

As explained, the majority proposes to permanently exclude a class of employees from statutory coverage, in contravention of the law's language and its policies. There is no reason to revisit the *Columbia* decision, now on the books for over three years, particularly in the absence of any empirical evidence that any educational interests have been harmed in any way. To the contrary, student employees have already succeeded in bargaining with their universities for better working conditions, the very interests that spurred their organizing movement—just as the National Labor Relations Act encourages. Because the proposed rule has no plausible foundation, I must dissent.

## VI. Regulatory Procedures

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (“RFA”), 5 U.S.C. 601 *et seq.*, requires agencies promulgating proposed rules to prepare an initial regulatory flexibility analysis and to develop alternatives, wherever possible, when drafting regulations that will have a significant impact on a substantial number of small entities. The focus of the RFA is to ensure that agencies “review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA].” E.O. 13272, Sec. 1, 67 FR 53461 (“Proper Consideration of Small Entities in Agency Rulemaking”). An agency is not required to prepare an initial regulatory flexibility analysis for a proposed rule if the Agency head certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The Board concludes that the proposed rule will not affect a substantial number of small entities. In any event, the Board further concludes that the proposed rule will not have a significant economic impact on such small entities. Accordingly, the Agency Chairman has certified to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”) that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

### *Paperwork Reduction Act*

The NLRB is an agency within the meaning of the Paperwork Reduction Act (PRA), 44 U.S.C. 3502(1) and (5). This Act creates rules for agencies when they solicit a “collection of information.” 44 U.S.C. 3507. The PRA

defines “collection of information” as “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.” 44 U.S.C. 3502(3)(A). The PRA only applies when such collections are “conducted or sponsored by those agencies.” 5 CFR 1320.4(a).

The proposed rule does not involve a collection of information within the meaning of the PRA. Outside of administrative proceedings (discussed below), the proposed rule does not require any entity to disclose information to the NLRB, other government agencies, third parties, or the public.

The only circumstance in which the proposed rule could be construed to involve disclosures of information to the Agency, third parties, or the public is during the course of Board administrative proceedings. However, the PRA provides that collections of information related to “an administrative action or investigation involving an agency against specific individuals or entities” are exempt from coverage. 44 U.S.C. 3518(c)(1)(B)(ii). A representation proceeding under Section 9 of the NLRA as well as an investigation into an unfair labor practice under Section 10 of the NLRA are administrative actions covered by this exemption. The Board’s decisions in these proceedings are binding on and thereby alter the legal rights of the parties to the proceedings and thus are sufficiently “against” the specific parties to trigger this exemption.

For the foregoing reasons, the proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under the PRA.

### List of Subjects in 29 CFR Part 103

Colleges and universities, Health facilities, Joint-employer standard, Labor management relations, Military personnel, Music, Sports.

For the reasons set forth in the preamble, the Board proposes to amend 29 CFR part 103 to read as follows.

### PART 103—OTHER RULES

- 1. The authority citation for part 103 continues to read as follows:

**Authority:** 29 U.S.C. 156, in accordance with the procedure set forth in 5 U.S.C. 553.

- 2. Revise § 103.1 to read as follows:

#### § 103.1 Colleges and universities.

(a) The Board will assert its jurisdiction in any proceeding arising under Sections 8, 9, and 10 of the Act

involving any private nonprofit college or university which has a gross annual revenue from all sources (excluding only contributions which, because of limitation by the grantor, are not available for use for operating expenses) of not less than \$1 million.

(b) Students who perform any services, including, but not limited to, teaching or research assistance, at a private college or university in connection with their undergraduate or graduate studies are not employees within the meaning of Section 2(3) of the Act.

Dated: September 18, 2019.

**Roxanne Rothschild,**  
*Executive Secretary.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2019–0493; FRL–9999–98–Region 9]

### Air Plan Conditional Approval; Arizona; Maricopa County

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to conditionally approve revisions to the Maricopa County Air Quality Department (MCAQD or the County) portion of the Arizona State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from organic liquid and gasoline storage and transfer operations. We are proposing to conditionally approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act) and conditionally approve the County’s demonstration regarding Reasonably Available Control Technology (RACT) requirements for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) in the Phoenix-Mesa ozone nonattainment area, with respect to petroleum liquid storage and gasoline transfer and transport. We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by October 23, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0493 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>.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Newhouse, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105, (415) 972-3004, [newhouse.rebecca@epa.gov](mailto:newhouse.rebecca@epa.gov).

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

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**I. The State’s Submittal**

*A. What did the State submit?*

Table 1 lists the documents addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ or the State).

