

COUNTY NOTICES PURSUANT TO A.R.S. § 49-112

NOTICE OF EXPEDITED RULEMAKING

**MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS
RULE 204 – EMISSION REDUCTION CREDITS FOR USE WITH THE
ARIZONA EMISSIONS BANK
RULE 210 – TITLE V PERMIT PROVISIONS
RULE 220 – NON-TITLE V PERMIT PROVISIONS
RULE 240 – PERMITS FOR NEW MAJOR SOURCES AND MAJOR
MODIFICATIONS TO EXISTING MAJOR SOURCES**

PREAMBLE

- 1. Sections Affected**

Rule 204 All Sections	<u>Rulemaking Action</u>
Rule 210 § 400	New Rule
Rule 220 § 400	Amend
Rule 240 § 300	Amend
- 2. Statutory authority for the rulemaking:**

Authorizing statutes: Arizona Revised Statutes, Title 49, Chapter 3, Article 3, §§ 49-471.08, 49-479, and 49-480
Implementing statute: Arizona Revised Statutes, Title 49, Chapter 3, Article 1, § 49-410
- 3. List of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening (Rules 210, 220, 240): 8 A.A.R. 2403, May 31, 2002
Notice of Informal Public Meeting on Open Rulemaking Docket (Rules 210, 220, 240): 8 A.A.R. 2404, May 31, 2002
Notice of Rulemaking Docket Opening (Rule 204): 8 A.A.R. 4618, November 1, 2002
- 4. Name and address of department personnel with whom persons may communicate regarding the rulemaking:**

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- 5. Explanation of the rule, including the department's reason for initiating the rulemaking:**

Summary: Rule 204 has been created, and Rules 210, 220, and 240 are being amended in order for the Arizona Department of Environmental Quality (ADEQ) to administer its emissions bank. The emissions bank was authorized under Arizona Revised Statutes, Title 49, Chapter 3, Article 1, Section 410 (A.R.S. § 49-410) and implemented by the ADEQ under Arizona Administrative Code, Title 18, Chapter 2, Article 12 (R18-2-1201 et seq.) Pursuant to A.R.S. § 41-1081, the ADEQ entered into a delegation agreement with the Maricopa County Environmental Services Department (MCESD) providing that the MCESD will take over two elements of the emissions bank program in Maricopa County. First, the county will certify emissions credits arising within Maricopa County and revise permits for sources that reduce emissions and seek certification for those reductions. Additionally, the MCESD will issue permits to eligible sources wishing to use emission reduction credits in Maricopa County.

Statutory Authority: A.R.S. § 49-410 directs the ADEQ to establish and administer an Arizona emissions bank. The statute provides that a permitted source that reduces emissions of specified air pollutants by an amount greater than otherwise legally required "shall be granted credit in an amount determined by the department of environmental policy." A.R.S. § 49-410(B). The statute goes on to provide that the credit "shall be deposited into the Arizona emissions bank" *id.*, though the ADEQ has interpreted the statutory language in A.R.S. § 49-410 to state that participation in the ERC banking program by any source is voluntary.

The statute sets forth conditions for the emissions reduction to be eligible for credit and deposit in the Arizona emissions bank, including that the reduction be permanent, quantifiable, and otherwise enforceable, and occur after the effective date of the statute (Aug. 17, 1999). A.R.S. § 49-410(B). The statute notes, however, that it does not prohibit a source from receiving credit by means other than the Arizona emissions bank for emission reductions that occurred before the effective date of the statute. *Id.* The statute directs the ADEQ to register, certify, or otherwise approve the amount of the credit that is banked and later used, but allows the ADEQ to delegate the certification duties to a county or multi-county air quality control region. A.R.S. § 49-410(C). The statute also sets forth conditions under which a credit may be used, traded, or sold. *Id.*

Background: The Arizona emissions bank was established to serve as a clearinghouse for emission reductions credits. The emissions bank program allows a source to reduce emissions, then generate credits for the reductions and deposit the credits in the bank. The bank then lists all of the credits it holds so that the public will have easy access to information regarding credit availability. The banking system likely will decrease costs for both reducing sources and credit buyers by eliminating the need for a consultant or broker. Additionally, the ADEQ's rule assures that the program provides an air quality benefit through the automatic 10 percent retirement of emission reduction credits at the time of deposit. While the 10 percent discount ensures some level of air quality benefit, the program allows sources to maximize opportunities for economic benefits because of a known market for credits and potential for expansion. The program also allows the purchase of credits for retirement, thereby providing for a permanent reduction of emissions within a particular area.

