

PRE-PUBLICATION NOTICE

On October 5, 2026, Michael Martucci, the EPA Region IX Acting Regional Administrator, signed the following document:

Action: Proposed Rule

Title: Air Quality Plan; Arizona; Maricopa County Air Quality Department; New Source Review; Emission Reduction Credits – Rule 204

FRL #: FRL-13434-01-R9

Docket ID #: EPA-R09-OAR-2026-4654

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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2026-4654; FRL-13434-01-R9]

Air Quality Plan; Arizona; Maricopa County Air Quality Department; New Source Review; Emission Reduction Credits – Rule 204

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. 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 nonroad engine fleet owners/operators to generate emission reduction credits (ERCs) by either retrofitting their nonroad engines or replacing their nonroad engines with lower-emitting nonroad engines 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 nonroad engine emission reductions under the CAA.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2026-4654 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 proposed rule, the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple abbreviations and terms in this proposed rule. While this list may not be exhaustive, for ease of reading and for reference purposes, the EPA defines the following terms and acronyms here:

ADEQ—Arizona Department of Environmental Quality

CAA—Clean Air Act
CBI—Confidential Business Information
CFR—Code of Federal Regulations
EIP—economic incentive program
EPA—Environmental Protection Agency
ERC—emission reduction credit
FR—*Federal Register*
IBR—incorporation by reference
MCAQD—Maricopa County Air Quality Department
NAA—nonattainment area
NAAQS—national ambient air quality standards
NERC—nonroad engine emission reduction credit
NNSR—Nonattainment New Source Review
NO_x—oxides of nitrogen
PM₁₀—particulate matter 10 micrometers or smaller in diameter
RFP—reasonable further progress
ROP—rate of progress
SIP—State Implementation Plan
TSD—technical support document
VOC—volatile organic compound
U.S.C.—United States Code

Table of Contents

- I. Executive Summary
 - A. What Action is the EPA Taking?
 - B. What is the Legal Authority and What are the Requirements?
- II. Background
- III. Summary of Arizona’s Submittal
 - A. What Did Arizona Submit?
 - B. Deferred Action
- IV. The EPA’s Evaluation of Arizona’s Submittal
 - A. Does the Submittal Meet the Evaluation Criteria?
 - B. Proposed Action and Public Comment
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. Executive Summary

A. What Action is the EPA Taking?

The EPA is proposing to approve the Arizona Department of Environmental Quality’s (ADEQ’s) November 14, 2025, submittal of MCAQD Rule 204, “Emission Offsets Generated by Voluntary Nonroad Engine Emission Reductions,” as revised on

November 5, 2025, (“Rule 204”) (“MCAQD Rule 204 submittal”) into the Arizona SIP.

As an economic incentive program (EIP), Rule 204 allows for the generation of ERCs from nonroad engines. When nonroad engines are replaced or retrofitted with lower-emitting equipment, the resulting emissions reductions can be banked and credited as ERCs to offset emissions increases elsewhere. ERCs generated by this rule are intended to offset emissions increases at major stationary sources as part of the preconstruction permit process required by the CAA’s NNSR program.

If finalized as proposed, Rule 204 would be incorporated into the federally enforceable Maricopa County portion of the Arizona SIP with one exception where the EPA is deferring action on a severable provision of the MCAQD Rule 204 submittal. The provision, section 301.2 b.(3) of Rule 204, relies on and references MCAQD Rule 230, “General Permits” (“Rule 230”), a rule that has not previously been approved into the Arizona SIP. The EPA intends to act on this provision when acting on the pending SIP submittal for Rule 230. In the interim, and as described in section III.B of this document, this provision is not otherwise needed to ensure Rule 204 meets CAA requirements.

Additionally, the EPA is proposing to approve the Department’s EIP support document¹ into the non-regulatory portion of the Arizona SIP. The Department’s EIP support document contains relevant information on how the MCAQD will ensure that the implementation of Rule 204 will meet all CAA requirements.

B. What is the Legal Authority and What are the Requirements?

We are taking this action under CAA section 110. Pursuant to CAA section

¹ The Department’s EIP support document is Appendix 18 of the MCAQD Rule 204 submittal.

