



May 1, 2024

Ms. Karen Peters  
Chief Executive Officer  
Arizona Department of Environmental Quality (ADEQ)  
1110 W. Washington St.  
Phoenix, AZ 85007

RE: Request for Submittal of Letter of Commitment for Conditional Approval of Maricopa County Air Pollution Control Regulations, Rule 205 (Emission Offsets Generated by Voluntary Mobile Source Emission Reduction Credits)

Dear Ms. Peters:

As the designated U.S. Environmental Protection Agency (EPA) contact, the Maricopa County Air Quality Department (MCAQD) is asking you to transmit to the EPA this letter of commitment to adopt and submit specific revisions to Rule 205 and provide additional support documentation.

On May 4, 2023, MCAQD submitted Rule 205 to the EPA for full approval into the Arizona State Implementation Plan (SIP). On March 25, 2024, the EPA sent MCAQD a letter identifying deficiencies and issues in the rule that would prevent full approval of the rule into the Arizona SIP. In the letter, the EPA stated they may grant conditional approval of Rule 205 under section 110(k)(4) of the Clean Air Act based on a commitment by the state to adopt and submit specific enforceable measures within one year of the EPA's final conditional approval.

MCAQD commits to addressing each deficiency and issue identified in the EPA letter either in Rule 205 or the Economic Incentive Program (EIP) support document before submitting a revised version of Rule 205 for approval into the SIP. In addition, MCAQD commits to submit the revised rule to the ADEQ within eleven months after the EPA's final conditional approval, to allow the ADEQ to make the final submission to the EPA not later than twelve months after the EPA's final conditional approval.



Attached to this letter is the EPA's March 25, 2024 letter along with a list of the commitments MCAQD is making to address each identified deficiency or issue.

You may direct any questions to Kimberly Butler, Manager of the Planning & Analysis Division, at 602-506-6731 or [Kimberly.Butler@maricopa.gov](mailto:Kimberly.Butler@maricopa.gov).

Sincerely,



Philip A. McNeely  
Director

Enclosure

Cc email: Matthew Lakin – Lakin.Matthew@epa.gov, EPA  
Idalia Perez – Perez.Idalia@epa.gov, EPA  
Doris Lo – Lo.Doris@epa.gov, EPA  
Daniel Czecholinski – dc5@azdeq.gov, ADEQ

PAM/gjv

Attachments: (2)



**Response to the EPA's Comments on Maricopa County Air Quality Department's (MCAQD) SIP Submittal, Rule 205 (Emission Offsets Generated by Voluntary Mobile Source Emission Reduction Credits)**

**1. Applicability of Rule 205 to Ozone Precursors**

MCAQD will correct this deficiency by revising Rule 205 to specify that Mobile Source Emission Reduction Credits (MERCs) may only be generated for the ozone precursors of nitrogen oxides and volatile organic compounds.

**2. Rule Definitions, Consistent Terminology and Enforceability**

MCAQD will correct the corresponding deficiencies outlined in the EPA's March 25, 2024 letter as follows:

*a. Defining vehicle types*

MCAQD will correct this issue by defining original fleet vehicle, baseline vehicle, retrofitted vehicle, and replacement vehicle as distinct terms in the rule and will use these terms consistently throughout the rule.

*b. Defining and distinguishing MERC terminology*

MCAQD will correct this issue by revising the rule to provide clear and consistent usage of the terms used to describe emission reductions along with appropriate definitions for each term. These revisions will make clear that the MERC issuance process is for the Department to evaluate proposed reductions in qualifying emissions, certify the reductions if they meet the certification criteria and issue MERC certificates for the certified quantity of qualified emission reductions.

**3. MERC Certificate Content**

MCAQD will correct this deficiency by revising the rule to specify that the MERC certificate shall include the following: MERC certificate number, date of issuance, name and address of the generator, description of activity that resulted in the qualified emission reductions, the quantity of emission reductions certified for each pollutant, the vehicle miles traveled (VMT) and Motor Vehicle Emission Simulator (MOVES) emission factors used for the calculations, a statement that the MERC does



not provide any property rights, and a statement that the new source relying on the emissions offsets from a MERC may not commence operation until the emissions reductions corresponding to that MERC have actually occurred.