A.R.S. § 49-410 sets standards for the certification of emission reduction credits. Because the ADEQ has delegated the certification of credits to the county, the MCESD will follow the standards outlined in the delegation agreement and the emissions bank statute. Emission reductions of particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds are eligible for emission reduction credits if the reductions occur at a permitted source after August 17, 1999; exceed any amount greater than that required by law, rule, permit, or order; are permanent; quantifiable; and are otherwise enforceable. The emissions bank program does not provide for the banking of hazardous air pollutant (HAP) credits.

A.R.S. § 49-410 also sets standards for the use of the certified emission reduction credits. First, credits used as offsets must be for the same pollutant as the reductions. Second, the reduction must have occurred in the same nonattainment, maintenance or modeling domain area in which the emission reduction credits will be used. Furthermore there must be no adverse impact on the air quality.

Any source wishing to participate in the bank program must be permitted, which is the process to ensure the permanence, quantification, and enforceability of credit generation or credit utilization. Neither this rule nor A.R.S. § 49-410 restricts the generation or utilization of credits outside the Arizona emissions bank. If a source generates or utilizes emission reduction credits through another trading program, (for example, EPA's acid rain program) such emission reduction credits are no longer available to be traded through the Arizona emissions bank.

Traditionally the two participants in the permitting process are the source and the regulatory agency. Under the proposed rule this will not change, nor will the bank take over either of these roles. The bank is a mechanism for depositing emission reduction credits and reporting on the availability of those credits for future use. The bank is administered by the ADEQ, who will post emission reduction credit information on an electronic registry so sources can locate current credit availability. The ADEQ has the authority to establish the criteria to determine the amount of the emission credit; it does not set the market value of the credits. Any source wishing to generate an emission reduction credit for deposit in the bank must obtain a permit revision, or surrender a permit in the case of a shutdown, from the state or local agency that has permitting authority over that source.

A source wishing to utilize emission reduction credits must also obtain a permit revision or a new permit. It must be noted that the emissions bank rules do not alter the part of the permitting process whereby new sources or existing major sources involved in major modifications must also satisfy existing Clean Air Act New Source Review (NSR) or Prevention of Serious Deterioration (PSD) requirements. Because of this, the MCESD will reevaluate credits at the time of their withdrawal to determine how and when the credits may be used. The ADEQ emissions bank rule clarifies that nothing in the emissions bank rule has any effect on the life of the credits in the bank. R18-2-1205(D). However, the NSR program requires credits applied as offsets for new or modifying sources in the NSR program to be "contemporaneous." "Contemporaneous" has been defined at both the federal and state level as five years.

Section by Section Explanation of Changes:

Rule 204: This new rule will establish procedures for the certification and utilization of emission reduction credits under the Arizona Emissions Bank.

- Rule 210 § 408.4(l): This proposed change will require public notices to reflect credit certification or utilization in a Title V permit application or revision application.
- Rule 220 § 407.2(g): This proposed change will require public notices to reflect credit certification or utilization in a Non-Title V permit application or revision application.
- Rule 240 § 306.1: This proposed change will change the time restriction for emission reductions to allow certain prior shutdowns and curtailments to qualify for offsets.
- Rule 240 § 306.9: This proposed change will correct a typographical error.
- Rule 240 § 306.10: This proposed change will change the time restriction for emission reductions to allow certain prior shutdowns and curtailments to qualify for offsets.

6. Demonstration of compliance with A.R.S. § 49-112:

Under A.R.S. § 49-479(c), a county may not adopt a rule that is more stringent than the rules adopted by the director of the ADEQ for similar sources unless it demonstrates compliance with the requirements of A.R.S. § 49-112. In this rulemaking process, Maricopa County has not adopted a rule that is more stringent than the ADEQ's rules for similar sources, therefore no demonstration under A.R.S. § 49-112 is necessary.

