

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

[R07-399]

PREAMBLE

- 1. Section Affected**
R18-2-610
R18-2-611
- Rulemaking Action**
Amend
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing Statutes: A.R.S. §§ 49-104(A)(10) and 49-404(A)
Implementing Statutes: A.R.S. § 49-457
Implementing Legislative Action: Forty-eighth Legislature, First Regular Session, 2007, Chapter 292, Senate Bill 1552, Section 20
- 3. The effective date of the rules:**
November 14, 2007
- 4. A list of all previous notices in the *Register* addressing the exempt rule:**
None
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Carrie Bojda
Address: ADEQ, Air Quality Planning Section
1110 W. Washington St.,
Phoenix, AZ 85007
Telephone: (602) 771-4210 (Any ADEQ number may be reached in-state by dialing 1-800-234-5677, and asking for that extension.)
Fax: (602) 771-2366
E-mail: cb7@azdeq.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:**
Summary. These rules establish agricultural best management practices (BMPs) for the Phoenix nonattainment area to reduce emissions of particulate matter 10 or less micrometers in aerodynamic diameter (PM₁₀) from regulated agricultural activities. This interim rule adds five new BMPs and increases the number of BMPs required from each land category from one to two. The interim rule also requires BMPs to be applied in the Maricopa County portion of Area A in addition to the Maricopa County PM₁₀ nonattainment area.
Background. The portions of Maricopa County were designated nonattainment for PM₁₀ on November 15, 1990, under section 107(d)(4)(B) of the amended Clean Air Act (CAA). The boundaries of the nonattainment area are listed in 40 CFR 81.303 and a map exists on ADEQ's web site; at <http://www.azdeq.gov/enviro/air/prevent/pcp.html#bmp>. The CAA requires state and local authorities to implement stricter particulate matter pollution controls in PM₁₀ nonattainment areas. To that end, ADEQ and the Maricopa Association of Governments (MAG), acting under delegated authority, developed a state implementation plan for the area. The original plan and subsequent revisions failed to bring the area into attainment.

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On June 6, 2007, at 72 FR 31183, the Environmental Protection Agency made a finding that the Maricopa PM₁₀ Non-attainment Area and Maricopa County Portion of Area A had not attained the National Ambient Air Quality Standard (NAAQS) for PM₁₀ by the December 31, 2006, deadline mandated pursuant to the CAA. EPA based its Finding on monitored air quality data from 2004 through 2006.

ADEQ to submit by December 31, 2007, a five percent annual Reasonable Further Progress plan that provides for attainment of the PM₁₀ standard as required by CAA section 189(d). The plan currently under development will demonstrate three years of 5% annual reductions, which is expected to be sufficient for attainment. Being a daunting requirement, all significant sources, of which agriculture is one, will be affected by a suite of emissions control programs. The interim rule, with its additional requirements, is the agricultural community's contribution to the five percent plan.

The Maricopa Association of Governments (MAG) has been certified under A.A.C. 49-406 as the agency responsible for the development of the 5% plan. MAG, in a cooperative effort with many agencies and organizations, is compiling the necessary components of the SIP that is to be submitted to the EPA outlining the plan for PM₁₀ attainment.

Senate Bill (SB) 1552, signed by Governor Napolitano on July 2, 2007, mandates enactment of a variety of programs for reduction of PM₁₀ in the Phoenix nonattainment area for all contributing sources, including expansion of the AgBMP program. Section 20 of the bill authorizes this interim, exempt rulemaking. The interim rule shall have an immediate effective date in compliance with A.R.S. § 41-1032 in order to comply with the December 31, 2007, deadline imposed by the EPA for submittal of the Five Percent RFP Maricopa PM₁₀ State Implementation Plan, and shall require that emission reductions occur during the critical winter time stagnant air condition period during which PM₁₀ exceedances have historically occurred. This interim rule is exempt from Title 41, Chapter 6, Article 3, Arizona Revised Statutes that establishes the procedures and policies for rulemaking within the state agencies. Senate Bill 1552 also recognizes the statutory authority, A.R.S. § 49-457, of the Governor's Agriculture Best Management Practices Committee (AgBMP Committee) to develop best management practices and, with the assistance of ADEQ, submit rules for publication in the *Arizona Administrative Register*.

Section by Section Explanation of the Rules:

R18-2-610. Definitions for R18-2-611. The rulemaking adds definitions of the new best management practices added to R18-2-611.

R18-2-611. Agricultural PM₁₀ General Permit; Maricopa PM₁₀ Nonattainment Area. The rulemaking changes the date for required compliance in subsection (A), increases the number of BMPs per category that must be employed by commercial farmers in subsection (C), and adds specific BMPs to the appropriate lists in subsections (E), (F), and (G).

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

ADEQ, 2007, Environmental Programs, AQD, Comparison of Potential PM₁₀ Emissions Reductions from Implementation of Maricopa County Agricultural BMPs and San Joaquin Conservation Measure Practices, (1/22/07).

