FR 13543
Regulation II, Rule 210	Permits and Fees; Title V Permit Provisions.	February 3, 2016	April 5, 2019	84 FR 13543
Regulation II, Rule 220	Permits and Fees; Non-Title V Permit Provisions.	February 3, 2016	April 5, 2019	84 FR 13543
Regulation II, Rule 240 (except Section 305).	Permits and Fees; Federal Major New Source Review (NSR).	February 3, 2016	April 5, 2019	84 FR 13543
Regulation II, Rule 241	Permits and Fees; Minor New Source Review (NSR).	September 7, 2016 ³	April 5, 2019	84 FR 13543

Our TSD, which can be found in the docket for this rulemaking, contains a more detailed discussion of the approval criteria and our evaluation of the rules in Table 1.

II. Public Comments and EPA Responses

The EPA’s February 23, 2021 proposed rulemaking provided a 30-day public comment period. We received comments from the Arizona Center for Law in the Public Interest (ACLPI). The full text of the ACLPI’s public comments is available in the docket for this rulemaking. The EPA’s summaries of, and responses to, these public comments are as follows:

A. Exemption for Agricultural Equipment Used in Normal Farm Operations in Rule 200

Comment: The commenter states that the MCAQD has failed to identify the types of equipment that it considers to be “agricultural equipment used in normal farm operations” and that “fugitive emissions” are not a type of “activity” or “equipment.” The commenter states that the MCAQD’s exemption for agricultural equipment used in normal farm operations is vague to the point of unenforceability. The commenter states that this vagueness prevents scrutiny of whether the

fugitive emissions are actually fugitive (*i.e.*, could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening).

Response: The EPA respectfully disagrees with this comment. In our proposed rulemaking for the June 11, 2018 conditional approval action, the EPA stated that the MCAQD must provide a basis consistent with 40 CFR 51.160(e) to demonstrate that regulation of the equipment exempted under Rule 200, Section 305 is not needed for the MCAQD’s federal NSR program to meet requirements for attainment and maintenance of the NAAQS or review for compliance with the control strategy. *See* 83 FR 26912, 26915 (June 11, 2018). Among other things, we also stated that such demonstrations must address identification of the types of equipment that the MCAQD considers to be “agricultural equipment used in normal farm operations.” In its December 20, 2019 SIP Submittal, the MCAQD responded by explaining that it had revised Rule 200 to exempt only “fugitive emissions from agricultural equipment used in normal farm operations” [emphasis added]. *See* Rule 200, Section 305.2.i.

The submitted revision to the “agricultural equipment used in normal farm operations” exemption considerably clarifies and narrows the scope of the exemption. Although, as the commenter mentions, fugitive emissions are not a specific type of activity or equipment, we find that the clarification regarding the scope of the exemption in the rule revision that was provided by the MCAQD is sufficient to meet the requirements of our June 11,

2018 conditional approval action and the CAA. As an initial matter, we note that, in addition to the fact that the exemption is now limited to fugitive emissions from agricultural equipment used in normal farm operations, the explicit language of the exemption provision clearly specifies that it does not apply to any equipment that would otherwise require a permit under Title V of the Act. A title V permit is required for any major source⁴ as defined in 40 CFR 70.2.⁵ A stationary source that is required to obtain a major NSR (PSD or nonattainment NSR) permit, is also required to obtain a title V permit.⁶

⁴ “Stationary source” means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant. *See* Rule 100, Section 200.123, 40 CFR 51.165(a)(1)(i), and 40 CFR 51.166(b)(5).

⁵ Under 40 CFR 70.2, a major source is a stationary source of air pollutants, as defined in section 302 of the Act, that directly emits, or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). It is also defined as a stationary source that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule.

⁶ For nonattainment areas, a major NSR permit is required for a stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the CAA (*e.g.*, since Maricopa County is a serious nonattainment area for PM₁₀, an emissions threshold of 70 tpy applies). *See* Rule 240, Section 202 and 40 CFR 51.165(a)(1)(iv)(A)(1). For attainment or unclassifiable areas, a major NSR permit is required for a stationary source of air pollutants, that belongs to one of the 28 source

² The correct citation for the definition of “Soot” is Rule 21, Section D.1 (AZ R9–3–101, Paragraph 151), and not Paragraph 152 which was in the April 5, 2019 final action.

³ The correct adoption or amendment date for Rule 241 is September 7, 2016, and not February 3, 2016 as stated in the EPA’s actions in 84 FR 13550 (April 5, 2019), 84 FR 18396 (May 1, 2019), and 86 FR 10906 (February 23, 2021).