TABLE 1—SUBMITTED DOCUMENTS

Local agency	Document	Revised	Submitted
MCAQD .....	Analysis of Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP).	1 06/16/2017	06/22/2017
MCAQD .....	Rule 350: Storage and Transfer of Organic Liquids (Non-Gasoline) at an Organic Liquid Distribution Facility.	11/02/2016	06/22/2017
MCAQD .....	Rule 351: Storage and Loading of Gasoline at Bulk Gasoline Plants and Bulk Gasoline Terminals.	11/02/2016	06/22/2017
MCAQD .....	Rule 352: Gasoline Cargo Tank Testing and Use .....	11/02/2016	06/22/2017
MCAQD .....	Rule 353: Storage and Loading of Gasoline at Gasoline Dispensing Facilities .....	11/02/2016	06/22/2017

On December 22, 2017, the submittal containing the documents listed in Table 1 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

In addition to these SIP submittals, the County and the ADEQ transmitted

letters to the EPA <sup>2 3</sup> committing to adopt and submit specific enforceable measures within a year of our final action that would remedy the deficiencies identified in this notice and further described in the associated

technical support documents (TSDs) for this action.

The County’s submittal states that Rules 350, 351, 352 and 353 were submitted to regulate sources associated with the Control Techniques Guidelines (CTGs) shown in Table 2:

TABLE 2—RULES AND ASSOCIATED CTGS <sup>4</sup>

County rule	Associated CTGs
Rule 350 .....	Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks (EPA-450/2-77-036). Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks (EPA-450/2-78-047).
Rule 351 .....	Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks (EPA-450/2-77-036). Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks (EPA-450/2-78-047).
Rule 352 .....	Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals (EPA-450/2-77-026). Control of Volatile Organic Emissions from Bulk Gasoline Plants (EPA-450/2-77-035).
Rule 353 .....	Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (EPA-450/2-78-051). Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations (EPA-450/R-75-102).

<sup>1</sup> This document is dated December 5, 2016. It was adopted by the County on June 16, 2017.

<sup>2</sup> Letter dated January 28, 2019, from Philip A. McNeely, Director, MCAQD, to Misael Cabrera, Director, ADEQ.

<sup>3</sup> Letter dated February 25, 2019, from Misael Cabrera, Director, ADEQ, to Michael Stoker, Regional Administrator, EPA, Region IX.

<sup>4</sup> See RACT SIP, Appendix C: CTG RACT Spreadsheet.

*B. Are there earlier versions of the submitted documents in the SIP?*

We approved earlier versions of the rules listed in Table 1 into the SIP on September 5, 1995 (Rules 350 and 352) (60 FR 46024), February 9, 1998 (Rule 351) (63 FR 6489), and on February 1, 1996 (Rule 353) (61 FR 3578). There is no previously approved version of the RACT SIP for the 2008 8-hour ozone standard in the MCAQD portion of the Arizona SIP. The ADEQ previously submitted the documents in Table 1 in a SIP revision on December 19, 2016, along with the County's RACT SIP. However, this submittal did not include documentation that showed the entirety of the County's SIP revision had met the public notice requirements required for completeness under 40 CFR part 51 Appendix V. The County's June 22, 2017 submittal was provided in response to this feedback, and the State withdrew the December 19, 2016 submittal on May 17, 2019.<sup>5</sup>

*C. What is the purpose of the submitted documents?*

Emissions of VOCs contribute to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Section 182(b)(2) requires that SIPs for ozone nonattainment areas classified as Moderate or above implement RACT for any source covered by a CTG document and for any major sources of VOCs. The MCAQD is subject to this requirement as it regulates a portion of the Phoenix-Mesa ozone nonattainment area, which is classified as Moderate for the 2008 8-hr ozone NAAQS (40 CFR 81.303).

Section III.D of the preamble to the EPA's final rule to implement the 2008 ozone 8-hour ozone NAAQS (80 FR 12264, March 6, 2015) discusses RACT requirements. It states in part that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that there are no sources in the nonattainment areas covered by a specific CTG category. The County's RACT SIP provides MCAQD's analyses of its compliance with the CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS. As a result of this analysis, the County revised and submitted the rules listed in Table 1 to establish RACT-level controls for VOC emissions from the petroleum liquid

storage and gasoline transfer and transport CTG source categories shown in Table 2.

The EPA's TSDs have more information about the submitted rules and RACT SIP.

## II. The EPA's Evaluation and Action

### A. How is the EPA evaluating the submitted documents?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The MCAQD regulates a portion of the Phoenix-Mesa ozone nonattainment area, which is classified as Moderate for the 2008 8-hr ozone NAAQS 40 CFR 81.303. Therefore, these rules must implement RACT.