#### **4. Relocation and Disposal of Baseline Vehicles**

MCAQD will correct this deficiency by revising the rule to specify that vehicles relocated out of the Phoenix-Mesa ozone nonattainment area must not be relocated to any other ozone nonattainment area, as designated on the date a MERC certificate is issued.

#### **5. Determining and Documenting Annual Utilization Rates**

MCAQD will correct this deficiency by specifying in the rule that the application for certified credits must include the annual average utilization rate that occurred in the nonattainment area for each vehicle included in the proposed project, and information documenting the methodology for determining the annual average utilization rate.

#### **6. Installation and Operation of Fleet Monitoring System**

MCAQD will correct this deficiency by providing a definition of “GPS tracking” and by adding requirements for the installation, operation, and maintenance of a defined GPS tracking device and software system capable of monitoring and recording VMT data, including whether the VMT occurred within the specific nonattainment area, in addition to the general operation and maintenance requirements in section 503. Additionally, these requirements will include a requirement that the permitted generator operate the GPS tracking device in accordance with manufacturer’s instructions/specifications, including a requirement that the permitted generator periodically update the software and maps used by the GPS tracking system.

#### **7. Data Used to Calculate Emissions Reductions**

##### *a. Rule 205*

MCAQD will correct this deficiency by revising the rule to state that the g/mile emission factor shall be determined for each project using the latest version of the EPA’s MOVES software.

##### *b. EIP Support Document*



MCAQD will correct this deficiency by specifying in the EIP support document the MOVES input data fields to be used, how the MOVES software will be run, and that MCAQD will utilize the latest version of MOVES to calculate the creditable quantity of qualifying emission reductions. The EIP support document will also explain how the generator will obtain the MOVES-generated emission factor data to be used in their application.

#### **8. Notification of Implementation of Emission Reductions**

MCAQD will correct this deficiency by revising the rule to: (a) require that the future project completion date be included in the generator's permit; (b) clarify that the credit user cannot commence operation until the project to reduce qualifying emissions has been completed; and (c) require that the generator notify MCAQD and the credit user when the credit generating project has been completed and provide the applicable supporting documentation to demonstrate that new or replacement vehicles are in operation and all original vehicles have been removed or destroyed.

#### **9. Requirements for Users of Certified Credits**

MCAQD will correct this deficiency by revising the rule to include the following requirements for credit users: (a) the certified credits (MERCs) must be surplus when their permit is issued, not as of the credit user's application submittal date; (b) the credit user may not commence operation until the permitted generator has submitted to MCAQD the necessary documents to demonstrate the MERC project was completed; (c) if notified of a VMT shortfall, the credit user must evaluate the VMT shortfall against the credit user's actual 12-month rolling emissions from the project that relied on the MERCs as offsets; and (d) the credit user must make up any actual emission reduction shortfall that occurs through options provided in the rule.

#### **10. Off-road vehicles**

MCAQD will correct this deficiency by removing the off-road vehicle provisions from the rule.

#### **11. Reductions Occurring in EJ Communities**

MCAQD will correct this deficiency by removing the High Pollution Area Incentive in Appendix A, paragraph D. from the rule.



## **12. Base Year Inventory**

MCAQD will correct this deficiency by revising the rule to disallow credit for any fleet conversion that occurred prior to 2017 or for any emission reductions the MOVES model has already credited in a transportation conformity demonstration.

## **13. Monitoring, Recordkeeping, and Reporting Requirements**

MCAQD will correct this deficiency by revising the rule to: (a) state the frequency of MERC generation monitoring and require the retention of a record of the monitored data and (b) ensure all records pertaining to credit generation are maintained by the applicant and MCAQD even if they were not included in the original application. The rule will also include provisions to require that compliance records be made available to the public.

