

**MARICOPA COUNTY
AIR POLLUTION CONTROL REGULATIONS
REGULATION II – PERMITS AND FEES**

**RULE 240
FEDERAL MAJOR NEW SOURCE REVIEW (NSR)**

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**MARICOPA COUNTY
AIR POLLUTION CONTROL REGULATIONS
REGULATION II – PERMITS AND FEES**

**RULE 240
FEDERAL MAJOR NEW SOURCE REVIEW (NSR)**

SECTION 100 – GENERAL

- 101 PURPOSE:** To implement the federal new source review requirements, including nonattainment area new source review requirements of sections 172(c)(5) and 173 of the Clean Air Act for any area designated nonattainment for any national ambient air quality standard under 40 CFR 81.303 and attainment area prevention of significant deterioration requirements of section 165 of the Clean Air Act for any area designated attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Clean Air Act. This is a preconstruction review and permitting program applicable to new or modified major stationary sources in areas designated nonattainment, attainment or unclassifiable.
- 102 APPLICABILITY:** The provisions of this rule apply to any new major stationary source or major modification to an existing major stationary source of regulated NSR pollutants.
- 103 INCORPORATION BY REFERENCE:** Except as otherwise provided in this rule, the CFR sections adopted as of July 1, 2019, as cited in this rule, are incorporated by reference into this rule and made part of the Maricopa County Air Pollution Control Regulations. This incorporation by reference includes no future editions or amendments.

SECTION 200 – DEFINITIONS: In the event of any inconsistency between any of the Maricopa County Air Pollution Control Regulations, the definitions in this rule take precedence. See Rule 100 (General Provisions and Definitions) of these rules for definitions of terms that are used but not defined in this rule.

- 201** The definitions contained in 40 CFR 51.100 and 40 CFR 51.103 are applicable to all portions of this rule.
- 202** The definitions contained in 40 CFR 51.165(a)(1) are applicable to Section 304 of this rule.
- 202.1** The following incorporated definitions in 40 CFR 51.165(a)(1) are revised as follows:
- a.** In the definition of “net emissions increase”, the term “reasonable period” shall be replaced with “Between the dates five years before a complete application for a permit or permit revision authorizing the particular change is submitted or actual construction of the particular change begins, whichever occurs earlier, and the date that the increase from the particular change occurs.”
 - b.** The definition of the term “projected actual emissions” as defined in 40 CFR 51.165(a)(1)(xxviii) (B)(1) shall be revised to include “Maricopa County” and read

as "...the company's filings with Maricopa County, the State or Federal regulatory authorities..."

c. The term "reviewing authority" shall be replaced with "Control Officer".

202.2 The following definitions of 40 CFR 51.165(a)(1) are excluded: (xliii), (xliv), (xlv), and (xlvi).

203 The definitions contained in 40 CFR 52.21(b) are applicable to Section 305 of this rule.

203.1 The following incorporated definitions in 40 CFR 52.21(b) are revised as follows:

a. In the definition of "net emissions increase", paragraph 40 CFR 52.21(b)(3)(ii)(a) shall read as "The date five years before a complete application for a permit or permit revision authorizing the particular change is submitted or actual construction of the particular change begins, whichever occurs earlier; and".

204 The definitions of the terms "major source" and "major modification" as used throughout this rule have the meanings as defined in 40 CFR 51.165(a)(1) when referring to nonattainment pollutants and as defined in 40 CFR 52.21(b) for all other pollutants.

SECTION 300 – STANDARDS

301 PERMIT OR PERMIT REVISION REQUIRED: No person shall begin actual construction of a new major source or a major modification subject to the requirements of this rule without first obtaining a proposed final permit from the Control Officer.

302 APPLICATION COMPLETENESS: An application for a permit or a permit revision under this rule, other than a PAL permit issued pursuant to Sections 304 and/or 305 of this rule, shall not be considered complete unless the applicant demonstrates that:

302.1 The impact analyses requirements in Section 304.16 and Section 305 of this rule are met and demonstrate that the new major source or major modification will not interfere with the attainment or maintenance of any applicable NAAQS.

302.2 The proposed major source or major modification of a major source will comply with any applicable new source performance standards (NSPS) in 40 CFR Part 60.

302.3 The new major source or major modification will not have an adverse impact on visibility in any Federal Class I area or mandatory Class I Federal area, as determined by Sections 304 and/or 305 of this rule and the applicant will satisfy all the applicable visibility requirements contained in Sections 304 and/or 305 of this rule. If required by Sections 304 or 305 of this rule, a demonstration of the impact on visibility shall be made according to the requirements of 40 CFR 51.307(a), 40 CFR 52.21(o), and (p)(1) through (p)(4) as incorporated by reference and shall be included with the application.