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

Not applicable

9. The summary of the economic, small business, and consumer impacts:

Not applicable

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

Not applicable

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

None

13. Incorporation by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL**

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES

Section

R18-2-610. Definitions for R18-2-611

R18-2-611. Agricultural PM₁₀ General Permit; Maricopa PM₁₀ Nonattainment Area and Maricopa County Portion of Area A

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES

R18-2-610. Definitions for R18-2-611

The definitions in Article 1 of this Chapter and the following definitions apply to R18-2-611:

1. "Access restriction" means restricting or eliminating public access to noncropland with signs or physical obstruction.
2. "Aggregate cover" means gravel, concrete, recycled road base, caliche, or other similar material applied to noncropland.
3. "Area A" means the area delineated according to A.R.S. § 49-541(1).
- ~~3-4.~~ "Artificial wind barrier" means a physical barrier to the wind.
- ~~4-5.~~ "Best management practice" means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM₁₀ emissions from a regulated agricultural activity.
- ~~5-6.~~ "Chemical irrigation" means applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system.
7. "Cessation of Night Tilling" means the discontinuation of night tilling on high pollution advisory days during stagnant air conditions.
- ~~6-8.~~ "Combining tractor operations" means performing two or more tillage, cultivation, planting, or harvesting operations with a single tractor or harvester pass.
- ~~7-9.~~ "Commercial farm" means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Maricopa PM₁₀ nonattainment area and Maricopa County portion of Area A.
- ~~8-10.~~ "Commercial farmer" means an individual, entity, or joint operation in general control of a commercial farm.
- ~~9-11.~~ "Committee" means the Governor's Agricultural Best Management Practices Committee.
- ~~10-12.~~ "Cover crop" means plants or a green manure crop grown for seasonal soil protection or soil improvement.
- ~~11-13.~~ "Critical area planting" means using trees, shrubs, vines, grasses, or other vegetative cover on noncropland.
- ~~12-14.~~ "Cropland" means land on a commercial farm that:
 - a. Is within the time-frame of final harvest to plant emergence;
 - b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
 - c. Is a turn-row.
- ~~13-15.~~ "Cross-wind ridges" means soil ridges formed by a tillage operation.
- ~~14-16.~~ "Cross-wind strip-cropping" means planting strips of alternating crops within the same field.
- ~~15-17.~~ "Cross-wind vegetative strips" means herbaceous cover established in one or more strips within the same field.
- ~~16-18.~~ "Equipment modification" means modifying agricultural equipment to prevent or reduce particulate matter generation from cropland.
19. "Forage Crop" means a product grown for consumption by any domestic animal.
20. "Genetically Modified" means a living organism whose genetic material has been altered, changing one or more of its characteristics.
21. "GMO: Genetically Modified Organism" means a plant that has been altered by a genetic exchange with another organism.
22. "GPS: Global Position Satellite System" means using a satellite navigation system on farm equipment to calculate position in the field.
23. "Green Chop" means the harvesting of a forage crop without allowing it to dry in the field.
24. "High Pollution Advisory" means a public notification issued by the Department when the ambient concentrations of PM₁₀ may exceed the federal health standard.
25. "Integrated Pest Management" means the use of a combination of techniques including organic, conventional, and biological farming practices.
- ~~17-26.~~ "Limited activity during a high-wind event" means performing no tillage or soil preparation activity when the measured wind speed at 6 feet in height is more than 25 mph at the commercial farm site.
- ~~18-27.~~ "Manure application" means applying animal waste or biosolids to a soil surface.

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~~19-28.~~ "Maricopa PM₁₀ nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.

~~20-29.~~ "Mulching" means applying plant residue or other material that is not produced onsite to a soil surface.

~~21-30.~~ "Multi-year crop" means a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than one year.

~~22-31.~~ "Noncropland" means any commercial farm land that:

- a. Is no longer used for agricultural production;
- b. Is no longer suitable for production of crops;
- c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
- d. Includes a private farm road, ditch, ditch bank, equipment yard, storage yard, or well head.

~~32.~~ "Night Tilling" means preparing the land for the raising of crops between the hours of 2:00 a.m. and 8:00 a.m.

~~33.~~ "Organic Farming Practices" means using biological or non-chemical agricultural methods.

~~23-34.~~ "Permanent cover" means a perennial vegetative cover on cropland.

~~24-35.~~ "Planting based on soil moisture" means applying water to soil before performing planting operations.

~~36.~~ "Precision Farming" means using GPS to precisely guide farm equipment in the field.

~~25-37.~~ "Reduce vehicle speed" means operating farm vehicles or farm equipment on unpaved private farm roads at speeds not to exceed 20 mph.

~~26-38.~~ "Reduced harvest activity" means reducing the number of harvest passes using a mechanized method to cut and remove crops from a field.

~~27-39.~~ "Reduced tillage system" means reducing the number of tillage operations used to produce a crop.

~~28-40.~~ "Regulated agricultural activity" means a commercial farming practice that may produce PM₁₀ within the Maricopa PM₁₀ nonattainment area and Maricopa County portion of Area A.

