TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS—Continued

State citation	Title/subject	Date adopted by State	Date approved by EPA	**Federal Register** citation	52.1020
*	*	*	*	*	*
153	Mobile Equipment Repair and Refinishing.	2/5/04	5/26/05	[Insert *FR* citation from published date] ..	(c)(54).
*	*	*	*	*	*

Note.—1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. 05–10481 Filed 5–25–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–140–128; FRL–7912–3]

Revisions to the Arizona State Implementation Plan, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Maricopa County portion of the Arizona State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on March 23, 2005 and concern volatile organic compound (VOC) emissions from expandable polystyrene foam operations. We are approving local Rule 358—Polystyrene Foam Operations. This rule regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on June 27, 2005.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revisions by appointment at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901;

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

Arizona Department of Environmental Quality, Air Quality Division, 1100 West Washington Street, Phoenix, AZ, 85007; and,

Maricopa County, Air Quality Department, 1001 North Central Avenue, Phoenix, AZ, 85004–1942.

A copy of the rule may also be available via the Internet at *http://www.maricopa.gov/AQ/Rules.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On March 23, 2005 (70 FR 14616), EPA proposed to approve the following rule into the Arizona SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
Maricopa County	358	Polystyrene Foam Operations	04/20/05	04/25/05

We proposed to approve Rule 358 because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on this rule and our evaluation.

On May 2, 2005, we found this rule submittal met the completeness criteria in 40 CFR part 51, appendix V. On February 22, 2005, the Arizona Department of Environmental Quality (ADEQ) requested EPA to parallel process our review of Rule 358 concurrently with Maricopa County's rule adoption process. We agreed to parallel process Rule 358 using our authority under 40 CFR part 51, appendix V and, for the purposes of our March 23, 2005 proposal, we made a completeness finding on the February 22, 2005 submittal according to the criteria at 40 CFR part 51, appendix V, 2.3.1. Our May 2, 2005 completeness finding applies to the April 25, 2005 submittal that is the subject of this rulemaking.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following party.

1. Seth v.d.H. Cooley, Duane Morris, LLP representing WinCup Holdings, Inc. (WinCup); letter dated April 22, 2005 and received via electronic mail April 22, 2005. The comments and our responses are summarized below.

Comment #1: The emission limit in Rule 358, Section 303, 3.2 pounds of VOC per 100 pounds of polystyrene beads processed, (Section 303 limit) has no technical basis. There is no connection between Maricopa County Air Quality Division's (MCAQD) RACT Analysis and the Section 303 limit.

Response #1: In their RACT Analysis ,[1] MCAQD reviewed the expandable polystyrene industry, a wide variety of possible emission control options, and emission limits and controls adopted in other jurisdictions. Their RACT analysis outlined a compliance strategy of installing specific control equipment and process modifications, such as a regenerative thermal oxidizer, use of a total enclosure for capturing prepuff polystyrene aging emissions, and different prepuff polystyrene aging regimes, that could be used at the WinCup facility to meet the Section 303 emission limit. MCAQD calculated a specific emission reduction due to WinCup's use of the compliance

[1] ''RACT Analysis for Rule 358 Polystyrene Foam Operations,'' Planning & Analysis Section, Maricopa County Air Quality Department, Phoenix, AZ April 21, 2005.

strategy, 37.3 tons per year.[2] Then, MCAQD calculated the cost effectiveness of these emission controls at $5,414 per ton of VOC reduced.[3]

MCAQD developed the Section 303 compliance strategy after reviewing provisions adopted in other states and localities (see Chapter 5.2) and how cupmakers met similar and more stringent emission limits in the Bay Area Air Quality Management District (BAAQMD Rule 8–52, 2.8 pounds of VOC per 100 pounds of beads processed, for our discussion, the ''Rule 8–52 limit'') and South Coast Air Quality Management District (SCAQMD Rule 1175, 2.4 pounds of VOC per 100 pounds of beads processed, for our discussion the ''Rule 1175 limit''). Specifically, Chapter 10 of the RACT analysis describes how MCAQD established the Section 303 standard by adding 0.4 pounds VOC to BAAQMD's 2.8 pound VOC limit. MCAQD added the 0.4 pounds VOC to account for residual VOC in finished products that are not stored at the WinCup Corte Madera manufacturing facility. WinCup supplied this information used to estimate residual VOC content in their finished products.[4]