7. Demonstration of compliance with A.R.S. § 49-471.08:

A county may declare an expedited rulemaking if the rule is adopted pursuant to A.R.S. § 49-112(B) and the rule incorporates a conforming change to directly reflect federal or state rule or law. Rule 204 and the corresponding changes in rules 210, 220, and 240 have been created as result of a delegation agreement between Maricopa County and the ADEQ, and therefore will be adopted according to A.R.S. § 49-112(B). Additionally this proposed rule package has been created in order to directly reflect state law (A.R.S. § 49-410) and the state emissions bank rule (R18-2-1201 through R18-2-1208).

A.R.S. § 49-471.08(A)(1)

Rule 204 is substantially identical to the ADEQ's emissions bank rule, R18-2-1201 through R18-2-1208. The state emissions bank rule creates an emissions bank where sources may list emission reduction credits for sale to the general public. In order for a source to list emission reduction credits with the emissions bank, the permitting authority must first certify that the reductions are actual, quantifiable, permanent, enforceable, and surplus. Rule 204 incorporates all of these credit certification elements.

Additionally, the state rule maintains that before a source may utilize an emission reduction credit as an offset, the source must submit a credit utilization application and the permitting authority must evaluate and verify the authenticity of the credit, determine that there will be no adverse impact on the air quality and submit the credit certificate to the Director of the ADEQ. Rule 204 incorporates all of these credit utilization elements.

A.R.S. § 49-471.08(A)(2)

The delegation agreement between the ADEQ and Maricopa County establishes that the county will govern two integral parts of the emission reduction banking process for emissions and offsets within Maricopa County: certification and utilization of emission reduction credits. The adoption of Rule 204 is necessary to establish uniform and consistent procedures to certify emission reduction credits that sources generate and wish to deposit in the Arizona emissions bank. Additionally Rule 204 establishes procedures for evaluating existing emission reduction credits for use as offsets. Rule 204 communicates to the public the requirements for both the certification and utilization of emissions reduction credits.

The certification and utilization procedures that Maricopa County will incorporate from the state rule were subject to public review during the rulemaking process at the state level. The ADEQ held an oral proceeding where formal comments were stated on the record and opened a comment period during which the public was free to submit formal written comments. Because the provisions in Rule 204 have already been subject to extensive public review at the state level, Maricopa County has proposed this emissions bank rule package with a notice of expedited rulemaking rather than a notice of proposed rulemaking.

Rule 204 does not alter the sense, meaning or effect of the state rule from which it is derived, as it incorporates language that is essentially the same as the state's emissions bank rule. The applicable language is identical except for minor clauses reflecting administrative procedures. Because Maricopa County was delegated only the procedures for certification and utilization of credits, the state's provisions for the administration of the bank itself are left out of Rule 204. The meaning and effect of the emissions bank rule package is identical to the applicable parts of the state's emissions bank rule package.

A.R.S. § 49-471.08(A)(3)

Under A.R.S. § 49-112(B) a county may adopt rules in lieu of a state program that are as stringent as a state program, if the county demonstrates that the cost of obtaining permits or other approvals from the county will be approximately equal to or less than the cost of obtaining similar permits. Because Rule 204 does not establish fees, any costs associated with this rule will come from permit application fees for sources obtaining a permit revision to reflect new emissions limits, due to either the certification of emission reduction credits or the use of emission reduction credits. Therefore, fees associated with this rule will be exactly the same as fees associated with similar permits.

8. Reference to any study relevant to the rule that the department reviewed and either relied or did not rely on in its evaluation of or justification for the rule, where the public may review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were reviewed in reference to this rulemaking action.

9. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

10. The preliminary summary of the economic small business, and consumer impact:

Please refer to the Arizona Department of Environmental Quality's Notice of Final Rulemaking for the Arizona emissions bank in the April 12, 2002 issue of the Arizona Administrative Register, Volume 8, Issue #15, page 1822.

11. Name and address of department personnel with whom persons may communicate regarding the accuracy of the economic, small business and consumer impact statement:

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12. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule:

Written comments will be accepted if received between the date of this publication and Friday February 21, 2003, 5:00 p.m. Written comments may be mailed or hand delivered to the Maricopa County Environmental Services Department (see item #4). Written comments received during the comment period will be considered formal comments to the proposed rules and will be responded to in the notice of final rulemaking.