302.4 All applicable requirements of the SIP will be met, including but not limited to the requirements contained in Rule 200 (Permit Requirements), Rule 210 (Title V Permit Provisions), Rule 240 (Federal Major New Source Review (NSR)), Rule 241 (Minor New Source Review (NSR)), Rule 245 (Continuous Source Emission Monitoring), and Rule 270 (Performance Tests) of these rules.

- 302.5 The new major source or major modification will be in compliance with whatever emission limitation, design, equipment, work practice or operational standard, or combination thereof is applicable to the source or modification to satisfy BACT or LAER as applicable.
- 302.6 The new major source or major modification will the applicable standards for hazardous air pollutants contained in Section 112 of the Clean Air Act.
- 302.7 The new major source or major modification will comply with all applicable requirements of Regulation III-Control of Air Contaminants of these rules.

303 ACTION ON APPLICATION AND NOTIFICATION REQUIREMENTS: Unless the specific requirement has already been satisfied under Rule 210 of these rules, the Control Officer shall comply with the following requirements:

303.1 Within 60 days after receipt of an application for a permit or a permit revision subject to this rule, or of any addition to such application, the Control Officer shall advise the applicant of any deficiency in the application. The date of receipt of the application shall be, for the purpose of this rule, the date on which the Control Officer received all required information and deemed the application complete. The permit application shall not be deemed complete solely because the Control Officer failed to meet the requirements of this section.

303.2 Permit Issuance: Prior to issuing a permit or permit revision pursuant to this rule, the Control Officer shall:

- a. Make a preliminary determination whether the permit or permit revision should be approved with conditions or disapproved.
- b. Make available in at least one location, including the closest Department office, a copy of all materials the applicant submitted, a copy of the preliminary determination, a copy of the proposed permit and a copy or summary of other materials, if any, considered in making the preliminary determination. Permits or permit revisions subject to the provisions in Section 305 of this rule, shall also make available the degree of increment consumption that is expected from the source or modification.
- c. Notify the public of the application, the preliminary determination and the opportunity for a public hearing and to submit written comments in accordance with the public participation requirements in Rule 210 of these rules. In case of an application subject to Section 305 of this rule, the notice shall include the degree of consumption of the maximum allowable increases allowed under limitation of pollutants in classified attainment and unclassified areas that is expected to occur as a result of emissions from the proposed source or modification.
- d. Send a copy of the notice requesting public comment to the permit applicant, the Administrator, and the following officials and agencies having cognizance of the location where the proposed major source or major modification would occur:
 - (1) The Board of Supervisors for the county wherein the proposed or existing source that is the subject of the permit or permit revision application is located;

- (2) The city or town managers of the city or town which contains, and any city or town the boundaries of which are within five miles of the location of the proposed or existing source that is the subject of the permit or permit revision application;
 - (3) Any regional land use planning agency with authority for land use planning in the area where the proposed or existing source that is the subject of the permit or permit revision application is located; and
 - (4) Any State, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the proposed source or modification.
- e. Consult with the Federal Land Manager on a proposed major stationary source or major modification that may impact visibility in any Class I Area, in accordance with 40 CFR 51.307, as incorporated by reference.
 - f. Provide opportunity for a public hearing for persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations, if in the Control Officer's judgment such a hearing is warranted. The Control Officer shall give notice of any public hearing at least 30 days in advance of the hearing.
 - g. Consider all written comments that were submitted within the 30 day public comment period and all comments received at any public hearing in making a final determination on the approvability of the application and make all comments available, including the Control Officer's response to the comments, for public inspection in the same location where the Control Officer made available preconstruction information relating to the proposed source or modification.
 - h. Make a final determination whether the permit or permit revision should be approved with conditions or denied within one year of the proper filing of the complete application. The Control Officer shall notify the applicant in writing of his approval or of his denial.
- 303.3** The authority to construct and operate a new major source or major modification under a permit or permit revision issued under this rule shall terminate if the owner or operator does not commence the proposed construction within 18 months of issuance, or if during the construction, the owner or operator suspends work for more than 18 months. The Control Officer may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.
- 303.4** Within 30 days of the issuance of any permit under this rule, the Control Officer shall submit control technology information from the permit to the Administrator for the purposes listed in Section 173(d) of the Clean Air Act.
- 303.5** Prior to issuance of a preliminary decision to issue a permit or permit revision for a new major stationary source or major modification, the Control Officer shall make each of the following determinations:

- a. That the new or modified source will not violate applicable SIP requirements.
- b. That the new or modified source will not interfere with the attainment or maintenance of any applicable NAAQS.
- c. For applications subject to Section 305, that the new or modified source will not cause or contribute to a violation of a prevention of significant deterioration (PSD) increment identified in Section 305 of this rule.
- d. That the new or modified source has met the BACT or LAER control technology requirements as applicable in Sections 304 and/or 305 of this rule.