Finally, in the appendices to the RACT analysis, MCAQD supplied the information needed to review the 2001 pre-rule implementation VOC emissions baseline case, the post-rule implementation estimated VOC emissions, the resulting VOC emission reductions, and rule implementation costs. These appendices show the different VOC capture and destruction percentages that result from implementing the MCAQD's control strategy and that ultimately allow a cupmaker to meet the Section 303 standard. MCAQD's calculations use the Section 303 limit as an end point for estimating emission reductions under the rule and the Section 303 limit can be mathematically derived from the information provided in the RACT Analysis and appendices.

As MCAQD points out,[5] they did not specify precise WinCup production inputs, exact emission rates related to WinCup's specific production processes or manufacturing practices, or discuss production figures or emission rates for specific WinCup product lines because WinCup labeled this information confidential. Furthermore, MCAQD could not present information in such a way as to allow a reader to derive the information which WinCup claimed as confidential. Had WinCup allowed MCAQD to be more forthcoming with this information labeled as confidential, the RACT Analysis and its appendices could have demonstrated more clearly the existing link between the Section 303 emission limit and the VOC emissions and compliance estimates used in the RACT Analysis.

Contrary to the comment, MCAQD provides three independent rationales supporting the section 303 limit. First, similar and more stringent limits are in effect in other areas. Second, by using a reasonably available and similar control strategy employed by cupmakers to meet these similar and more stringent limits, it is technically feasible to meet the Section 303 limit. Third, the cost of compliance with the Section 303 limit is reasonable. In contrast, WinCup provided no evidence that compliance with the Section 303 limit is unreasonable for Maricopa County facilities.

Comment #2: The Section 303 limit is derived from the BAAQMD Rule 8–52 emission limit. As determined by BAAQMD, the Rule 8–52 limit is a Best Available Retrofit Control Technology (BARCT) standard. Under California regulation, BARCT limits are more stringent than RACT limits for the same source. Because the Rule 8–52 limit is defined as BARCT, the Section 303 limit cannot represent RACT.

Response #2: As discussed in Response #1, the Rule 8–52 limit was not the only basis for the Section 303 limit. However, even if MCAQD had borrowed wholly from the BAAQMD rule, nothing in Federal law precludes MCAQD from adopting in Rule 358 limits taken from other jurisdictions and submitting them to EPA. There are over a hundred state and local agencies in the United States that establish prohibitory air pollution regulations like Rule 358 for stationary sources of pollution. It is necessary and appropriate for these agencies to build on work performed by others with similar sources.

EPA has defined RACT as the, ''lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility'' (44 **Federal Register** 53762, September 17, 1979). MCAQD has the primary obligation to analyze the source category and determine what controls are applicable to their jurisdiction and sources and part of this obligation involves looking at limits applied to similar sources in other jurisdictions.

In Rule 358, MCAQD must adopt and submit to EPA limits that meet our RACT criteria. At MCAQD's discretion, they may adopt and submit to EPA limits that exceed our RACT criteria. We note that the commenter provided no evidence that compliance with the Section 303 limit is unreasonable for Maricopa County facilities given EPA's definition of RACT.

Also, we point out that BAAQMD Rule 8–52 has one set of limits intended fulfill both RACT and BARCT requirements under California law. In contrast, BAAQMD could have specified separate RACT and BARCT limits as they have done, for example, within BAAQMD Rule 9–9. However, BAAQMD did not do this in adopting Rule 8–52.

Comment #3: MCAQD has not demonstrated the technical and economic feasibility of the Section 303 limit based on the physical structures and layout of Wincup's Maricopa facility.

Response #3: It is not appropriate for state and local agencies to analyze the physical structures and layout of every potentially affected facility before adopting requirements. Instead, agencies consider typical facilities and design elements common to a class of facilities.

As we outlined in Response to Comment #1, MCAQD did consider the technical and cost feasibility of implementing the Section 303 standard. MCAQD provided three independent rationales for the section 303 limit. First, in comparison to the Section 303 limit, similar and more stringent limits are in effect in other areas such as BAAQMD and SCAQMD. Second, by using a reasonably available and similar control strategy employed by cupmakers to meet these similar or more stringent limits, it is technically feasible to meet the Section 303 limit. Third, the cost of compliance with the Section 303 limit is reasonable. In contrast, WinCup has provided no evidence that compliance with the Section 303 limit is technically or economically infeasible for their Phoenix facility.