The County's RACT SIP explains that Rules 350, 351, 352, and 353 were revised and submitted in order to meet the RACT requirement for the source categories listed in Table 2.

Accordingly, our evaluation of whether these rules establish RACT levels of control also constitutes our evaluation of the approvability of the MCAQD RACT SIP, with respect to those CTG source categories.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "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).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks," EPA-450/2-77-036, December 1977.
5. "Control of Volatile Organic Emissions from Petroleum Liquid

Storage in External Floating Roof Tanks," EPA-450/2-78-047, December 1978.

6. "Control of Volatile Organic Emissions from Bulk Gasoline Plants," EPA-450/2-77-035, December 1977.

7. "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals," EPA-450/2-77-026, October 1977.

8. "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA-450/2-78-051, December 1978.

9. "Design Criteria for Stage I Vapor Control Systems-Gasoline Service Stations," EPA-450/R-75-102, November 1975.

10. "Alternative Control Techniques Document: Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks," EPA-453/R-94-001, January 1994.

*B. Do the submitted documents meet the evaluation criteria?*

Rules 350, 351, 352, and 353 apply to sources of VOC emissions from organic liquid storage and gasoline transfer and storage operations in the Phoenix-Mesa area. The four rules are generally more stringent than the applicable CTGs, have requirements for organic liquid and gasoline storage and transfer that are generally consistent with other local air district rules for these source categories, and are largely consistent with the applicable CAA requirements. However, as identified below, the rules contain deficiencies that preclude full approval. In a letter dated January 28, 2019 (the "commitment letter"), the County identified certain rule deficiencies and committed to revise those provisions in accordance with EPA guidance, and submit the revised rules within eleven months of a conditional approval.<sup>6</sup> On February 25, 2019, the ADEQ provided its own commitment to submit the County's revised rules to the EPA within one month after the County's action and request for SIP revision.<sup>7</sup> Because the commitments by the County and ADEQ would remedy the identified rule deficiencies, we propose to conditionally approve Rules 350, 351, 352, and 353, and the RACT SIP with respect to the VOC source categories covered by Rules 350, 351, 352, 353 (as provided in Table 2). Summaries of the specific rule deficiencies and the County's commitments to address those

<sup>6</sup> Letter dated January 28, 2019, from Philip A. McNeely, Director, MCAQD, to Misael Cabrera, Director, ADEQ.

<sup>7</sup> Letter dated February 25, 2019, from Misael Cabrera, Director, ADEQ, to Michael Stoker, Region Administrator, EPA, Region IX.

<sup>5</sup> Letter dated May 17, 2019, from Timothy S. Franquist, Director, Air Quality Division, ADEQ, to Michael Stoker, Regional Administrator, Region IX.

deficiencies are included in the following sections.

Our TSDs for Rules 350, 351, 352, and 353 provide further details on our evaluation for these proposed conditional approvals.

### C. What are the deficiencies?

The following provisions of Rules 350, 351, 352, and 353 do not fully satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision.

#### 1. Rule 350 Deficiencies<sup>8</sup>

(a) Rule 350 includes exemptions from rule requirements for fuel consumed or dispensed at the facility directly to users, hazardous waste, which is undefined, and wastewater and ballast water, none of which are exempted from the applicable CTGs.

(b) The rule lacks an emissions limit for bulk terminals transferring organic liquid. The SIP-approved version requires an emissions limit of 0.08 lbs VOCs/1000 gallons transferred.<sup>9</sup>

(c) The rule contains inappropriate use of director's discretion with respect to the opening of hatches or seals on cargo tanks.\* †

(d) Several sections do not clearly state rule prohibitions, and instead require owners and operators with particular types of tanks to put some amount of liquid into tanks that meet certain requirements. Section 301.3, in particular, appears to be missing the word "not" in a way that impacts the effectiveness of the requirement.\*

(e) The rule exempts roofs from the requirement that they always be floating on liquid when the tank is being filled, instead of only while filling after the tank has been emptied completely.\*

(f) The rule is not clear regarding which external floating roof tanks are exempt from the rule's requirements.\*

(g) The rule does not clearly specify vapor control requirements for internal floating roof tanks.