Therefore, no major stationary source qualifies for the MCAQD's "fugitive emissions from agricultural equipment used in normal farm operations" exemption (agricultural equipment exemption), regardless of whether any of its emissions units emit fugitive emissions. The rule is also clear that the exemption does not apply to any equipment subject to the New Source Performance Standards (NSPS) under 40 CFR part 60, nor to the National Emission Standards for Hazardous Air Pollutants (NESHAP) under 40 CFR parts 61 and 63. Again, this is the case regardless of whether the emissions are fugitive or non-fugitive. For example, diesel-fired engines are commonly used at agricultural sources, and are subject to a NSPS and/or NESHAP requirement.⁷ Accordingly, such engines do not qualify for the agricultural equipment exemption. The EPA also notes that the MCAQD's permit program only applies to stationary sources, therefore any mobile equipment, such as tractors, are already exempt from permit program requirements. Thus, the exemption is limited to fugitive emissions from agricultural equipment used in normal farm operations, located at minor stationary sources that are not subject to any NSPS or NESHAP. The EPA believes this is a sufficiently small universe of sources to satisfy the requirements of 40 CFR 51.160(e) and our June 11, 2018 conditional approval action.

The EPA also disagrees with the commenter's claim that the revision to Section 305.2.i is too vague to be enforceable. Fugitive emissions are defined in Rule 100, Section 200.56 as "[a]ny emission which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening." This definition is consistent with the EPA's regulatory definition of "fugitive emissions" for SIP-approved PSD and NNSR programs at 40 CFR 51.166(b)(20) and 51.165(a)(1)(ix), respectively. The MCAQD considers this definition and the specific circumstances of the emissions-generating activity when implementing various NSR requirements and determining whether emissions are fugitive. In this case, the

categories, and which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant; a major NSR permit is also required for a stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant. See Rule 240, Section 203, 40 CFR 51.166(b)(1)(i)(a)–(b) and 40 CFR 52.21(b)(1)(i)(a)–(b).

⁷ See the NSPS regulations at 40 CFR part 60, subparts III and JJJJ, and the NESHAP regulations 40 CFR part 63, subparts ZZZZ.

MCAQD can determine if the emissions from agricultural equipment are fugitive, and thus qualify for the exemption, before they address whether they are used in "normal farm operations." Under the federal NSR permitting program, fugitive emissions need not be considered when determining permit requirements, unless the source is one of the categorical sources identified. See Rule 100, Section 200.28; 40 CFR 51.165(a)(1)(iv)(C) and 51.166(b)(1)(iii). Therefore, we disagree with the commenter that the MCAQD's exemption prevents scrutiny of whether potentially exempt emissions are, in fact, fugitive emissions. We also note that the MCAQD's SIP-approved minor NSR program already exempts fugitive emissions from permit requirements for a minor source that doesn't belong to one of the categorical sources under Rule 100, Section 200.28. See 84 FR 13543 (April 5, 2019) and 84 FR 18392 (May 1, 2019).

In sum, while the revised exemption does not specifically define "agricultural equipment used in normal farm operations," we have determined that the revision clarifies and narrows how the exemption is used and addresses the concerns in our conditional approval regarding the need for additional clarification regarding this exemption.

Comment: The commenter stated that the MCAQD still provides no basis for determining that fugitive emissions from "agricultural equipment used in normal farm operations" do not need to be regulated as part of the MCAQD's minor NSR program under 40 CFR 51.160(e). The commenter stated that although the EPA compared the MCAQD's exemption to a similarly worded exemption in the State regulations implemented by the ADEQ, the ADEQ's regulation suffers from the same problem. The commenter stated that, as with the ADEQ's exemption, the MCAQD's exemption violates CAA section 110(l) and Appendix V, sections 2.2(d) and 2.2(e).

Response: The EPA respectfully disagrees with this comment. The MCAQD's December 20, 2019 SIP Submittal provides a rationale and basis for the exemption of certain agricultural equipment used in normal farm operations under 40 CFR 51.160(e). See December 20, 2019 MCAQD Submittal at 12–14. This information, in addition to other available information, demonstrates that the MCAQD reasonably concluded that the exemption of fugitive emissions from agricultural equipment used in normal farm operations is inconsequential to

attainment and maintenance of the NAAQS.⁸

As discussed in the EPA's response to the previous comment, the exemption in Rule 200, Section 305.2.i for agricultural equipment used in normal farm operations only applies to fugitive emissions, is only available to minor sources, and is not available for sources subject to an NSPS or NESHAP. Additionally, the MCAQD's SIP-approved minor NSR program already exempts fugitive emissions from permit requirements for a minor source that doesn't belong to one of the categorical sources under Rule 100, Section 200.28. See 84 FR 13543 (April 5, 2019) and 84 FR 18392 (May 1, 2019).