Comment #4: Under current WinCup operating conditions, the VOC content of pre-puff polystyrene fed to cup molding machines is 3.3 to 3.9 percent. Therefore, the Section 303 limit cannot be met by installing the control equipment MCAQD assigned to the WinCup facility in the RACT Analysis without changing the facility's pre-puff polystyrene aging process. MCAQD

[2] *See* RACT Analysis at Table 12–1, Appendix A–2, Tables III & IV, and Appendix A–3).

[3] *See* RACT Analysis at Table 12–1 and Appendix A–2, Table II.

[4] *See* citations 11A, B, and C in RACT Analysis bibliography.

[5] *See* Comment and Response #5, Notice of Final Rulemaking (NFRM), Maricopa County Air Pollution Control Regulations, Rule 358—Polystyrene Foam Operations, Preamble, Response to Comments.

failed to consider and analyze how WinCup might be able to change its pre-puff aging processes without affecting product quality. This failure constitutes an arbitrary and capricious action.

Response #4: MCAQD reviewed the current operating conditions at WinCup and other expandable polystyrene molding operations. They found that block makers were able to maintain product quality while modernizing their manufacturing equipment, using a lower VOC bead content, and installing more efficient VOC capture and control equipment. [6] MCAQD questioned cupmaker Dart Container Corporation on how it meets SCAQMD's more stringent Rule 1175 limit while making similar high density products that WinCup cites as problematic in implementing the Section 303 limit, and MCAQD learned that product quality did not suffer due to an emission reduction strategy that included a pre-puff polystyrene aging regime. [7] MCAQD has information from WinCup showing that they already mold 4.5 pound per cubic foot density product from 3.0% VOC pre-puff. If WinCup installs a 90% efficient emission control system and ages the pre-puff to 2.9% VOC, it would meet the 3.2 pound VOC limit. [8] We cite this evidence presented by MCAQD to show that they have performed an analysis and have reason to believe that the Section 303 limit has been and can be met as described in the RACT Analysis, through aging pre-puff polystyrene adequately and capture and control of these and other VOC emissions prior to molding.

Also, MCAQD points out that the form of Section 303 limit does not preclude WinCup from implementing VOC emission controls on molding or storage emissions. [9] WinCup has presented data to MCAQD showing that specific products lines have molding losses of 0.8 pounds of VOC and storage losses of 1.0 pound VOC per 100 pound beads processed. MCAQD determined that these emission rates and the product's production volumes are high enough to make capture and control of either of these VOC emission points cost-effective.[10] Consequently, WinCup has considerable flexibility in how it may choose to comply with the Section 303 limit.

Lastly, we do not believe MCAQD must specify exactly how WinCup will meet the Section 303 limit in every conceivable circumstance for every single product line without modification of WinCup's current operating conditions before MCAQD can adopt and apply the Section 303 limit to WinCup's operations. MCAQD need only perform an analysis sufficient to demonstrate that the Section 303 limit is consistent with our definition of RACT; that the Section 303 limit is reasonably available, both on a technical and economic basis.

Comment #5: In EPA's proposed rulemaking action on Rule 358, EPA found complete the February 22, 2005 SIP revision submitted to EPA by ADEQ using the criteria at 40 CFR part 51, appendix V, 2.3.1 (The Completeness Criteria). Under the Completeness Criteria, a SIP submittal must contain a fully justified basis. ADEQ's February 22, 2005 SIP submittal is deficient because it does not support a RACT standard for expandable polystyrene cup-makers. As a result, EPA must disapprove this SIP revision pursuant to 40 CFR part 51, appendix V.