(h) The rule contains an overly broad provision, allowing the opening of hatches, vent valves, or vapor sealing devices for vacuum relief when organic liquid is transferred from the cargo tank or railcar into a storage tank.\*

#### 2. Rule 351 Deficiencies<sup>10</sup>

(a) The rule allows the use of a less stringent compliance option than the

SIP-approved rule for controlling VOC vapors from gasoline storage.<sup>11</sup>

(b) Rule 351 requirements for gasoline transfers at bulk plants are not as strict as requirements that have been demonstrated to be reasonably available in other air districts, as there is no emissions limit or vapor recovery efficiency requirement when vapor ballast systems are used.

(c) The rule exempts the loading of aviation gasoline at airports from the rule's gasoline transfer requirements, which is not exempted from applicable CTGs or other analogous SIP-approved district rules.<sup>12</sup>

#### 3. Rule 352 Deficiencies<sup>13</sup>

(a) The rule exempts cargo tanks with gasoline loads that originated outside of Arizona, and gasoline loads delivered outside Maricopa County, from the rule's gasoline cargo tank vapor tightness requirements. Exemptions from vapor tightness requirements based on where the cargo tank is initially filled or where it ultimately delivers gasoline are not provided for in the applicable CTG.

(b) The rule provides inappropriate discretion to unspecified agencies to certify cargo tanks vapor tight.

(c) The rule allows gasoline cargo tank vapor tightness tests to remain valid for up to two years, whereas the CTG and rules from other air districts require more frequent testing.

(d) The rule allows inappropriate discretion for the opening of cargo tank hatches during loading.

(e) No test method is specified for determining compliance with the provision requiring a 90% reduction in VOC emissions by weight when purging cargo tank vapors.

(f) The rule does not clearly prohibit purging of gasoline vapors from cargo tanks, including during switch loading, and may relax purging provisions as compared to the SIP-approved rule.

#### 4. Rule 353 Deficiencies<sup>14</sup>

(a) The rule exempts an owner or operator from certain rule requirements if the gasoline dispensing facility (GDF) is unattended or there is only one owner or operator present. As there may be one attendant at a GDF in many instances for a variety of reasons, this exemption is overly broad and presents enforceability challenges.

D. What are the commitments to remedy the deficiencies?

The County's commitment letter includes specific and enforceable commitments, outlined below, to address the above deficiencies for Rules 350, 351, 352, and 353.

#### 1. Rule 350 Commitments<sup>15</sup>

(a) Removing the exemptions for fuel consumed or dispensed at the facility directly to users, hazardous waste, wastewater, and ballast water, to address section II.C.1.a, above.

(b) Adding an emissions limit for organic liquid distribution facilities transferring over 600,000 gallons per 30-day period of organic liquid, based on a RACT analysis, to address II.C.1.b, above.

(c) Deleting the provision that allows Control Officer discretion for approval of hatch or seal opening, to address II.C.1.c, above.\* †

(d) Rephrasing and restructuring the requirements for organic liquid storage tanks to clarify the specified requirements without weakening any substantive requirements, to address II.C.1.d, above.\*

(e) Clarifying that the floating roof exemption will only apply when the tank is filled initially, after it is drained completely and subsequently refilled, or when undergoing maintenance requiring the roof be rested on its leg supports, to address II.C.1.e, above.\*

(f) Removing the specified exemption for external floating roof tanks, to address II.C.1.f, above.\*

(g) Deleting the specified section, and adding requirements for internal floating roof organic liquid storage tanks that match SIP-approved requirements, to address II.C.1.g, above.

(h) Limiting the conditions under which a hatch, vent valve, or vapor sealing device may be open during the organic liquid transfer from the cargo tank to the storage tank to those necessary to avoid unsafe operating conditions, to address II.C.1.h, above.\*

#### 2. Commitments for Rule 351<sup>16</sup>

(a) Adding vapor loss control requirements that will be at least as stringent as the SIP-approved version, to address II.C.2.a above.

(b) Revising Rule 351 to include an emissions limit or vapor recovery efficiency for loading at a bulk gasoline plant, based on a RACT analysis, to address II.C.2.b, above.

<sup>8</sup>Rule deficiencies throughout this section marked with an asterisk (\*) also apply to Rule 351; those marked with a dagger (†) also apply to Rule 352.

<sup>9</sup>The 0.08 lbs VOC/1000 gallons limit is included in SIP-approved Rule 351, which contains transfer requirements for organic liquid and gasoline.

<sup>10</sup>For additional Rule 351 deficiencies, please see Rule 350 deficiencies (c)–(f) and (h).

<sup>11</sup>The vapor loss control requirement is included in SIP-approved Rule 350, which contains storage requirements for organic liquid and gasoline.

<sup>12</sup>This deficiency also applies to Rule 352 and Rule 353.