304 PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES OR MAJOR MODIFICATIONS LOCATED IN NONATTAINMENT AREAS: The provisions of this section apply to new major stationary sources and major modifications to existing major stationary sources located in areas designated as nonattainment in 40 CFR 81.303 and which would be major for the nonattainment regulated NSR pollutant. Such sources are subject to nonattainment new source review.

304.1 Emission Calculation Requirements to Determine NSR Applicability: Except for an application for a PAL permit subject to Section 304.8 of this rule, the provisions contained in 40 CFR 51.165(a)(2)(ii)(A) through (F) shall be used to determine if a proposed project will result in a new major stationary source or a major modification to an existing stationary source. These provisions shall not be used to determine the quantity of offsets required for a project subject to the requirements of Section 304 of this rule.

304.2 Emission Offsets: Increased emissions, calculated pursuant to Section 304.4(d) of this rule, from a major source or major modification subject to Section 304 of this rule shall be offset by reductions in the emissions of each pollutant for which the area has been designated as nonattainment and for which the proposed project will result in a new major stationary source or a major modification for that nonattainment pollutant. Unless an offset ratio is provided for the applicable nonattainment pollutant in Section 304.5 of this rule, the offset ratio of total actual emissions reductions to emission increases shall be at least 1 to 1.

304.3 Baseline for Determining Credit for Offsets: The baseline for determining credit for emissions reductions shall be the actual emissions of the source from which offset credit is obtained.

304.4 Offset and Emission Reduction Requirements:

- a. All emission reductions claimed as offset credit shall meet the provisions contained in 40 CFR 51.165(a)(3)(ii)(A) through (D) and 40 CFR 51.165(a)(3)(ii)(G).
- b. All emission reductions claimed as offset credits shall be federally enforceable by the time a permit is issued to the owner or operator of the major source subject to this rule and shall be in effect by the time the new or modified source subject to the permit commences operations.
- c. Location of offsetting emissions: The applicant of a major source or major modification subject to this rule must obtain offset credits from the same source

or from other sources in the same nonattainment area, except that the Control Officer may allow the applicant to obtain offset credits from another nonattainment area if the provisions contained in 40 CFR Part 51 Appendix S (IV)(D) are satisfied.

- d. The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset under this rule shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.
- e. Interpollutant offsetting:
 - (1) For the purposes of satisfying the offset requirements, the provisions contained in 40 CFR Part 51, Appendix S (IV)(G)(5) apply. The Control Officer may approve interpollutant emission offsets for precursor pollutants on a case by case basis, except for PM₁₀ and PM_{2.5}, which are subject to Sections 304.4(e)(2) and 304.5(e)(2) of this rule. In such cases, the Control Officer shall impose, based on an air quality analysis, emission offset ratios in addition to the requirements of Sections 304.2 and 304.5 of this rule. Interpollutant emission offsets used at a major stationary source must receive written approval by the Administrator.
 - (2) Interpollutant offsets between PM₁₀ and PM₁₀ precursors are not allowed.
 - (3) PM₁₀ emissions shall not be allowed to offset Nitrogen Oxides or Volatile Organic Compound (VOC) emissions in ozone nonattainment areas.
 - (4) In no case shall the compounds excluded from the definition of VOC be used as offsets for VOC.
 - (5) Interpollutant offsets between PM_{2.5} and PM_{2.5} precursors are not allowed unless modeling has been used to demonstrate appropriate PM_{2.5} interpollutant offset ratios as approved in a PM_{2.5} Attainment Plan.

304.5 Offset Ratios for Ozone Nonattainment Areas: In meeting the emissions offset requirements of Section 304.2 of this rule for ozone nonattainment areas, the offset ratio of total actual emissions reductions of VOC or nitrogen oxides to the emissions increase of VOC or nitrogen oxides shall be as follows:

- a. In any marginal nonattainment area for ozone – at least 1.1 to 1;
- b. In any moderate nonattainment area for ozone – at least 1.15 to 1; or
- c. In any serious, severe, or extreme nonattainment area for ozone the applicable ratio as provided in 40 CFR 51.165(a)(9)(ii)(C) through (E) and 40 CFR 51.165(a)(9)(iii).

