

comments are filed. This rule will be effective December 14, 2009 without further notice unless we receive relevant adverse written comments by November 13, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective *December 14, 2009*.

#### 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 CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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. EPA will 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 December 14, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: September 9, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

- For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code

of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart KK—Ohio

- 2. Section 52.1870 is amended by adding paragraph (c)(144) to read as follows:

#### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(144) The Ohio Environmental Protection Agency formally submitted revisions to Ohio's Administrative Code on August 7, 2007. These revisions consists of Rule 3745-21-17 which impacts sale, use, and manufacture of Portable Fuel Containers in the State of Ohio.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745-21-17 "Portable fuel containers", adopted on June 11, 2007, effective on June 21, 2007.

(B) June 11, 2007, "Director's Final Findings and Orders", signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

\* \* \* \* \*

[FR Doc. E9-24610 Filed 10-13-09; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R09-OAR-2009-0339; FRL-8947-2]

#### Revisions to the Arizona State Implementation Plan, Maricopa County Air Quality Department

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions and precursors from steam generating units, cogeneration units, stationary gas turbines, process heaters and internal combustion engines. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on December 14, 2009 without further

notice, unless EPA receives adverse comments by November 13, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number [EPA–R09–OAR–2009–0339], by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).  
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail.

<http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business

hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Idalia Perez, EPA Region IX, (415) 972–3248, [perez.idalia@epa.gov](mailto:perez.idalia@epa.gov).

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

## Table of Contents

- I. The State’s Submittal
  - A. What rules did the State submit?
  - B. Are there other versions of these rules?
  - C. What is the purpose of the submitted rules?
- II. EPA’s Evaluation and Action
  - A. How is EPA evaluating the rules?
  - B. Do the rules meet the evaluation criteria?
  - C. EPA Recommendations to Further Improve the Rules
  - D. Public Comment and Final Action
- III. Statutory and Executive Order Reviews

## I. The State’s Submittal

### A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
MCAQD .....	322	Power Plant Operations .....	10/17/07	01/09/08
MCAQD .....	323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources.	10/17/07	01/09/08
MCAQD .....	324	Stationary Internal Combustion (IC) Engines .....	10/17/07	01/09/08

On July 9, 2008, these rule submittals were found to meet the completeness criteria in 40 CFR Part 51, Appendix V by operation of law, which must be met before formal EPA review.

### B. Are there other versions of these rules?

There are no previous versions of Rule 322, 323 and 324 in the SIP.

### C. What is the purpose of the submitted rules?

NO<sub>x</sub> helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. PM contributes 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. Section 110(a) of the CAA requires States to submit regulations that control NO<sub>x</sub> and PM emissions. Rule 322 regulates emissions of NO<sub>x</sub>, PM, oxides

of sulfur (SO<sub>x</sub>) and carbon monoxide (CO) from fossil-fuel-fired equipment and cooling towers at power plants and cogeneration plants for which construction started before May 10, 1996. This rule applies to steam generating units with heat input greater or equal than 100 MM Btu/hour (29 MW), stationary gas turbines with a peak heat input equal to or greater than 10 MM Btu/hour (2.9 MW) and cooling towers associated with these units. Rule 323 regulates emissions of NO<sub>x</sub>, PM, SO<sub>x</sub> and CO from fuel burning combustion equipment at industrial, commercial and/or institutional sources. Rule 323 applies to steam generating units with heat input greater than 10 MM Btu/hour, stationary gas turbines with a peak heat input equal to or greater than 2.9 MW and indirect-fired process heaters with a heat input greater than 10 MM Btu/hour. Rule 324 regulates emissions of NO<sub>x</sub>, PM, SO<sub>x</sub>, CO and volatile organic compounds (VOCs) from stationary IC engines. This Rule applies to new or existing

stationary spark or compression-ignited IC engines with a rating greater than 250 brake horsepower (bhp). This rule also applies to a combination of engines rated more than 50 bhp used at a single source whose maximum aggregated rating is more than 250 bhp. All three rules limit PM emissions by ensuring good combustion practices, limiting sulfur in the fuel and controlling NO<sub>x</sub>, a PM–10 precursor. EPA’s technical support document (TSD) has more information about these rules.

## II. EPA’s Evaluation and Action

### A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM nonattainment areas, and Best Available Control Measures (BACM), including

Best Available Control Technology (BACT), in serious PM nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)). The MCAQD regulates a PM nonattainment area classified as serious (see 40 CFR part 81), so Rules 322, 323 and 324 must implement BACM/BACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACM/RACF or BACM/BACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

4. "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).

5. "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).

6. "PM-10 Guideline Document," EPA 452/R-93-008, April 1993.

7. "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters" California Air Resources Board (July 18, 1991).

8. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Industrial/Commercial/Institutional (ICI) Boilers" EPA 453/R-94-022 (March 1994)

9. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Utility Boilers" EPA 452/R-93-008 (March 1994).

10. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Stationary Gas Turbines" EPA 453/R-94-023 (January 1993).

11. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Stationary Reciprocating Internal Combustion Engines" EPA 453/R-93-032 (July 1993).

12. "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Spark-Ignited Internal Combustion Engines" California Air Resources Board (November 2001).

#### *B. Do the rules meet the evaluation criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, BACM, and SIP relaxations. The TSD has more information on our evaluation.

#### *C. EPA Recommendations to Further Improve the Rules*

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

#### *D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by November 13, 2009, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 14, 2009. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **III. 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, EPA's role is to approve state choices, provided that they meet the 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 Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not 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 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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. EPA will 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 December 14, 2009. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition

for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

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

Dated: July 10, 2009.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 52—[AMENDED]**

■ 1. The authority citation for Part 52 continues to read as follows:

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

#### **Subpart D—Arizona**

■ 2. Section 52.120 is amended by adding and reserving paragraph (c)(141) and by adding paragraph (c)(142) to read as follows:

#### **§ 52.120 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(141) [Reserved]

(142) New and amended regulations were submitted on January 9, 2008, by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Air Quality Department.

(1) Rule 322, "Power Plant Operations," adopted October 17, 2007.

(2) Rule 323, "Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources," adopted October 17, 2007.

(3) Rule 324, "Stationary Internal Combustion (IC) Engines," adopted October 17, 2007.

\* \* \* \* \*

[FR Doc. E9-24549 Filed 10-13-09; 8:45 am]

**BILLING CODE 6560-50-P**