



State Implementation Plan Revision: Agricultural Best Management Practices Statutes and Rules

*Air Quality Division
November 18, 2022 Draft*

This page is intentionally blank.

Table of Contents

Table of Contents	1
List of Appendices	1
List of Appendices	1
1 Completeness Criteria (40 C.F.R. Part 51, Appendix V, § 2.0)	3
1.1 Appendix V § 2.1 - Administrative Materials	3
1.2 Appendix V § 2.1 - Technical Support	4
2 Introduction	7
3 AgBMP and West Pinal PM ₁₀ Nonattainment Area Background	8
3.1 The AgBMP Program	8
3.2 The West Pinal County PM ₁₀ Nonattainment Area	8
4 Statutes and Rules to be Added to the SIP	10
4.1 SIP-Approved Version	10
4.2 Amendments Adopted Since SIP Approval	10
5 Demonstrating Noninterference with Attainment of the National Ambient Air Quality Standards of Reasonable Further Progress under Clean Air Act § 110(l)	12

List of Appendices

Appendix A: Amendments to A.R.S. § 49-457, Laws 2021, Ch. 134 (HB 2677)

Appendix B: A.R.S. § 49-457, as Amended

Appendix C: Amendments to AgBMP Rules

Appendix D: AgBMP Rules, as Amended

Appendix E: Letter from Colleen McKaughan, Associate Director, Air Division, Environmental Protection Agency Region IX, to Timothy Franquist, Director, Air Quality Division, Arizona Department of Environmental Quality, May 11, 2017

Appendix F: 2016 Certification of Maricopa Association of Governments as the lead planning organization for the West Pinal PM₁₀ Nonattainment Area

Appendix G: Procedural and Administrative Requirements

 Exhibit 1 - Delegation of Authority

 Exhibit 2 - Authorizing Statutes

State Implementation Plan Revision: Agricultural Best Management Practices Statutes and Rules

Exhibit 3 - Copy of Public Notice and Affidavit of Public Notice Publication

Exhibit 4 - Public Hearing Agenda

Exhibit 5 - Public Hearing Attendee List

Exhibit 6 - Public Hearing Officer Certification

Exhibit 7 - Public Hearing Transcript

Exhibit 8 - Compilation of Comments

Exhibit 9 - State Responses to Comments Received

1 Completeness Criteria (40 C.F.R. Part 51, Appendix V, § 2.0)

1.1 Appendix V § 2.1 - Administrative Materials

(a) A formal signed, stamped, and dated letter of submittal from the Governor or his designee, requesting EPA approval of the plan or revision thereof (hereafter “the plan”). If electing to submit a paper submission with a copy in electronic version, the submittal letter must verify that the electronic copy provided is an exact duplicate of the paper submission.

A cover letter will be included in the final State Implementation Plan Revision. Attached as part of Appendix G is a delegation of authority from Misael Cabrera, Director of Arizona Department of Environmental Quality (ADEQ), to Daniel Czecholinski, Director of ADEQ Air Quality Division, authorizing Mr. Czecholinski to perform any act the Director is authorized to perform under the state air quality statutes, including the submission of State Implementation Plans to the Environmental Protection Agency (EPA).

(b) Evidence that the State has adopted the plan in the State code or body of regulations; or issued the permit, order, consent agreement (hereafter “document”) in final form. That evidence shall include the date of adoption or final issuance as well as the effective date of the plan, if different from the adoption/issuance date.

Copies of the statutes and rules for which approval is sought in this State Implementation Plan Revision are included in Appendices A through D.

(c) Evidence that the State has the necessary legal authority under State law to adopt and implement the plan.

ADEQ has primary responsibility for prevention and abatement of air pollution under Arizona Revised Statutes § 49-104(A)(10) and is required to "maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act" under Arizona Revised Statutes § 49-404(A). ADEQ also has broad authority to adopt rules relating to air quality under Arizona Revised Statutes § 49-425. Copies of Arizona Revised Statutes, Sections 49-104, 49-106, 49-404, 49-406, and 49-425 are included in Appendix G for reference only.

(d) A copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan, including indication of the changes made (such as redline/strikethrough) to the existing approved plan, where applicable. The submission shall include a copy of the official State regulation/document, signed, stamped, and dated by the appropriate State official indicating that it is fully enforceable by the State. The effective date of any regulation/document contained in the submission shall, whenever possible, be indicated in the regulation/document itself; otherwise the State should include a letter signed, stamped, and dated by the appropriate State official indicating the effective date. If the regulation/document provided by the State for approval and incorporation by reference into the plan is a copy of an existing publication, the State submission should, whenever possible, include a copy of the publication cover page and table of contents.