13. Any other matters prescribed by the statute that are applicable to the specific agency or to any specific rule or class of rules:

None

14. Incorporations by reference and their location in the rules:

None

15. The full text of the rule follows:

RULE 210 – TITLE V PERMIT PROVISIONS

- 101 No change
- 102 No change
- 201 No change
- 301 No change
- 302 No change
- 303 No change
- 304 No change
- 305 No change
- 401 No change
- 402 No change
- 403 No change
- 404 No change
- 405 No change
- 406 No change

407 No change

408 PUBLIC PARTICIPATION

408.1 No change

408.2 No change

408.3 No change

408.4 The notice required by subsection 408.3 of this rule shall include the following:

- a. No change
- b. No change
- c. No change
- d. No change
- e. No change
- f. No change
- g. No change
- h. No change
- i. No change
- j. No change
- k. No change

l. A statement in the public notice if the permit or permit revision would result in the generation of emission reduction credits under A.A.C. R18-2-1204 (Title 18, Chapter 2, Article 12) or the utilization of emission reduction credits under A.A.C. R18-2-1206 (Title 18, Chapter 2, Article 12).

408.5 No change

408.6 No change

408.7 No change

RULE 220 – NON-TITLE V PERMIT PROVISIONS

101 No change

102 No change

301 No change

302 No change

303 No change

304 No change

401 No change

402 No change

403 No change

404 No change

405 No change

406 No change

407 PUBLIC PARTICIPATION

407.1 No change

407.2 Public Notice for Applications Received: For sources listed in Rule 280 (Fees), Section 402 (Table A, Table B, and Table C Sources) of these rules, the Control Officer shall publish, once each week, a list of all permit applications received. The list will be available to the public at the Department's main office and on the Internet. The list shall include the following information:

- a. No change
- b. No change
- c. No change
- d. No change
- e. No change
- f. No change

g. A statement if the permit or permit revision would result in the generation of emission reduction credits under A.A.C. R18-2-1204 (Title 18, Chapter 2, Article 12) or the utilization of emission reduction credits under A.A.C. R18-2-1206 (Title 18, Chapter 2, Article 12).

407.3 No change

407.4 No change

407.5 No change

407.6 No change

408 No change

501 No change

502 No change

503 No change

RULE 240 – PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

101 No change

102 No change

201 No change

202 No change

203 No change

204 No change

205 No change

206 No change

207 No change

208 No change

209 No change

210 No change

211 No change

212 No change

213 No change

214 No change

301 No change

302 No change

303 No change

304 No change

305 No change

306 OFFSET AND NET AIR QUALITY BENEFIT STANDARDS:

306.1 Increased emissions by a major source or major modification subject to 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 source or modification is classified as major. The offset may be obtained by reductions in emissions from the source or modification, or from any other source in existence within the allowable offset area ~~on the startup date of the new major source or major modification~~. Credit for an emissions offset can be used only if it has not been relied upon in demonstrating attainment or in demonstrating RFP, and if it has not been relied upon previously in issuing a permit or permit revision under this rule, under Sections 301 through 305 of this rule, or not otherwise required under this rule or under any provision of the SIP.

306.2 No change

306.3 No change

306.4 No change

306.5 No change

306.6 No change

306.7 No change

306.8 No change

306.9 Offsets shall be made on either a pounds-per-hour, pounds-per-day, pounds-per-quarter, tons-per-quarter, or tons-per-year basis, whichever is applicable, when all sources involved in the emission offset calculations are operating at their maximum expected or allowed production rate and, except as otherwise provided in subsection ~~306.6~~ **306.8** of this rule, utilizing the type of fuel burned at the time the application for the permit or permit revision under this rule is filed. A tons-per-year basis shall not be used if the new or modified source or the source offsets are not expected to operate throughout the entire year. No emissions credit may be allowed for replacing 1 VOC with another VOC of lesser reactivity.