Thus, there is sufficient evidence that the exemption for fugitive emissions from agricultural equipment used in normal farm operations is available only to a very narrow group of minor sources. Such emissions are already exempt from regulation under NSR, or they come from stationary equipment such as boilers or engines, which are subject to the NSPS and thus do not qualify for the exemption in Rule 200, Section 305. We therefore find the MCAQD's exemption for fugitive emissions from agricultural equipment used in normal farm operations to be reasonable under 40 CFR 51.160(e).

The commenters also indicate that the EPA's approval of the MCAQD's 2019 NSR Submittal conflicts with the requirement in CAA section 110(l) that the EPA "shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of this chapter." For the reasons stated in this document and in our proposal, we continue to find that this action strengthens the overall SIP and does not relax or otherwise interfere with any SIP requirements related to attaining the NAAQS in Maricopa County, Arizona.

The commenters make the related argument that the MCAQD's SIP revision does not satisfy section 2.2(d) of Appendix V to 40 CFR part 51.⁹ As

⁸ In reviewing the MCAQD's minor NSR program under 40 CFR 51.160(e), the EPA considered it appropriate to exclude emissions from its NSR program if such emissions would be "inconsequential to attainment or maintenance of the NAAQS." See 86 FR 31927, 31936, footnote 21 (June 16, 2021). This was the same standard that the EPA used in developing the permitting thresholds for its minor NSR program for Indian country. See 76 FR 38748, 38758 (July 1, 2011).

⁹ The commenters reference the portion of section 2.2(d) that requires SIP submittals to demonstrate "that the national ambient air quality standards, prevention of significant deterioration increments,

described above, the MCAQD's 2019 NSR Submittal contains sufficient information to support our conclusion that the MCAQD's NSR program meets the requirements of the CAA and its implementing regulations and will not interfere with attainment or maintenance of the NAAQS.

Lastly, in response to the commenter's argument that the MCAQD should have included a modeling demonstration to meet the requirements of section 2.2(e) of Appendix V to 40 CFR part 51, the commenters have not accurately characterized these requirements. We do not interpret section 2.2(e) of Appendix V to require that every SIP submittal contain a modeling demonstration, as implied by the commenters. Instead, when a modeling demonstration is necessary and is therefore included in a submittal to support the SIP revision, then the submittal must also contain the underlying modeling information outlined in section 2.2(e). We find that section 2.2(e) of Appendix V is not applicable to the MCAQD's NSR Submittal because modeling was not used to support this SIP revision nor was a modeling demonstration required in this instance.

For the reasons discussed above, we find that the MCAQD reasonably concluded that the exemption of "fugitive emissions from agricultural equipment used in normal farm operations" from its minor NSR program will not interfere with attainment or maintenance of the NAAQS, consistent with 40 CFR 51.160(e). Because the exemption will not interfere with attainment or maintenance of the NAAQS, or interfere with the overall control strategy, it is consistent with CAA section 110(l) and section 2.2(d) of Appendix V to 40 CFR part 51.

Comment: The commenter stated that, while fugitive dust emissions from farm operations are primarily addressed through Arizona's Ag BMP general permit program, experience with the Ag BMP program in both Maricopa County and Pinal County has demonstrated that it is inadequate to ensure compliance with the PM₁₀ NAAQS. The commenter further stated that both the MCAQD and ADEQ PM₁₀ nonattainment areas continue to violate the NAAQS decades after the Ag BMP program was adopted and agricultural emissions are a key contributor. The commenter also noted that the EPA proposed a limited approval and limited disapproval of

Arizona's Ag BMP statute and regulations for Arizona on February 26, 2021. The commenter indicated that in light of these concerns, the EPA must disapprove the MCAQD's exemption for "agricultural equipment used in normal farm operations."

Response: The EPA respectfully disagrees that it must disapprove the MCAQD's exemption for "agricultural equipment used in normal farm operations" based on the commenter's concerns about Arizona's Ag BMP program. As discussed in detail in our responses above, we find that the MCAQD's exemption from NSR review of a narrow subset of minor agricultural sources with fugitive emissions through its exemption for "fugitive emissions from agricultural equipment used in normal farm operations" is reasonable. The EPA is not evaluating, updating, or relying on the existing EPA-approved Ag BMP program rules in the Arizona SIP as part of this rulemaking.¹⁰ We understand that the ADEQ submitted revisions to the Arizona SIP to update the Ag BMP rules; however, those revisions are not part of our NSR rulemaking action.