## **14. Demonstrating Permanence**

MCAQD will correct this deficiency by revising the rule to require that permitted generators demonstrate ongoing compliance with the activity level (expressed in VMT) that was the basis for the MERC certificate issuance.

## **15. Identifying Violations**

MCAQD will correct this deficiency by explaining in the EIP support document how MCAQD will identify rule and program violations.

## **16. Penalty Provisions for Violations of the Rule**

MCAQD will correct this deficiency by including the following in the EIP support document: (a) a description of how penalties are imposed for violations, (b) a description of what constitutes a violation of Rule 205 and the procedures the Department will use to determine the magnitude of a violation and how potential penalties will be determined, (c) a demonstration of the Department's authority and ability to impose a maximum monetary penalty of at least \$10,000 per day per violation, and (d) an explanation that it is a violation each and every day within the averaging period if a source does not meet any requirement of the rule and provisions specifying that a source may be subject to a monetary penalty of up to \$10,000 per day per violation. The Department will retain the right to impose and collect monetary



penalties.

## **17. Additional EIP Elements**

MCAQD will correct the corresponding deficiencies outlined in the EPA's March 25, 2024 letter as follows:

- a. MCAQD will correct this deficiency by providing a discussion and demonstration of the environmental benefits of the Department's EIP in the EIP support document.
- b. MCAQD will correct this deficiency by addressing the following elements in the EIP support document: (1) options for preventing and/or mitigating impacts from potential or actual trades involving HAPs; (2) what information will be made available for meaningful review and participation by the public; and (3) periodic program evaluations of the impacts of VOC HAP trades on the health and environment of local communities.
- c. MCAQD will correct this deficiency by revising the enforcement section of the rule to include the following statement: "Nothing herein restricts independent enforcement authorities under the Clean Air Act by other parties."
- d. MCAQD will correct this deficiency by revising the rule to allow the Department to obtain from the participating sources all information necessary to calculate each permitted generator and credit user's emissions (tonnage). A description of how this information will be provided to the public will be included in the EIP support document.

## **18. Measuring and Tracking Results**

MCAQD will correct the corresponding deficiencies outlined in the EPA's March 25, 2024 letter as follows:

- a. MCAQD will correct this deficiency by including in the EIP support document a discussion of how the Department will ensure that the MERCs granted remain surplus to all other CAA requirements and how these MERCs may affect the air quality planning emissions inventories and transportation conformity.
- b. MCAQD will correct this deficiency by including in the EIP support document a



discussion of the relationship between MCAQD and Maricopa Association of Governments (MAG) in ensuring the EIP will comply with applicable CAA planning requirements.

- c. MCAQD will correct this deficiency by making clear in the EIP support document that the public has access to all information regarding issued MERCs. The Department will, at a minimum, maintain a record for each MERC issued pursuant to Rule 205. Such records will contain the information identified in commitment 3 above.
- d. MCAQD will correct this deficiency by providing in the EIP support document specific procedures for program evaluation of the EIP and submission of an EIP review to EPA Region 9 every three years.

#### **19. Enforcement Elements for EIPs**

MCAQD will correct this deficiency by including in the EIP support document provisions specifying the following: (a) the permitted generator must be liable for the truth and accuracy of the information provided in their application requesting the issuance of MERCs and in their monthly and annual recordkeeping and reporting requirements, (b) the permitted generator must be liable for any shortfalls in achieving, on a 12-month rolling basis, the emission reductions for which the ERC certificate was granted, and (c) the user must be liable for any emission increases that are not fully offset based on a 12-month rolling comparison of the quantity of emission reductions achieved by the permitted generator and the amount of actual emissions emitted by the user for that particular project.