304.6 Source Obligations:

- a. The issuance of a permit or permit revision under this rule in accordance with this section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, State, or Federal law.

- b. At such time that a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.
- c. Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this rule, any changes to the application as required by the Control Officer, or with the terms of its permit, shall be subject to enforcement action.

304.7 Non-Major Modifications that Result in Reasonable Possibility of Significant Emissions Increase: The provisions of this section shall apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source, other than at a source with a PAL, in circumstances where there is a reasonable possibility, within the meaning of 40 CFR 51.165(a)(6)(vi), that a project that is not part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in the definition of projected actual emissions in 40 CFR 51.165(a)(1)(xxviii)(B)(1) through (3) for calculating projected actual emissions. The owner or operator shall meet the following requirements:

- a. Comply with the procedures in 40 CFR 51.165(a)(6)(i) through (vi).
- b. Make the information required to be documented and maintained pursuant to this section available for review upon a request for inspection by the Control Officer or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

304.8 Plantwide Applicability Limits (PAL) Permit:

- a. The Control Officer shall issue a PAL permit for any existing major stationary source according to the provisions contained in 40 CFR 51.165(f)(1) through (15).
- b. The term “PAL” shall mean “actuals PAL” as used in Section 304.8 of this rule.

304.9 Permit Issuance: Except as provided in Section 304.11 through Section 304.14 of this rule, the Control Officer shall not issue any permit or permit revision under this rule to an applicant proposing to construct a new major source or proposing to make a major modification for the pollutant for which the area is designated nonattainment unless:

- a. The Control Officer has determined that the new major source or the major modification will meet an emission limitation which is the lowest achievable emission rate (LAER) for that source for that regulated NSR pollutant.
- b. The Control Officer has determined that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with such person) in the State are in compliance with, or are on a schedule of compliance for, all conditions contained in permits for each of the

sources and all other applicable emission limitations and standards under the Act and in this rule.

- c. The Control Officer has determined that emission reductions for the specific pollutant(s) from the new major source or major modification meet the offset requirements of Sections 304.2 through 304.5 of this rule.
- d. The Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area.

304.10 No permit or permit revision under this rule shall be issued for a new major source or major modification to a major source located in a nonattainment area unless:

- a. The applicant performs an analysis of alternative sites, sizes, production processes and environmental control techniques for such new major source or major modification; and
- b. The Control Officer determines that the analysis demonstrates that the benefits of the new major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

304.11 Secondary emissions shall not be considered in determining the potential to emit of a new source or modification and therefore whether the new source or modification is major. However, if a new source or modification is subject to this rule on the basis of its direct emissions, a permit or a permit revision shall be denied, unless the requirements in Sections 304.9(a) and (b) of this rule are met, for reasonably quantifiable secondary emissions caused by the new source or modification.

304.12 Fugitive emissions shall not be considered in determining the potential to emit of a new source or modification that would be a major stationary source or a major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential emissions of the new source or modification, if the source does not belong to a source category listed in 40 CFR 51.165(a)(1)(iv)(c)(1) through (27).

304.13 The requirements of Sections 304.4 and 304.9(c) of this rule shall not apply to temporary emissions units, such as pilot plants or portable facilities that will be relocated outside of the nonattainment area, and the construction phase of a new source, if those units will operate for no more than 12 months in the nonattainment area, are otherwise in compliance with the requirement to obtain a permit under this rule, and are in compliance with the conditions of their permit.

304.14 A decrease in actual emissions shall be considered in determining the net emission increase of a new source or modification only to the extent that the Control Officer has not relied on it in issuing any permit or permit revision under these rules (including the issuance of any ERC (Emission Reduction Certificate), or the State has not relied on it in demonstrating attainment or reasonable further progress (RFP).

304.15 Ambient Air Quality Standards Impact Analysis: The Control Officer may require the use of an air quality model to estimate the effects of a new or modified stationary source. The analysis shall estimate the effects of the new or modified stationary source, and verify that the new or modified stationary source will not prevent or

interfere with the attainment or maintenance of any ambient air quality standard. In making this determination the Control Officer shall take into account the mitigation of emissions through offsets pursuant to this rule and the impacts of transported pollutants on downwind pollutant concentrations. The Control Officer may impose, based on an air quality analysis, offset ratios greater than the requirements of Sections 304.2 and 304.5 of this rule.