B. Public Hearing Requirements for Minor NSR Requirements in Rule 241

Comment: The commenter stated that the MCAQD revised Rule 241, Section 310 by deleting public hearing requirements and stated that the revised provision provides that the public notice requirements in Rules 210 and/or 220 shall be required if the emissions of any one pollutant is equal to or greater than the public notice thresholds as defined in Rule 100. The commenter further noted that the EPA stated that the same or similar language that was deleted from Rule 241, Section 310 was contained in portions of Rules 210 and 220, and that therefore the change was consistent with the requirements of 40 CFR 51.161(a), and the EPA's regulations at 40 CFR 51.160–164. The commenter then states that Rule 210, Sections 408.4.g and 408.5, and Rule 220, Sections 407.5 and 407.7 contain more than just public notice requirements, but also contain requirements to accept public comments and hold a hearing upon request. The commenter concluded by asserting that Rule 241, Section 310 should be amended to clarify that it incorporates

all of the public participation requirements in Rules 210 and 220.

Response: The EPA respectfully disagrees with the commenter that Rule 241, Section 310 should be amended to make the suggested clarification. Rule 241, Section 310 states that "Public notice requirements pursuant to Rules 210 and or 220 of these rules shall be required for a permit or permit revision if . . ." emissions are equal to or greater than the public notice thresholds in Rule 100. The public notice requirements contained in Rules 210 and 220 are found in Sections 408 and 407, respectively, which are titled "PUBLIC PARTICIPATION." Critically, the public hearing requirements of those rules contain public notice requirements, such as the requirement to publish a notice at least two times in a newspaper of general circulation to ensure adequate notice to the affected public. The requirement to accept public comments is also linked to the requirement to provide public notice in both rules, such as the requirement to allow at least 30 days for public comment following public notice of the comment period. While we agree that it would be clearer if Rule 241, Section 310 stated that the "public participation" rather than the "public notice" requirements of Rules 210 and/or 220 must be met, we believe it is sufficiently clear that all of the public participation requirements in Rule 210, Section 408 and Rule 220, Section 407 are applicable if emissions are equal to or greater than the public notice thresholds in Rule 100. Therefore, we continue to find that the revisions to Rule 241, Section 310 are acceptable and consistent with the requirements of the Act and its implementing regulations.

C. Public Notification Requirements for General Permits in Rule 230

The commenter also provided comments regarding our proposed approval of Rule 230 into the MCAQD portion of the Arizona SIP. The EPA is deferring final action on Rule 230 at this time. Therefore, the EPA is not addressing these comments as part of this final action.

III. Additional Developments After Notice of Proposed Rulemaking

On January 29, 2021, the U.S. Court of Appeals for the District of Columbia Circuit issued its opinion in *Sierra Club v. EPA* (Case No. 15–1465), granting in part and denying in part petitions for review of four provisions of the 2015 and 2018 ozone NAAQS implementation rules. Among other things, the court vacated the provisions

reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented." See 40 CFR part 51, Appendix V, section 2.2(d).

¹⁰ Further, to the extent the commenter has raised concerns about the regulation of air pollution sources located in Pinal County, the commenter has not explained how those concerns are relevant to this rulemaking action, which pertains specifically to the MCAQD's NSR program, which applies only in Maricopa County.

of the rule allowing interprecursor trading of ozone precursors (*See* 2018 Implementation Rule, 83 FR 62998, 63016–63021). The court's judgment became final and effective on March 23, 2021, when the court issued its mandate. In response to this, on June 10, 2021, the ADEQ withdrew the provisions in Rule 240, Section 304.4.e.(1) for interpollutant offsetting from the NNSR requirements of the rule. The EPA finds this withdrawal acceptable, given the court's vacatur of these provisions in the EPA's regulations. Accordingly, this provision will not be included in the version of Rule 240 incorporated into the Maricopa County portion of the Arizona SIP.

We note that the EPA recently adopted a rule known as the NSR Error Corrections Rule, effective August 18, 2021, which corrected minor, inadvertent, and non-substantive errors in 40 CFR parts 51 and 52, which govern NSR permitting programs, and updated the regulatory text to reflect statutory changes and certain court decisions vacating elements of the regulatory text, but did not change the requirements within these programs. *See* 86 FR 37918 (July 19, 2021). States have discretion as to when to make the changes indicated in this rulemaking and may choose to combine them with other SIP submittals. *See* 86 FR 37918, 37923–37924. Accordingly, this recent rulemaking does not affect our final action.