306.10 Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, if the work force to be affected has been notified or the proposed shut down or curtailment. No offset credits for shutdowns or curtailments shall be provided for emissions reductions that are necessary to bring a source into compliance with RACT or any other standard under an applicable implementation plan. ~~Source shutdowns and curtailments in production or operating hours occurring before the date the new major source or major modification application shall not be used for emissions offset credits except as follows: if an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than 1 year before the date of application for the permit or permit revision under this rule, whichever is earlier, and the proposed new major source or major modification is a replacement for the shutdown or curtailment, then credit for the shutdown or curtailment may be applied to offset emissions from the new source or modification.~~

306.11 No change

306.12 No change

306.13 No change
307 No change
308 No change
309 No change
501 No change
502 No change
503 No change
504 No change
405 No change
506 No change
507 No change
508 No change
509 No change
510 No change
511 No change

REGULATION II - PERMITS AND FEES

RULE 204 – EMISSION REDUCTION CREDITS FOR USE WITH THE ARIZONA

EMISSIONS BANK

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MARICOPA COUNTY

AIR POLLUTION CONTROL REGULATIONS

REGULATION II - PERMITS AND FEES

RULE 204

EMISSION REDUCTION CREDITS FOR USE WITH THE ARIZONA EMISSIONS BANK

SECTION 100 – GENERAL

101 PURPOSE: To implement procedures for certification and utilization of emission reduction credits for use with the Arizona Emissions Bank.

102 APPLICABILITY: Participation in the Rule 204 emission reduction credit certification and utilization program is voluntary. The provisions of this rule apply to permitted sources emitting particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds. Rule 204 does not apply to sources granted the authority to operate under Rule 230 (General Permits) of these rules.

SECTION 200 – DEFINITIONS: For the purpose of this rule, the following definitions shall apply. See Rule 100 (General Provisions and Definitions) of these rules for definitions of terms that are used but not specifically defined in this rule.

201 CERTIFIED CREDITS – emission reduction credits that have qualified for certification by satisfying the criteria established for emission reduction as outlined in Section 302 (Credit Certification) of this rule.

202 CREDIT UTILIZATION – the use of a certified emission reduction credit.

203 EMISSION REDUCTION CREDIT or CREDIT – a certified unit that may be banked, sold, transferred, withdrawn or retired.

204 EMISSIONS BANK – the electronic entity where emission reduction credits are recorded for the purpose of the public notice, allowing a person to determine the availability of credits for related market transactions. The emissions bank is administered by the Arizona Department of Environmental Quality.

205 SURPLUS – the amount of a permitted source’s emission reduction that is not required by federal, state, or local law.

SECTION 300 – STANDARDS

301 CREDIT CERTIFICATION

301.1The Control Officer may certify an emission credit if the Control Officer verifies the credit is based on all of the following:

- (a) A reduction in actual emissions that occurred after August 17, 1999;
- (b) A quantifiable reduction in actual emissions;
- (c) A permanent reduction in actual emissions;
- (d) An enforceable reduction in actual emissions; and
- (e) A surplus reduction in actual emissions occurring in addition to any other required emission reduction.

301.2The source must notify the Control Officer when the reduction occurs.

301.3In order for the emission reduction to be quantifiable under this section:

- (a) The emission reduction must be quantifiable under Rule 100, § 200.86; and
- (b) The reducing source shall submit documentation of any testing or monitoring that demonstrates an emission reduction.

301.4The Control Officer shall certify one emission reduction credit for each ton per year of particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, or volatile organic compound actually reduced.

301.5The Control Officer shall notify the source and the Director of the ADEQ that a credit is certified.

302 CREDIT UTILIZATION

302.1A source may use a certified emission reduction credit in the same nonattainment area, maintenance area, or modeling domain in which the emission reduction occurred by submitting a Credit Utilization Application (CUA) to both the Director of the ADEQ and the Control Officer, on a form prescribed by the Director of the ADEQ. The source shall submit the CUA to the Control Officer at the time the source submits an application for a permit or permit revision.

302.2Before any emission reduction credits may be utilized, the Control Officer shall:

- (a) Evaluate and verify the authenticity of the credit; and
- (b) Determine that there will be no adverse impact on the air quality.

302.3After the Control Officer completes the permitting action, the Control Officer shall submit the credit certificate to the Director of the ADEQ and notify the Director that the requirements of A.A.C. R18-2-1206 have been met.

SECTION 400 - ADMINISTRATIVE REQUIREMENTS (NOT APPLICABLE)

SECTION 500 - MONITORING AND RECORDS (NOT APPLICABLE)