110(a), States are required to submit SIPs to the EPA that provide for the implementation, maintenance, and enforcement of the national ambient air quality standards (NAAQS). CAA section 110(k) requires SIPs to meet certain procedural requirements and requires the EPA to approve or disapprove SIP submissions. CAA section 110(l) requires States to 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 CAA applicable requirements. If a SIP submittal meets all the applicable CAA requirements, then the EPA must approve the submittal under CAA section 110(k)(3).

In evaluating the MCAQD Rule 204 submittal, the EPA must also consider whether ERCs generated under the rule would meet the requirements in CAA section 173 and 40 CFR 51.165. CAA section 173(c)(1) requires that emissions increases from a new or modified stationary source “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 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, permanent, quantifiable, and federally enforceable. 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 nonattainment area (NAA) for the life of the source utilizing the credits, and are legally and practicably enforceable by the EPA.

As part of our review, we also considered the EPA’s 2001 EIP 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.² An EIP is a regulatory program that implements market-based strategies to achieve an air quality objective. Rule 204 is considered an EIP because it provides a framework for generating ERCs from nonroad engine sources. The ERCs generated under the EIP may be traded with stationary sources to provide the offsets required under a NNSR program. 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 ensure that the program meets the applicable CAA requirements.

II. Background

The MCAQD is the local air pollution control agency for Maricopa County, Arizona and is responsible for regulating stationary sources of air pollution within its boundaries. Portions of Maricopa County designated nonattainment for the 2008 and 2015 ozone NAAQS are classified as “Moderate” and portions of Maricopa County designated nonattainment for the 1987 particulate matter 10 micrometers or smaller in

² A discretionary EIP is not subject to the requirements for mandatory EIPs found in 40 CFR part 51, subpart U.

diameter (PM₁₀) NAAQS are classified as “Serious.”³ 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 secure surplus emissions reductions to offset the proposed project’s projected emissions increases.^{4,5}

The MCAQD states that the quantity of surplus emissions reductions currently available for use as NNSR offsets do not appear sufficient to support current and projected economic growth. The MCAQD developed Rule 204 to generate NNSR offsets for oxides of nitrogen (NO_x) and volatile organic compounds (VOC). Rule 204 creates a regulatory structure for the generation and use of nontraditional ERCs from nonroad engine sources, or nonroad engine ERCs (NERCs), for the Department’s NNSR program. The rule allows nonroad engine source fleet owners/operators that permanently reduce NO_x or VOC emissions from their fleets, or “generators,” 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.

III. Summary of Arizona’s Submittal

A. What Did Arizona Submit?

On November 14, 2025, the ADEQ, the Governor’s designee for Arizona SIP submittals, submitted the MCAQD Rule 204 submittal to the EPA on behalf of the MCAQD. Table 1 lists the rule we are proposing for inclusion in the Arizona SIP, which

³ 40 CFR 81.303.

⁴ 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. The major source threshold for the Serious PM₁₀ nonattainment areas is 70 tons per year for PM₁₀ and PM₁₀ precursors.

⁵ 40 CFR 51.165(a)(9)(ii). The offset ratio for Moderate ozone nonattainment areas is at least 1.15 to 1. The offset ratio for Serious PM₁₀ nonattainment areas is at least 1 to 1.

the ADEQ included in the submittal with the Department’s technical support materials.

Table 1 – Rule Proposed for Inclusion in the Arizona SIP

Local agency	Rule #	Rule title	Revised	Submitted
MCAQD	204, except section 301.2 b.(3)	Emission Offsets Generated by Voluntary Nonroad Engine Emission Reductions	11/5/25	11/14/25

On May 14, 2026, the MCAQD Rule 204 submittal became complete by operation of law with respect to the completeness criteria in 40 CFR part 51, appendix V.

Rule 204 outlines the requirements a generator 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 NERC application; provides procedures for processing an application; provides methodologies to calculate emissions reductions; requires the issuance of NERC certificates; and provides ongoing monitoring, recordkeeping, and reporting requirements for NERC generators. The rule also contains certain requirements for the credit user and the Department. The EPA’s technical support document (TSD) includes more information about this rule.