IV. EPA Action

No comments were submitted that change our assessment that the MCAQD's Rules 100, 200, 210, 220, 240, and 241 satisfy the applicable CAA requirements, nor were any comments submitted that change our assessment that certain MCAQD rules should be removed from the Arizona SIP. As discussed above, we are deferring action on Rule 230 at this time. Therefore, as authorized under CAA sections 110(k)(3) and 301(a), and for the reasons set forth in our February 23, 2021 proposed rule, we are finalizing full approval of submitted Rules 100, 200, 210, 220, 240 (except Section 304.4.e.(1)), and 241, in the MCAQD portion of the Arizona SIP. We are also removing from the MCAQD portion of the Arizona SIP the rules identified in Table 2.

This action incorporates Rules 100, 200, 210, 220, 240 (except Section 304.4.e.(1)), and 241 into the federally enforceable SIP through revisions to 40 CFR 52.120 (Identification of plan). We are amending 40 CFR 52.119(b) (Identification of plan—conditional approvals) to remove the conditional

approval of Rules 100 and 200 since the MCAQD's December 20, 2019 Submittal addressed the deficiencies identified by the EPA, and we are now fully approving Rules 100 and 200. We are amending the PSD FIP requirements in 40 CFR 52.144 (Significant deterioration of air quality) since we are approving the PSD program provisions in Rule 240 into the MCAQD portion of the Arizona SIP. We are also amending the visibility FIP in 40 CFR 52.145(b) (Visibility protection) since we have determined that the MCAQD's NNSR and PSD programs comply with the visibility requirements in 40 CFR 51.307.

V. 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 the MCAQD rules described in Table 1 of this preamble, with the exception of Rule 230. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and in hard copy at the EPA Region IX office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the Arizona SIP, have been incorporated by reference by the EPA into that plan, are 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.¹¹

Also in this document, as described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions from the EPA-approved rules for the ADEQ portion of the Arizona SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VI. 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 applicable criteria of the Clean Air Act. 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 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.*);
- 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 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);
- 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; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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. 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

¹¹ 62 FR 27968 (May 22, 1997).

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* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 3, 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

§ 52.119 [Amended]

■ 2. In § 52.119, remove and reserve paragraph (b).

■ 3. In § 52.120, revise table 4 in paragraph (c) 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
Pre-July 1988 Rule Codification				
Regulation II—Permits				
Rule 22 (paragraphs A, C, D, F, G, and H). Rule 27	Permit Denial-Action-Transfer-Expiration-Posting-Revocation-Compliance. Performance tests	August 12, 1971	July 27, 1972, 37 FR 15080. April 12, 1982, 47 FR 15579.	Paragraphs B and E have been superseded. Submitted on June 23, 1980.
Rule 28	Permit Fees	March 8, 1982	June 18, 1982, 47 FR 26382.	Submitted on March 8, 1982.
Regulation III—Control of Air Contaminants				
Rule 32, Paragraph G	Other Industries	October 1, 1975	April 12, 1982, 47 FR 15579.	Paragraph G of Rule 32 ("Odors and Gaseous Emissions") is titled "Other Industries." Submitted on June 23, 1980.
Rule 32, Paragraph H	Fuel Burning Equipment for Producing Electric Power (Sulfur Dioxide).	October 1, 1975	April 12, 1982, 47 FR 15579.	Paragraph H of Rule 32 ("Odors and Gaseous Emissions") is titled "Fuel Burning Equipment for Producing Electric Power (Sulfur Dioxide)." Submitted on June 23, 1980.
Rule 32, Paragraph J	Operating Requirements for an Asphalt Kettle.	June 23, 1980	April 12, 1982, 47 FR 15579.	Paragraph J of Rule 32 ("Odors and Gaseous Emissions") is titled "Operating Requirements for an Asphalt Kettle." Submitted on June 23, 1980.
Rule 32, Paragraph K	Emissions of Carbon Monoxide	June 23, 1980	April 12, 1982, 47 FR 15579.	Paragraph K of Rule 32 ("Odors and Gaseous Emissions") is titled "Emissions of Carbon Monoxide." Submitted on June 23, 1980.
Rule 32 (Paragraphs A through F only).	Odors and Gaseous Emissions	August 12, 1971	July 27, 1972, 37 FR 15080.	Paragraph G was superseded by approval of paragraph J of amended Rule 32. Submitted on May 26, 1972.
Rule 35	Incinerators	August 12, 1971	July 27, 1972, 37 FR 15080.	Superseded by approval of Maricopa Rule 313 published on September 25, 2014, except for Hospital/Medical/Infectious Waste Incinerators. Submitted on May 26, 1972.
Regulation IV—Production of Records; Monitoring; Testing and Sampling Facilities				
Rule 41, paragraph A	Monitoring	August 12, 1971	July 27, 1972, 37 FR 15080.	Submitted on May 26, 1972.
Rule 41, paragraph B	Monitoring	October 2, 1978	April 12, 1982, 47 FR 15579.	Submitted on January 18, 1979.
Rule 42	Testing and Sampling	August 12, 1971	July 27, 1972, 37 FR 15080.	Submitted on May 26, 1972.