<sup>13</sup>For additional Rule 352 deficiencies, please see Rule 350 deficiency (c), and Rule 351 deficiency (c).

<sup>14</sup>For an additional Rule 353 deficiency, please see Rule 351 deficiency (c).

<sup>15</sup>Rule commitments throughout this section marked with an asterisk (\*) also apply to Rule 351; those marked with a dagger (†) also apply to Rule 352.

<sup>16</sup>For additional Rule 351 commitments, please see Rule 350 commitments (c)–(f) and (h), above.

(c) Removing the exemption for aviation gasoline loading at airports, to address II.C.2.c, above.<sup>17</sup>

#### 3. Commitments for Rule 352<sup>18</sup>

(a) Removing the vapor tightness test exemption for cargo tanks with gasoline loads that originated outside of Arizona and gasoline loads delivered outside Maricopa County, to address II.C.3.a, above.

(b) Requiring that a gasoline cargo tank tested outside Maricopa County be tested and verified vapor tight using methods at least as stringent as those found in the County's rule, and that testing documentation be submitted to the MCAQD, to address II.C.3.b.

(c) Revising vapor tightness certification expiration requirements to shorten the maximum testing interval, to address II.C.3.c.

(d) Revising to clarify and limit the conditions under which a hatch, vent valve, or vapor sealing device may be open during the transfer of gasoline from the cargo tank, to address II.C.3.d.

(e) Including appropriate EPA-approved test methods to determine compliance with at least a 90% reduction in VOC emissions by weight, to address II.C.3.e.

(f) Revising the purging requirements to include a prohibition on purging that is at least as stringent as the SIP-approved version, to address II.C.3.f.

#### 4. Commitments for Rule 353<sup>19</sup>

(a) Deleting the exemption for unattended GDFs, or GDFs where there is only one owner or operator present, to address II.C.4.a.

#### E. The EPA's Recommendations To Further Improve the Submitted Rules

The TSDs for Rule 350, 351, 352, and 353 describe additional rule revisions that we recommend for the next time the County modifies the rules.

#### F. Public Comment and Proposed Action

Rules 350, 351, 352, and 353 largely fulfill the relevant CAA § 110 and part D requirements, but the deficiencies, as discussed in section C, preclude full SIP approval pursuant to 110(k)(3) of the Act. Section 110(k)(4) authorizes the EPA to conditionally approve SIP revisions based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval.<sup>20</sup> Because the MCAQD and

the ADEQ have committed to provide the EPA with a SIP submission within one year of this final action that will include specific rule revisions that would adequately address the identified deficiencies, we are proposing to conditionally approve Rules 350, 351, 352, and 353, pursuant to section 110(k)(4) of the Act. We are also proposing to conditionally approve MCAQD's RACT demonstrations for the 2008 8-hr ozone NAAQS with respect to the VOC source categories covered by Rules 350, 351, 352, and 353, as specified in Table 2. If the MCAQD and the ADEQ submit the required rule revisions by the specified deadline, and the EPA approves the submission, then the identified deficiencies will be cured. However, if these proposed conditional approvals are finalized, and MCAQD, through the ADEQ, fails to submit these revisions within the required timeframe, the conditional approval would be treated as a disapproval for those rules for which the revisions are not submitted (and the associated RACT SIP CTG source categories). We will accept comments from the public on this proposal until October 23, 2019. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

### III. Incorporation by Reference

In this rule, 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 the MCAQD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

#### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

#### B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because actions such as SIP approvals are exempted under Executive Order 12866.

#### C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because the proposed conditional approvals, if finalized, will not in-and-of themselves create any new information collection burdens, but will simply conditionally approve certain State requirements for inclusion in the SIP.

#### D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. These proposed conditional approvals, if finalized, will not in-and-of themselves create any new requirements but will simply conditionally approve certain State requirements for inclusion in the SIP.

#### E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action proposes to conditionally approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

#### G. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revisions that the EPA is proposing to conditionally approve would not 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, and will not impose substantial direct costs on tribal

<sup>17</sup> This commitment also applies to Rule 352 and Rule 353.

<sup>18</sup> For additional Rule 352 commitments, please see Rule 350 commitment (c), and Rule 351 commitment (c).

<sup>19</sup> For an additional Rule 353 commitment, please see Rule 351 commitment (c).

<sup>20</sup> 42 U.S.C. 7410(k)(4).

governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because the proposed conditional approvals, if finalized, will not in-and-of themselves create any new regulations, but will simply

conditionally approve certain State requirements for inclusion in the SIP.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

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

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

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

Dated: September 6, 2019.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

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