## REGION 9

SAN FRANCISCO, CA 94105

March 25, 2024

Philip McNeely  
Director, Maricopa County Air Quality Department  
301 W. Jefferson St., Suite 410  
Phoenix, AZ 85003

Via electronic mail

Dear Director McNeely,

On May 4, 2023, the EPA received a State Implementation Plan (SIP) submittal for Maricopa County Air Quality Department (MCAQD) Rule 205 – Emission Offsets Generated By Voluntary Mobile Source Emission Reduction Credits. Based on our review of the submitted rule, we have determined that there are issues that prevent EPA from proposing full approval of the rule. Under section 110(k)(4) of the Clean Air Act (CAA or Act), EPA may grant conditional approval of a SIP submittal if the State commits to adopt specific revisions to address deficiencies by a date certain, not to exceed one year after the date of conditional approval of the SIP submittal.

We have been working with your staff to better understand the Rule's goals and existing requirements. In the enclosed attachment, we have provided a list of the identified deficiencies. We have determined that various revisions and additional support documentation are needed to ensure that Rule 205 meets all Clean Air Act (CAA) requirements for the generation of emission reduction credits from mobile sources. As we have discussed with you and your staff, in some cases, the best option for resolving a deficiency may be for the Department to withdraw a portion of the rule to address a specific approval issue.

If after reviewing the list of identified deficiencies the Department is amenable to moving forward with a conditional approval, the Department and ADEQ will need to send to EPA a letter committing to adopt specific rule revisions to address the identified deficiencies by a date certain, but not later than twelve (12) months after the date of EPA's final action. If you fail to meet this commitment by the date committed to, the conditional approval will automatically become a disapproval. The EPA will publish a notice in the federal register and notify you by letter that the conditional approval has converted to a disapproval.

If you have any questions regarding the identified deficiencies, please feel free to contact Laura Yannayon of my staff at (415) 972-3534, or myself at (415) 972-3851.

Sincerely,

Matthew Lakin  
Director,  
Air and Radiation Division  
EPA Region 9

ENCLOSURES

Commitment letter for Maricopa Final 3-25-24

cc (via email): Kim Butler; kimberly.butler@maricopa.gov  
Greg Verkamp; gregory.verkamp@maricopa.gov

# Maricopa County Rule 205 Comment Letter Attachment

March 25, 2024

Rule 205 – Emission Offsets Generated By Voluntary Mobile Source Emission Reduction Credits, is a voluntary non-traditional emissions trading program developed by Maricopa County in cooperation with the Environmental Protection Agency (EPA) Region 9. Rule 205 is intended to generate emission reduction credits for use as federal offsets for new and modified major stationary sources. Accordingly, any future submittal of Rule 205 to EPA for State Implementation Plan (SIP) approval will be evaluated against applicable Clean Air Act (CAA), regulatory (*e.g.*, 40 CFR 51.165), and Federal EIP Guidance provisions.<sup>1</sup> The SIP submittal must also include an EIP support document, which explains how certain rule provisions will work, including Departmental obligations and procedures to carry out the EIP that may not be specified in the rule. The Maricopa County Air Quality Department (Department) is responsible for implementing all aspects of the EIP set out in Rule 205 and your program support document, as approved by the EPA.

Below we have identified the deficiencies and issues we found in Rule 205 pertaining to CAA and regulatory requirements. Each of the items described below must be addressed in either Rule 205 or the EIP support document, as indicated, before resubmitting Rule 205 for incorporation into the SIP.

1. **Applicability of Rule 205 to Ozone Precursors:** Throughout the rule, the term “conventional air pollutants” is used. This term is defined in Section 200.34 of Rule 100<sup>2</sup> – General Provisions and Definitions, as a pollutant for which a national ambient air quality standard (NAAQS) has been promulgated, including any precursors to such pollutants. The use of this term would presumably allow Mobile Source Emission Reduction Credits (MERCs) to be generated for any NAAQS pollutant,<sup>3</sup> while Maricopa County is only designated nonattainment for the 2008 and 2015 ozone NAAQS, and the 1987 PM<sub>10</sub> NAAQS. Due to several technical issues with calculating PM<sub>10</sub> emissions reductions from mobile sources, the rule must be revised to specify that MERCs may only be generated for the ozone precursors of nitrogen oxides and volatile organic compounds.
2. **Rule Definitions, Consistent Terminology and Enforceability:** CAA Section 110(a)(2) requires all rules incorporated into a SIP to be enforceable. There are several parts of the rule where the current text is not clear, which can lead to confusion as to how certain provisions of the rule are to be carried out and enforced. Here we comment on two specific issues.