Response #5: The comment confuses EPA's completeness finding with EPA's subsequent qualitative review and proposed action. The Completeness Criteria provide a list of materials that a SIP revision should contain when submitted to EPA for review. For a few items on the list, a state is allowed discretion in determining the appropriateness of the criterion to the submittal; however, EPA may contradict the state's decision in our completeness finding. EPA's March 23, 2005 completeness finding states that Arizona submitted the material EPA needed to review and take an action on the SIP revision. EPA is neither required by 40 CFR part 51, appendix V, nor did we use it to review the technical and legal sufficiency of Rule 358. It is after our completeness finding that we determine whether or not the SIP submittal complies with the relevant federal requirements discussed in our TSD, proposal, and outlined in Response #1.

Comment #6: EPA is required to review and approve the technical support submitted with the SIP revision. Among other items, the technical support must include quantification of emission changes as a result of the proposed SIP revision, evidence that emission limitations are based on continuous emission reduction technology, and any modeling required to support the revision (see 40 CFR part 51, appendix V, 2.2 (c),(e), and (h)). Otherwise, the Section 303 limit is an unsupported numerical standard and EPA's action to approve this SIP submittal is arbitrary and capricious.

Response #6: The comment cites the three completeness criteria listed above as the basis for the deficiency described in Comment #5. Beyond that, the comment does not claim that these three completeness elements were missing. Nonetheless, in our March 23, 2005 completeness finding, we found that Arizona and MCAQD submitted all the required elements needed for EPA to review the February 22, 2005 SIP Revision. In particular, we found that Arizona quantified emission changes as a result of the proposed SIP revision; we found evidence that the emission limitations are based on a continuous emission reduction technology; and, we found that Arizona provided modeling sufficient to support the revision.[11] In the case of modeling, no ambient aerometric modeling or specific aerometric models were required for this rulemaking so the majority of the elements described within the criterion are not relevant. MCAQD estimated VOC emissions prior to and after rule implementation according to a specified control strategy. This simple modeling was all we required.

We point out that our March 23, 2005 completeness finding supported our proposed action on Arizona's February 22, 2005 parallel processing request and SIP revision. MCAQD adopted Rule 358 on April 20, 2005 after a lengthly public comment period and Arizona submitted a new SIP revision to complete their parallel processing request on April 25, 2005. Our May 2, 2005 completeness finding and today's final action concern this April 25, 2005 SIP submittal. In this submittal, we note that Arizona and MCAQD may submit additional information in support of their SIP revision as a result of their public review and comment period.

III. EPA Action

No comments were submitted that change our assessment that Rule 358 complies with the relevant CAA

[6] *See* Comment and Response #24, NFRM, Maricopa County Air Pollution Control Regulations Rule 358—Polystyrene Foam Operations, Preamble, Response to Comments.

[7] *See* Comment and Response #1 and 24, NFRM, Maricopa County Air Pollution Control Regulations Rule 358—Polystyrene Foam Operations, Preamble, Response to Comments.

[8] *See* Comment and Response #24, NFRM, Maricopa County Air Pollution Control Regulations Rule 358—Polystyrene Foam Operations, Preamble, Response to Comments.

[9] *See* Comment and Response #20, NFRM, Maricopa County Air Pollution Control Regulations Rule 358—Polystyrene Foam Operations, Preamble, Response to Comments.

[10] Again, MCAQD is restricted from presenting the specific product and production volumes due to confidentiality strictures applied by WinCup to their data.

[11] These three elements of the SIP submittal can be found in the February 11, 2005 Arizona Administrative Register Notice of Proposed Rulemaking and the RACT Analysis, draft January 28, 2005 at pages 42–44 and appendices A–2 and A–3.

requirements. Also, because our proposed action was based on a parallel processing submittal, Maricopa County's April 20, 2005 adopted version and subsequent submittal of Rule 358 must be similar in meaning and content to the February 11, 2005 version of the rule published in the Arizona Administrative Register submitted for parallel processing. There are no substantial and meaningful differences between the two submitted versions of Rule 358. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving Rule 358 into the Arizona SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 July 25, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 5, 2005.

Laura Yoshii,

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 paragraph (c)(122) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(122) A plan revision was submitted on April 25, 2005 by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 358 adopted on April 20, 2005.

[FR Doc. 05–10491 Filed 5–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2005–ME–0002; A–1–FRL–7915–1]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Smaller-Scale Electric Generating Resources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce emissions of nitrogen oxides (NO_X), sulfur dioxide (SO_2), particulate matter (PM), and carbon monoxide (CO) from smaller-scale electric generating units. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action