TABLE 4 TO PARAGRAPH (c)—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS—Continued

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
Regulation VII—Emergency Procedures				
Rule 74, paragraph C	Public Notification	June 23, 1980	April 12, 1982, 47 FR 15579.	Submitted on June 23, 1980. Paragraphs A, B, and D superseded by approval of Rule 510 published on November 9, 2009.
Regulation VIII—Validity and Operation				
Rule 81	Operation	August 12, 1971	July 27, 1972, 37 FR 15080.	Submitted on May 26, 1972.
Post-July 1988 Rule Codification				
Regulation I—General Provisions				
Rule 100	General Provisions and Definitions	December 11, 2019	February 15, 2022, [IN-SERT FEDERAL REGISTER CITATION].	Submitted on December 20, 2019.
Rule 140	Excess Emissions	Revised September 5, 2001.	August 27, 2002, 67 FR 54957.	Submitted on February 22, 2002.
Regulation II—Permits and Fees				
Rule 200	Permit Requirements	December 11, 2019	February 15, 2022, [IN-SERT FEDERAL REGISTER CITATION].	Submitted on December 20, 2019.
Rule 210	Title V Permit Provisions	December 11, 2019	February 15, 2022, [IN-SERT FEDERAL REGISTER CITATION].	Submitted on December 20, 2019.
Rule 220	Non-Title V Permit Provisions	December 11, 2019	February 15, 2022, [IN-SERT FEDERAL REGISTER CITATION].	Submitted on December 20, 2019.
Rule 240 (except Section 304.4.e.(1)).	Federal Major New Source Review (NSR)	December 11, 2019	February 15, 2022, [IN-SERT FEDERAL REGISTER CITATION].	Submitted on December 20, 2019.
Rule 241	Minor New Source Review (NSR)	December 11, 2019	February 15, 2022, [IN-SERT FEDERAL REGISTER CITATION].	Submitted on December 20, 2019.
Rule 242	Emissions Offsets Generated by the Voluntary Paving of Unpaved Roads.	June 20, 2007	August 6, 2007, 72 FR 43538.	Submitted on July 5, 2007.
Regulation III—Control of Air Contaminants				
Rule 300	Visible Emissions	March 12, 2008	July 28, 2010, 75 FR 44141.	Submitted on July 10, 2008.
Rule 310	Fugitive Dust From Dust-Generating Operations.	January 27, 2010	December 15, 2010, 75 FR 78167.	Submitted on April 12, 2010. Cites appendices C and F, which are listed separately in this table.
Rule 310.01	Fugitive Dust From Non-Traditional Sources of Fugitive Dust.	January 27, 2010	December 15, 2010, 75 FR 78167.	Submitted on April 12, 2010. Cites appendix C, which is listed separately in this table.
Rule 311	Particulate matter from process industries	August 2, 1993	April 10, 1995, 60 FR 18010. Vacated by <i>Ober</i> decision. Restored August 4, 1997, 62 FR 41856.	Submitted on March 3, 1994.
Rule 312	Abrasive Blasting	July 13, 1988	January 4, 2001, 66 FR 730.	Submitted on January 4, 1990.
Rule 313	Incinerators, Burn-Off Ovens and Crematories.	May 9, 2012	September 25, 2014, 79 FR 57445.	Submitted on August 27, 2012.
Rule 314	Open Outdoor Fires and Indoor Fireplaces at Commercial and Institutional Establishments.	March 12, 2008	November 9, 2009, 74 FR 57612.	Submitted on July 10, 2008.
Rule 316	Nonmetallic Mineral Processing	November 7, 2018 ..	7/15/2020, 85 FR 42726	Submitted on November 19, 2018.
Rule 318	Approval of Residential Woodburning Devices.	April 21, 1999	November 8, 1999, 64 FR 60678.	Submitted on August 4, 1999.
Rule 322	Power Plant Operations	October 17, 2007	October 14, 2009, 74 FR 52693.	Submitted on January 9, 2008.
Rule 323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources.	November 2, 2016 ..	July 20, 2020, 85 FR 43692.	Submitted on June 22, 2017.
Rule 324	Stationary Reciprocating Internal Combustion Engines (RICE).	November 2, 2016 ..	July 20, 2020, 85 FR 43692.	Submitted on June 22, 2017.
Rule 331	Solvent Cleaning	April 21, 2004	December 21, 2004, 69 FR 76417.	Submitted on July 28, 2004.
Rule 333	Petroleum Solvent Dry Cleaning	June 19, 1996	February 9, 1998, 63 FR 6489.	Submitted on February 26, 1997.
Rule 335	Architectural Coatings	July 13, 1988	January 6, 1992, 57 FR 354.	Submitted on January 4, 1990.
Rule 336	Surface Coating Operations	November 2, 2016 ..	January 7, 2021, 86 FR 971.	Submitted on June 22, 2017.