There are no previous versions of Rule 204 approved in the Arizona SIP; however, the MCAQD adopted an earlier version of this rule on December 11, 2019, and the ADEQ submitted it to the EPA on December 20, 2019 (“2019 submittal”). When the ADEQ submitted Rule 204 for approval into the Arizona SIP, it also withdrew the 2019 submittal, including the December 11, 2019 version of Rule 204.

B. Deferred Action

When acting on ERC applications, Rule 204 requires generators to obtain permits that impose conditions that will make ERCs permanent and enforceable.⁶ The rule lists three Maricopa County permit rules that can be used as the mechanism for these permits. The permit rule listed in section 301.2 b.(3) of Rule 204 is Maricopa County Rule 230 and has not yet been approved into the Maricopa County portion of the Arizona SIP.

The EPA is therefore deferring action on section 301.2 b.(3) of Rule 204. We plan to act on this provision when acting on the pending SIP submittal for Rule 230.⁷ ERC generators will be able to use the other SIP-approved permitting rules listed in Rule 204 to meet the necessary requirements.

IV. The EPA's Evaluation of Arizona's Submittal

A. Does the Submittal Meet the Evaluation Criteria?

The EPA finds that Rule 204, and the Department's accompanying supplemental documents, comply with the applicable CAA requirements and are consistent with relevant guidance. The EPA finds that the rule ensures offsets will meet the offset requirements in CAA section 173 and 40 CFR 51.165, including that offsets be real, surplus, permanent, quantifiable, and federally enforceable. Finally, the EPA finds that the rule meets the substantive requirements for SIPs and SIP revisions set forth in CAA sections 110(a)(2) and 110(l).

Rule 204 is focused on the creation of NO_x and VOC offsets for the NNSR permit program and includes requirements that ensure offsets generated from nonroad engines

⁶ Rule 204, section 301.2 b.

⁷ On July 8, 2026, Rule 230 was submitted to the EPA for SIP approval. The rule does not currently contain provisions for the issuance of ERC general permits.

meet the real, surplus, permanent, quantifiable, and federally enforceable criteria in CAA section 173 and 40 CFR 51.165(a)(3)(ii)(C)(1)(i). Specifically, Rule 204 requires generators to demonstrate that the captive fleet of nonroad engines used to generate emissions reductions is based, and operates, in the NAA and the fleet's operation inside the NAA is quantifiable.⁸ Appendix A of Rule 204 articulates the calculation formulas used to determine the quantity of NERCs that can be generated. Generators must use actual emissions and actual operating data rather than potential emissions when calculating emissions reductions.⁹ The calculation method is fuel neutral, meaning any replaced or retrofitted equipment that emits less NO_x or VOC than the original nonroad engine is eligible to generate NERCs. Rule 204's methodology for quantifying emissions reductions is clear, replicable, and enforceable.

Rule 204 also lists the elements that are required to be in a NERC application submittal.¹⁰ For example, information on the methodology for quantifying the surplus reductions in qualifying emissions, including emissions calculations, documentation of rated horsepower and each original nonroad engine's historic hours of operation, and how these rates were determined are required within a NERC application. Once the generator submits the NERC application to the Department, the Department must evaluate it to determine whether the proposed qualifying emissions will result in real, surplus, permanent, quantifiable, and federally enforceable emissions reductions.¹¹ If the Department determines that the criteria have been met, the generator can then submit a

⁸ Rule 204, section 302.1 a.

⁹ Rule 204, sections 203 and 210.

¹⁰ Rule 204, section 301.1 a.