See Appendices A through D.

(e) Evidence that the State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the plan.

See Appendix G.

(f) Evidence that public notice was given of the proposed change consistent with procedures approved by EPA, including the date of publication of such notice.

Proof that ADEQ gave notice of the State Implementation Plan Revision in accordance with Arizona Revised Statutes § 49-444 is attached as Appendix G.

(g) Certification that public hearing(s) were held in accordance with the information provided in the public notice and the State's laws and constitution, if applicable and consistent with the public hearing requirements in 40 CFR 51.102.

See Appendix G.

(h) Compilation of public comments and the State's response thereto.

See Appendix G.

1.2 Appendix V § 2.1 - Technical Support

(a) Identification of all regulated pollutants affected by the plan.

Particulate matter (PM₁₀).

State Implementation Plan Revision: Agricultural Best Management Practices Statutes and Rules

(b) Identification of the locations of affected sources including the EPA attainment/nonattainment designation of the locations and the status of the attainment plan for the affected areas(s).

As discussed in sections 3 and 4 below, the statute (A.R.S. § 49-457) and rule definitions (A.A.C. R18-2-310 and R18-2-311) being submitted in this SIP revision apply to agricultural sources of fugitive PM₁₀ emissions in certain PM₁₀ nonattainment areas throughout the state. The substantive regulations (A.A.C. R18-2-310.03 and R18-2-311.03) apply to agricultural sources of fugitive PM₁₀ emissions in the West Pinal County Serious PM₁₀ Nonattainment Area.

(c) Quantification of the changes in plan allowable emissions from the affected sources; estimates of changes in current actual emissions from affected sources or, where appropriate, quantification of changes in actual emissions from affected sources through calculations of the differences between certain baseline levels and allowable emissions anticipated as a result of the revision.

This information is contained in the 2022 Serious Area Particulate Plan for PM₁₀ for the West Pinal County Nonattainment Area submitted via EPA's Central Data Exchange, State Plan Electronic Collection System (SPeCS) on May 31, 2022.

(d) The State's demonstration that the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented. For all requests to redesignate an area to attainment for a national primary ambient air quality standard, under section 107 of the Act, a revision must be submitted to provide for the maintenance of the national primary ambient air quality standards for at least 10 years as required by section 175A of the Act.

See Section 5, Demonstrating Noninterference with Attainment of the National Ambient Air Quality Standards or Reasonable Further Progress under Clean Air Act § 110(l).

(e) Modeling information required to support the proposed revision, including input data, output data, models used, justification of model selections, ambient monitoring data used, meteorological data used, justification for use of offsite data (where used), modes of models used, assumptions, and other information relevant to the determination of adequacy of the modeling analysis.

Not applicable.

(f) Evidence, where necessary, that emission limitations are based on continuous emission reduction technology.

Not applicable.

State Implementation Plan Revision: Agricultural Best Management Practices Statutes and Rules

(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels.

Not applicable.

(h) Compliance/enforcement strategies, including how compliance will be determined in practice.

The Agricultural Best Management Practices program is an ongoing program already approved into the State Implementation Plan. No substantial changes to compliance and enforcement strategies will be required as a result of this revision.

(i) Special economic and technological justifications required by any applicable EPA policies, or an explanation of why such justifications are not necessary.

Not applicable

2 Introduction

The purpose of this revision to Arizona's State Implementation Plan (SIP) is to provide updated versions of the Agricultural Best Management Practices (AgBMP) statute and rules for inclusion into the SIP. In particular, the legislature enacted amendments to Arizona Revised Statutes (A.R.S.) 49-457 in 2021 to clarify permitting exemptions under the program and eliminate conflict between A.R.S. 49-457 and county rules already adopted into the SIP. The AgBMP Committee amended Arizona Administrative Code (A.A.C.), rules R18-2-610, R18-2-610.03, R18-2-611, and R18-2-611.03 in 2021 to require increased numbers of AgBMPs to be implemented, add measures to the list of approved AgBMPs, and make other changes required for a serious PM₁₀ nonattainment area.

ADEQ gave notice and held a public hearing on this SIP revision on [to be added after public hearing].

Section 3 provides background on the AgBMP program as well as the West Pinal PM₁₀ Nonattainment Area. Section 4 describes the revised statutes and rules which are being submitted for inclusion in the SIP. Section 5 demonstrates that this SIP revision will not interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) or any other requirement of the Clean Air Act (CAA), as required by CAA §110(l).