TABLE 4 TO PARAGRAPH (c)—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS—Continued

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
Rule 337	Graphic Arts	August 17, 2011	August 27, 2019, 84 FR 44701.	Submitted on January 15, 2014.
Rule 338	Semiconductor Manufacturing	June 19, 1996	February 9, 1998, 63 FR 6489.	Submitted on February 26, 1997.
Rule 340	Cutback and Emulsified Asphalt	September 21, 1992	February 1, 1996, 61 FR 3578.	Submitted on November 13, 1992.
Rule 341	Metal Casting	August 5, 1994	February 12, 1996, 61 FR 5287.	Submitted on August 16, 1994.
Rule 342	Coating Wood Furniture and Fixtures	November 2, 2016	August 27, 2019, 84 FR 44701.	Submitted on June 22, 2017.
Rule 343	Commercial Bread Bakeries	February 15, 1995	March 17, 1997, 62 FR 12544.	Submitted on August 31, 1995.
Rule 344	Automobile Windshield Washer Fluid	April 7, 1999	November 30, 2001, 66 FR 59699.	Submitted on August 4, 1999.
Rule 346	Coating Wood Millwork	November 20, 1996	February 9, 1998, 63 FR 6489.	Submitted on March 4, 1997.
Rule 347	Ferrous Sand Casting	March 4, 1998	June 12, 2000, 65 FR 36788.	Submitted on August 4, 1999.
Rule 348	Aerospace Manufacturing and Rework Operations.	April 7, 1999	September 20, 1999, 64 FR 50759.	Submitted on August 4, 1999.
Rule 349	Pharmaceutical, Cosmetic, and Vitamin Manufacturing Operations.	April 7, 1999	June 8, 2001, 66 FR 30815.	Submitted on August 4, 1999.
Rule 350	Storage and Transfer of Organic Liquids (Non-Gasoline) at an Organic Liquid Distribution Facility.	11/02/2016	2/26/2020, 85 FR 10986	Submitted on June 22, 2017.
Rule 351	Storage and Loading of Gasoline at Bulk Gasoline Plants and Bulk Gasoline Terminals.	11/02/2016	2/26/2020, 85 FR 10986	Submitted on June 22, 2017.
Rule 352	Gasoline Cargo Tank Testing and Use	11/02/2016	2/26/2020, 85 FR 10986	Submitted on June 22, 2017.
Rule 353	Storage and Loading of Gasoline at Gasoline Dispensing Facilities.	11/02/2016	2/26/2020, 85 FR 10986	Submitted on June 22, 2017.
Rule 358	Polystyrene Foam Operations	April 20, 2005	May 26, 2005, 70 FR 30370.	Submitted on April 25, 2005.
Regulation V—Air Quality Standards and Area Classification				
Rule 510	Air Quality Standards	12/11/2019	10/4/2021, 86 FR 54628	The December 11, 2019 version of Rule 510 replaces the version that was adopted on November 1, 2006 (74 FR 57612).
Regulation VI—Emergency Episodes				
Rule 600	Emergency Episodes	July 13, 1988	March 18, 1999, 64 FR 13351.	Submitted on January 4, 1990.
Appendices to Maricopa County Air Pollution Control Rules and Regulations				
Appendix C	Fugitive Dust Test Methods	March 26, 2008	December 15, 2010, 75 FR 78167.	Cited in Rules 310 and 310.01. Submitted on July 10, 2008.
Appendix F	Soil Designations	April 7, 2004	August 21, 2007, 72 FR 46564.	Cited in Rule 310. Submitted on October 7, 2005.

† Vacated by the U.S. Court of Appeals for the Ninth Circuit in *Delaney v. EPA*, 898 F.2d 687 (9th Cir. 1990). Restored by document published January 29, 1991.

* * * * *

■ 4. Revise § 52.144 to read as follows:
§ 52.144 Significant deterioration of air quality.

(a) The requirements of sections 160 through 165 of the Clean Act are not met, since the plan as it applies to stationary sources under the jurisdiction of the Pima County Health Department, and stationary sources locating on any Indian reservation lands, and any other area of Indian country where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, located within the State of Arizona, does not include approvable procedures for preventing the significant deterioration of air quality.