~~29-41.~~ "Residue management" means managing the amount and distribution of crop and other plant residues on a soil surface.

~~30-42.~~ "Sequential cropping" means growing crops in a sequence that minimizes the amount of time bare soil is exposed on a field.

~~31-43.~~ "Surface roughening" means manipulating a soil surface to produce or maintain clods.

~~44.~~ "Stagnant Air Conditions" means a meteorological regime where warm air aloft overlies cooler air near the surface and little if any vertical mixing occurs.

~~32-45.~~ "Synthetic particulate suppressant" means a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, and polyacrylamide that is used to control particulate matter.

~~33-46.~~ "Tillage and harvest" means any mechanical practice that physically disturbs cropland or crops on a commercial farm.

~~34-47.~~ "Tillage based on soil moisture" means applying water to soil before or during tillage, or delaying tillage to coincide with precipitation.

~~35-48.~~ "Timing of a tillage operation" means performing tillage operations at a time that will minimize the soil's susceptibility to generate PM₁₀.

~~36-49.~~ "Track-out control system" means a device to remove mud or soil from a vehicle before the vehicle enters a paved public road.

~~50.~~ "Transgenic Crops" means the use of plants that are genetically modified.

~~37-51.~~ "Tree, shrub, or windbreak planting" means providing a woody vegetative barrier to the wind.

~~38-52.~~ "Watering" means applying water to noncropland.

R18-2-611. Agricultural PM₁₀ General Permit; Maricopa PM₁₀ Nonattainment Area and Maricopa County Portion of Area A

- A. A commercial farmer shall comply with this Section by December 31, ~~2001~~ 2007.
- B. A commercial farmer, who begins a regulated agricultural activity after December 31, 2000, shall comply with this Section within 18 months of beginning the regulated agricultural activity.
- C. A commercial farmer shall implement at least ~~one~~ two best management ~~practice~~ practices from each of the following categories:
 1. Tillage and harvest, subsection (E);
 2. Noncropland, subsection (F); and
 3. Cropland, subsection (G). A commercial farmer may implement more than one best management practice for one or more of the categories.
- D. A commercial farmer shall ensure that the implementation of ~~each~~ all selected best management ~~practice~~ practices does not violate any other local, state, or federal law.
- E. A commercial farmer shall implement at least ~~one~~ two of the following best management practices to reduce PM₁₀ emissions during tillage and harvest activities:
 1. Chemical irrigation,

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2. Combining tractor operations,
 3. Equipment modification,
 4. Green Chop,
 5. Integrated Pest Management,
 - ~~4-6.~~ Limited activity during a high-wind event,
 - ~~5-7.~~ Multi-year crop,
 8. Cessation of Night Tilling,
 - ~~6-9.~~ Planting based on soil moisture,
 10. Precision Farming,
 - ~~7-11.~~ Reduced harvest activity,
 - ~~8-12.~~ Reduced tillage system,
 - ~~9-13.~~ Tillage based on soil moisture,
 - ~~10-14.~~ Timing of a tillage operation, or
 15. Transgenic Crops.
- F. A commercial farmer shall implement at least ~~one~~ two of the following best management practices to reduce PM₁₀ emissions from noncropland:
1. Access restriction;
 2. Aggregate cover;
 3. Artificial wind barrier;
 4. Critical area planting;
 5. Manure application;
 6. Reduce vehicle speed;
 7. Synthetic particulate suppressant;
 8. Track-out control system;
 9. Tree, shrub, or windbreak planting; or
 10. Watering.
- G. A commercial farmer shall implement at least ~~one~~ two of the following best management practices to reduce PM₁₀ emissions from cropland:
1. Artificial wind barrier;
 2. Cover crop;
 3. Cross-wind ridges;
 4. Cross-wind strip-cropping;
 5. Cross-wind vegetative strips;
 6. Integrated Pest Management,
 - ~~6-7.~~ Manure application;
 - ~~7-8.~~ Mulching;
 - ~~8-9.~~ Multi-year crop;
 - ~~9-10.~~ Permanent cover;
 - ~~10-11.~~ Planting based on soil moisture;
 12. Precision Farming,
 - ~~11-13.~~ Residue management;
 - ~~12-14.~~ Sequential cropping;
 - ~~13-15.~~ Surface roughening; or
 - ~~14-16.~~ Tree, shrub, or windbreak planting.
- H. A person may develop different practices not contained in subsections (E), (F), or (G) that reduce PM₁₀. A person may submit practices that are proven effective through on-farm demonstration trials to the Committee. The Committee may meet to review the submitted practices.
- I. A commercial farmer shall maintain a record demonstrating compliance with this Section. The record shall be provided to the Director within two business days of notice to the commercial farmer. The record shall contain:
1. The name of the commercial farmer,
 2. The mailing address or physical address of the commercial farm, and
 3. The best management practices selected for tillage and harvest, noncropland, and cropland.
- J. The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM₁₀ general permit.
- K. The Director shall document noncompliance with this Section before issuing a compliance order.
- L. A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).