¹¹ Rule 204, section 301.2 a.

permit application to the Department, in accordance with the SIP-approved requirements of MCAQD Rule 210, “Title V Permit Provisions,” as revised on December 11, 2019 (“Rule 210”), or MCAQD Rule 220, “Non-Title V Permit Provisions,” as revised on December 11, 2019 (“Rule 220”), seeking a new permit or permit revision that imposes conditions to make the reductions in qualifying emissions permanent and enforceable.¹²

Generators of NERCs must demonstrate permanence through monitoring and recordkeeping requirements that ensure replaced nonroad engines can no longer operate in the NAA and/or that usage is not shifted to other nonroad engines with higher emission factors within the captive fleet. Rule 204 accomplishes this through numerous requirements including the following: limiting the applicability of the rule to “captive fleet”¹³ nonroad engines; requiring the original baseline nonroad engine to be permanently removed from the NAA or rendered permanently disabled and disposed of;¹⁴ requiring any future replacement of a new or retrofitted nonroad engine in the next 20 years to be with a nonroad engine that is certified to the same or more stringent emission factor;¹⁵ and related monitoring, recordkeeping, and reporting requirements.¹⁶

Based on these and other requirements in Rule 204, the EPA finds that NERCs issued under Rule 204 will be real, surplus, permanent, quantifiable, and federally enforceable. Since Rule 204 is only focused on the creation of offsets, the Department’s existing SIP-approved NNSR program is the predominate mechanism for the issuance of

¹² Rule 204, section 301.2 b. Rule 210 and Rule 220 were approved into Maricopa County portion of the Arizona SIP on Feb. 15, 2022 (87 FR 8418).

¹³ Rule 204, section 204.

¹⁴ Rule 204, section 302.2 d.

¹⁵ Rule 204, section 302.2 e.

¹⁶ *E.g.*, Rule 204, sections 302.2, 401.2, 401.3, 501, 503, 504, and 505.

NNSR permits in Maricopa County and for ensuring the permitting requirements in CAA section 173 and 40 CFR 51.165 are met.¹⁷ The EPA finds that the provisions of Rule 204 are also consistent with the Department's existing NNSR program and would not alter how the program is implemented.

Regarding CAA section 110(a)(2) requirements, Rule 204 provides a process for establishing federally enforceable emissions limitations that will be used to generate offsets under the NNSR program. Rule 204 requirements and applicability are clear, and the monitoring, recordkeeping, reporting, and other provisions ensure that compliance can be consistently evaluated and determined. As stated previously, the MCAQD evaluates proposed reductions in qualifying emissions, certifies the reductions if they meet the certification criteria, issues permits or permit revisions to incorporate requirements that make the reductions in qualifying emissions permanent and federally enforceable, and issues NERC certificates for the certified quantity of qualified emissions reductions. Once NERCs are issued, Rule 204 requires continuous monitoring of the fleets of nonroad engines to ensure ongoing compliance.

Regarding CAA section 110(l) requirements, based on our review of the public process material included in the submittal, the EPA finds that the Department has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of Rule 204 to the EPA. Finally, Rule 204 is a new rule that does not relax any existing SIP provisions or interfere with any applicable requirement concerning attainment and reasonable further progress/rate of progress

¹⁷ MCAQD Rule 240, "Federal Major New Source Review (NSR)," revised Dec. 11, 2019, contains the majority of the MCAQD's NNSR program (87 FR 8418, Feb. 15, 2022).

(RFP/ROP) demonstrations or any other CAA requirements.

The EPA's TSD, which is in the docket for this action, contains a detailed and complete evaluation of how Rule 204 and the accompanying supplemental documents satisfy all applicable CAA requirements.

B. Proposed Action and Public Comment

As authorized in CAA section 110(k)(3), the EPA proposes to approve the MCAQD Rule 204 submittal, except for section 301.2 b.(3) of Rule 204, 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 finalize approval of the MCAQD Rule 204 submittal, our final action will incorporate Rule 204, except section 301.2 b.(3), into the federally enforceable Maricopa County portion of the Arizona SIP and add MCAQD's EIP support document into the non-regulatory portion of the Arizona SIP. These revisions would be codified at 40 CFR 52.120.

V. 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 204, except section 301.2 b.(3), "Emission Offsets Generated by Voluntary Nonroad Engine Emission Reductions," revised November 5, 2025, which establishes a program allowing fleet owners/operators to generate ERCs by either retrofitting or replacing existing fleet nonroad engines with lower-emitting nonroad engines 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).

VI. 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 an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant 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, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 5, 2026.

Michael Martucci,
Acting Regional Administrator,
Region IX.