(b) Regulation for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) of this section are hereby incorporated and made a part of the applicable State plan for the State of Arizona for those portions applicable to the Pima County Health Department, and to any Indian reservation lands, and any other area of Indian country where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, located within the State of Arizona.

(c) The requirements of sections 160 through 165 of the Clean Air Act are met as they apply to stationary sources under the jurisdiction of the Arizona Department of Environmental Quality (ADEQ) and the Maricopa County Air

Quality Department (MCAQD), except with respect to emissions of greenhouse gases (GHGs) (as defined in § 52.21(b)(49)(i)). Therefore, the provisions of § 52.21, except paragraph (a)(1) of this section, for GHGs are hereby made a part of the plan for stationary sources under the jurisdiction of the ADEQ and the MCAQD as it applies to the stationary sources described in § 52.21(b)(49)(iv).

■ 5. In § 52.145, revise paragraph (b) to read as follows:

§ 52.145 Visibility protection.

* * * * *

(b) Regulations for visibility new source review. The provisions of § 52.28 are hereby incorporated and made part of the applicable plan for the State of

Arizona only for those stationary sources under the permitting jurisdiction of the Pima County Department of Environmental Quality. The provisions of § 52.28 also remain the applicable plan for any Indian reservation lands, and any other area of Indian country where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, located within the State of Arizona.

* * * * *

[FR Doc. 2022-02773 Filed 2-14-22; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

[DOI-2021-0014; 223D0102DM,
DS6510000, DLSN0000, DX.65103]

RIN 1090-AB15

Privacy Act Regulations; Exemption for the Insider Threat Program

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (DOI) is issuing a final rule to amend its regulations to exempt certain records in the INTERIOR/DOI-50, Insider Threat Program, system of records from one or more provisions of the Privacy Act of 1974 because of criminal, civil, and administrative law enforcement requirements.

DATES: The final rule is effective February 15, 2022.

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, DOI_Privacy@ios.doi.gov or (202) 208-1605.

SUPPLEMENTARY INFORMATION:

Background

DOI published a notice of proposed rulemaking (NPRM) in the **Federal Register** at 86 FR 51645 (September 16, 2021) proposing to exempt portions of the INTERIOR/DOI-50, Insider Threat Program, system of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(5) due to criminal, civil, and administrative law enforcement requirements. DOI published a system of records notice (SORN) for INTERIOR/DOI-50, Insider Threat Program, in the **Federal Register** at 86 FR 48753 (August 31, 2021). Comments were invited on both the INTERIOR/DOI-50, Insider Threat Program, SORN and NPRM. DOI

received no comments on the SORN and six comments on the NPRM that were not relevant or did not result in a change to the rulemaking. The rulemaking will be implemented as proposed with a correction to the redesignated paragraph (e).

DOI previously published a final rule for INTERIOR/DOI-46, Physical Security Access Files, in the **Federal Register** at 86 FR 49927 (September 7, 2021) to add new and redesignated paragraphs for DOI Privacy Act exemptions at 43 CFR 2.254. In that rulemaking, a new paragraph (b) was reserved for exemptions claimed under 5 U.S.C. 552a(k)(1) as indicated in the published NPRM for the INTERIOR/DOI-50, Insider Threat Program, system of records. Paragraph (c) for investigatory records exempt under 5 U.S.C. 552a(k)(5) was redesignated to paragraph (e) to allow for a new paragraph (d) for exemptions claimed under 5 U.S.C. 552(k)(3) related to records maintained in connection with providing protective services.

The NPRM for the INTERIOR/DOI-50, Insider Threat Program, system of records described the new reserved paragraph (b) and new redesignated paragraph (e) for the proposed exemptions claimed under 5 U.S.C. 552a(k)(1) and (k)(5). However, the proposed redesignation of paragraph (e) was inadvertently changed during the publication process for the NPRM, which resulted in an incorrect reference to paragraph (c) for investigatory records exempt under 5 U.S.C. 552a(k)(5). This final rule corrects the redesignation of paragraph (e) and addresses a formatting error that occurred during publication of the final rule for INTERIOR/DOI-46, Physical Security Access Files, that resulted in the erroneous addition of a paragraph (f) instead of the appropriate reference to subsection (f) of the Privacy Act.

Procedural Requirements

1. Regulatory Planning and Review (*E.O. 12866 and E.O. 13563*)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The

executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

3. Small Business Regulatory Enforcement Fairness Act (*SBREFA*)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (*E.O. 12630*)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule makes