3 AgBMP and West Pinal PM₁₀ Nonattainment Area Background

3.1 The AgBMP Program

The Governor's AgBMP committee was created in 1998 with the responsibility of developing PM₁₀ emission control strategies for crop operations in the Phoenix PM₁₀ nonattainment area. The AgBMP program's approach is to maintain a general permit which lists best management practices (BMPs) for regulated activities. Operations subject to the permit are required to select BMP(s) to implement, with individual farmers able to select whichever controls are most appropriate for their operations.

The original AgBMP program, which was adopted into the Arizona SIP in 2001, has since been expanded. In 2011, cattle, swine, and poultry facilities were added to crop operations as agricultural activities required to implement BMPs. The program was also expanded to apply to any PM₁₀ nonattainment areas designated after June 1, 2009 and to require the implementation of a second BMP per regulated agricultural activity in serious PM₁₀ nonattainment areas; the previous requirement had been one BMP per regulated agricultural activity in all PM₁₀ nonattainment areas. The AgBMP program's statute and rules are located at Arizona Revised Statutes (A.R.S.) § 49-457 and Arizona Administrative Code (A.A.C.) R18-2-610, R18-2-610.01, R18-2-610.02, R18-2-610.03, R18-2-611, R18-2-611.01, R18-2-611.02, and R18-2-611.03, respectively.¹

3.2 The West Pinal County PM₁₀ Nonattainment Area

Part of the western portion of Pinal County was designated as nonattainment for PM₁₀ on July 12, 2012 and classified as moderate. On December 21, 2015, ADEQ (ADEQ) submitted a SIP revision for the area which included the latest version of the AgBMP statute and rules. The Environmental Protection Agency (EPA) approved A.A.C. R18-2-610 and R18-2-610.03 into the SIP on May 1, 2017, but identified deficiencies in the statute and proposed a limited approval and limited disapproval of the submission of the statute and remaining rules into the SIP on February 26, 2021. EPA's recommended revisions to the AgBMP rules and statutes were communicated to ADEQ in correspondence received from EPA on May 11, 2017 (Appendix E).

Most importantly, two revisions to the AgBMP statute were recommended to make it eligible for inclusion in the SIP.

First, EPA noted that A.R.S. § 49-457, section H, released permittees under the AgBMP programs from permitting requirements found in A.R.S. 49-426. In subsequent discussions EPA

¹ ADEQ is only submitting A.R.S. § 49-457 and A.A.C. R18-2-610, R18-2-610.03, R18-2-611, and R18-2-611.03 for inclusion in the SIP at this time.

State Implementation Plan Revision: Agricultural Best Management Practices Statutes and Rules

raised the concern that this exemption could interfere with the administration of permitting programs required under the Clean Air Act, such as minor new source review.

EPA's second comment was that that A.R.S. § 49-457, section O, preempted regulation of AgBMP permittees by counties, cities, and towns, which conflicted with county rules already approved in the Arizona SIP that applied to AgBMP permittees.²

Since A.R.S. § 49-457 sections H and O could reduce the stringency of the SIP-approved control measures, they could only be approved into the SIP with further revisions to these sections, or alongside an anti-backsliding analysis consistent with section 110(l) of the Clean Air Act (CAA). Sections H and O were revised to address these concerns, effective September 29, 2021.

On June 24, 2020, EPA determined that the West Pinal PM₁₀ nonattainment area had not attained the PM₁₀ NAAQS by the December 31, 2018 deadline for a moderate area. This determination automatically resulted in reclassification of the area to serious. Under the CAA, Arizona was required submit a SIP meeting all requirements for a serious PM₁₀ nonattainment area, including an attainment demonstration and the imposition of best available control measures (BACM), by January 24, 2022.

The Maricopa Association of Governments (MAG) was certified as the lead planning organization for the West Pinal PM₁₀ nonattainment area in 2016 and is therefore responsible for developing the serious area plan (Appendix F). ADEQ retained responsibility together with the AgBMP Committee for ensuring that the AgBMP program satisfies Clean Air Act requirements.

On May 30, 2022, ADEQ submitted the 2022 Serious Area Particulate Plan for PM-10 for the West Pinal County Nonattainment Area, prepared by Maricopa Association of Governments (MAG). This plan included revisions to the AgBMP definitions (R18-2-610 and R18-2-611) and AgBMP general permit requirements for the West Pinal County PM₁₀ nonattainment area (R18-2-610.03 and R18-2-611.03) adopted by the AgBMP Committee on November 3, 2021 to satisfy the requirements for a serious PM₁₀ nonattainment area. A detailed explanation of the AgBMP rule revisions can be found in the Notice of Exempt Final Rulemaking for the revisions attached as Appendix C.