304.16 All estimates of ambient concentrations required pursuant to this rule shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51, Appendix W (Guideline on Air Quality Models) as of July 1, 2019 (and no future amendments or additions) as incorporated by reference and consistent with the provisions in Rule 200 (Permit Requirements), Section 407 of these rules.

304.17 The applicant of a proposed new major source or major modification that may affect visibility of a Class I area shall provide the Control Officer with an analysis of impairment to visibility that would occur as a result of the source or modification as required by 40 CFR 51.307(b)(2) and in accordance with 40 CFR 51.166(o).

305 PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES OR MAJOR MODIFICATIONS LOCATED IN ATTAINMENT OR UNCLASSIFIABLE

AREAS: The provisions of this section apply to new major stationary sources and major modifications to existing major stationary sources located in areas designated as attainment or in areas that are unclassifiable for any NAAQS . Such sources are subject to the federal prevention of significant deterioration (PSD) program. The intent of Section 305 of this rule is to implement the federal prevention of significant deterioration (PSD) program by incorporating the program requirements into this rule by reference.

305.1 Incorporation by Reference Revisions: The provisions of 40 CFR 52.21, which are incorporated by reference pursuant to Section 103 of this rule, are revised as follows:

- a. Paragraphs (a)(1), (b)(55-58), (f), (g), (p)(6-8), (q), (s), (t), (u), (v), (x), (y), (z), and (cc) are excluded from the incorporation of 40 CFR 52.21.
- b. The term “administrator” shall read as follows:
 - (1) “EPA Administrator” in 40 CFR 52.21 (b)(3), (b)(17), (b)(37)(i), (b)(43), (b)(48)(ii)(c), (b)(49), (b)(50)(i), (b)(51), (l)(2) and (p)(2); and
 - (2) “Control Officer” elsewhere, as defined in Rule 100 of these rules.
- c. The phrase “paragraph (q) of this section” in 40 CFR 52.21(l)(2) and (p)(1) shall read as follows: the public participation provisions of Rule 210 of these rules.
- d. The definition of the term “Subject to regulation” as defined in 40 CFR 52.21(b)(49) shall read as follows: “Subject to regulation means, for any air pollutant, excluding greenhouse gases (GHGs), that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity.”

- e. In the definition of “net emissions increase”, paragraph 40 CFR 52.21(b)(3)(ii)(a) shall read as “The date five years before a complete application for a permit or permit revision authorizing the particular change is submitted or actual construction of the particular change begins, whichever occurs earlier; and”.

305.2 Notification Requirements: The Control Officer shall provide written notice of any permit application for a proposed major stationary source or major modification to the Administrator. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct.

305.3 Permit Issuance: The Control Officer shall not issue any permit or permit revision under this rule to an applicant proposing to construct a new major source or proposing to make a major modification for the pollutant for which the area is designated attainment or unclassifiable for any NAAQS, unless:

- a. The Control Officer has determined that the proposed new major source or major modification meets all applicable requirements of 40 CFR 52.21.
- b. The applicant performs an air quality impact assessment (AQIA) which demonstrates that allowable emissions increases from the proposed major source or major modification, in conjunction with all other applicable emission increases or reductions, including secondary emissions, would not contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any NAAQS, or interfere with any other State’s SIP provisions to prevent significant deterioration of air quality or to protect visibility.
 - (1) A new major source or major modification shall be presumed to cause or contribute to a violation of the NAAQS when such source or modification would, at a minimum, exceed the significance levels for any nonattainment pollutant listed in 40 CFR 51.165(b)(2) at any locality that does not or would not meet the applicable NAAQS.
 - (2) A new major source or major modification subject to Section 305.3(b)(1) of this rule may reduce the impact of its emissions upon air quality by obtaining significant emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any NAAQS. In the absence of such emission reductions, the Control Officer shall deny the proposed permit or permit revision.
 - (3) The presumption provision in Section 305.3(b)(1) of this rule may be rebutted for a new major source or major modification if it can be satisfactorily demonstrated to the Control Officer that emissions with respect to a particular pollutant from the new major source or major modification will not cause or contribute to violations of the NAAQS in designated nonattainment areas under section 107 of the Clean Air Act.
 - (4) The demonstration allowed by Section 305.3(b)(1) of this rule may include a showing that topographical, meteorological or other physical factors in the vicinity of the new major source or major modification are such that

transport of the pollutants emitted from the source are not expected to contribute to violations of a NAAQS in the adjacent nonattainment areas.

SECTION 400 – ADMINISTRATIVE REQUIREMENTS (NOT APPLICABLE)

SECTION 500 – MONITORING AND RECORDS (NOT APPLICABLE)