EPA requested that the AgBMP statute and rules be submitted for inclusion in the SIP separately from the 2022 Serious Area Particulate Plan for PM-10 for the West Pinal County Nonattainment Area, since the statute and some of the rules applied to areas of the state outside of Pinal County and would affect a larger stakeholder community than control measures specific to the West Pinal PM₁₀ nonattainment area.

This proposed SIP revision provides affected stakeholders with an opportunity to review, comment on, and attend a public hearing relating to ADEQ's proposal to include the amended statute and rules in the SIP.

² Pinal County Air Quality Control District Rule 4-2-050, Maricopa County Air Quality Department Rule 310.01.302.8

4 Statutes and Rules to be Added to the SIP

In the 2021 legislative session, ADEQ through the Governor's office requested and obtained amendments to the A.R.S. § 49-457 designed to cure the deficiencies EPA identified. The revised statute and rules (A.A.C. R18-2-610, R18-2-610.03, R18-2-611, and R18-2-611.03) are attached to this SIP revision as Appendices A through D.

4.1 SIP-Approved Version

The latest version of A.R.S. § 49-457 approved into the SIP was approved by EPA on June 8, 2000. This version is more limited in scope than the current program, only applying to crop operations in the Phoenix PM₁₀ nonattainment area. It also does not require two BMPs to be implemented per agricultural activity in serious nonattainment areas.

The original versions of A.A.C. R18-2-610 and R18-2-610.03 were approved into the SIP were submitted as part of the 2015 moderate area plan for the West Pinal PM₁₀ nonattainment area. These versions only require one BMP to be implemented per agricultural activity in the West Pinal PM₁₀ nonattainment area. They also do not include any BMPs related to unpaved vehicle and equipment traffic areas, which were added in the 2021 amendments to the regulation. A.A.C. R18-2-611 and R18-2-611.03 have not yet been approved into the SIP.³

4.2 Amendments Adopted Since SIP Approval

A.R.S. § 49-457 was amended by Laws 2021, Ch. 134 (HB2677) in order to cure the deficiencies identified by EPA. The AgBMP regulations were most recently amended in 27 A.A.R. 2747 (November 26, 2021).

The following is a description of the most significant changes made by the amendments:

4.2.1 Revision of permitting exemptions

A.R.S. § 49-457 previously exempted permittees under the AgBMP program from other permitting programs except in instances of noncompliance with the AgBMP permit. The revised statute only exempts fugitive emissions from permitting requirements, and only in the case where the fugitive emissions are not located at a stationary source which otherwise requires a permit.

³ The Arizona SIP does contain a rule numbered R18-2-611, but this is an agricultural permit for the Maricopa PM₁₀ nonattainment area which has since been revised and renumbered in the state administrative code. This proposed SIP revision would result in two R18-2-611s in the SIP which would be differentiated by title and date.

4.2.2 Elimination of conflict between AgBMP program and SIP-approved county rules

A.R.S. § 49-457 previously exempted emissions from sources permitted under the AgBMP program from being further regulated by counties, cities, or towns. Since some county measures applicable to AgBMP permittees had already been approved into the SIP, the revised statute allows for county, city, or town regulation of AgBMP permittees when the relevant regulation has been incorporated into the SIP.

4.2.3 Inclusion of BMPs related to unpaved vehicle and equipment traffic areas

The regulations governing the AgBMP program rules previously did not include any BMPs for unpaved vehicle and equipment traffic areas. The revised regulations define these areas and establish emission opacity limits for them.

4.2.4 Expansion of AgBMP requirements for West Pinal PM₁₀ nonattainment area

When R18-2-610.03 was approved into the SIP, the West Pinal PM₁₀ nonattainment area was classified as moderate and therefore required a single BMP to be implemented for each agricultural activity. Since the nonattainment area has since been reclassified as serious, the regulation has been amended to require two BMPs for each agricultural activity.

5 Demonstrating Noninterference with Attainment of the National Ambient Air Quality Standards of Reasonable Further Progress under Clean Air Act § 110(I)

Backsliding concerns raised by EPA in their May 11, 2017 letter to ADEQ (Appendix E) have been addressed by the 2021 revision to the program's statute and rules. This proposed SIP revision does not remove any measures from the SIP, nor does it lessen the stringency of any SIP-approved measures. Accordingly, this SIP revision is not anticipated to interfere with the attainment of the NAAQS or any other requirement of the CAA.