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<sup>1</sup> US EPA, Improving Air Quality with Economic Incentive Programs (January 2001), (“Federal EIP Guidance”), available at <https://www.epa.gov/sites/default/files/2015-07/documents/eipfin.pdf>. This guidance document describes various types of economic incentive programs and elements that the EPA believes, if met, would be approvable if submitted as part of the SIP.

<sup>2</sup> Version adopted on December 11, 2019, and SIP approved on February 15, 2022 ([87 FR 8418](#)).

<sup>3</sup> Rule 205, Section 214, specifically excludes lead from the definition of a qualifying emission.

- a. *Defining vehicle types:* The rule relies on specific pieces of data from three different vehicles that would be involved in each proposed emission generating project; (1) the original fleet vehicle that is to be replaced or retrofitted, (2) the regulatory baseline vehicle, which is an equivalent (size, fuel, and type of vehicle) current implementation model year replacement for the original vehicle that provides the emissions baseline to calculate the emissions reduction, and (3) the actual retrofitted or replacement vehicle which provides the cleaner vehicle emission data. Defining these as distinct terms in the rule is essential to differentiate each type of vehicle and then use these terms consistently throughout the rule.
- b. *Defining and distinguishing MERC terminology:* The rule currently uses various terms, such as “certified credits” and “MERCs”, to describe the emissions reductions for which a tradable credit may be issued. It appears the rule uses the terms “certified credits” and “MERCs” almost interchangeably, although they are defined differently (See definition for “Certified Emission Reduction Credits” and “MERCs”).

The rule must be revised to provide clear and consistent usage of the terms used to describe emission reductions, along with appropriate definitions for each term. We suggest revising the rule as necessary to make clear that the process is for the Department to evaluate proposed reductions in qualifying emissions, certify the reductions if they meet the certification criteria and issue MERC certificates for the certified quantity of qualified emission reductions.

3. **MERC Certificate Content:** To ensure the permit authority, the EPA, and the public can evaluate whether a MERC surrendered as a New Source Review (NSR) offset meets the offset integrity criteria found in 40 CFR 51.165(a)(3)(ii)(C)(1)(i) at the time of NSR permit issuance, the rule must specify the minimum contents of each MERC certificate. The certificate must include all the specific data for the particular qualified emission reductions, such as, but not limited to: MERC certificate number, date of issuance, name and address of the generator, description of activity that resulted in the qualified emission reductions, the quantity of emission reductions certified for each pollutant, the vehicle miles travelled (VMT) and Motor Vehicle Emission Simulator (MOVES) emission factors used for the calculations, a statement that the MERC does not provide any property rights, and a statement that the new source relying on the emissions offsets from a MERC may not commence operation until the emissions reductions corresponding to that MERC have actually occurred.
4. **Relocation and Disposal of Baseline Vehicles:** Section 302.2c. – Removal/Disposal of Replaced Baseline Vehicles, currently requires disposal of the vehicles for which a MERC is issued, in part to satisfy the requirement of 40 CFR 51.165(a)(3)(ii)(C)(1)(i) that emission reductions used for offsets must be permanent. Options for disposal currently include rendering the fleet vehicles permanently disabled and disposed of, or permanently removing the vehicles at least 200 miles from the Phoenix-Mesa ozone nonattainment area. While disabling and disposing of an engine is the best way to ensure the replaced vehicle will no longer operate in the Phoenix-Mesa ozone nonattainment area, we believe relocating the vehicles at least 200 miles outside the Phoenix-Mesa ozone nonattainment

area is acceptable if additional restrictions are imposed on the final location of those vehicles. The rule must specify that vehicles relocated out of the Phoenix-Mesa ozone nonattainment area must not be relocated to any other ozone nonattainment area, as designated on the date a MERC certificate is issued.

5. **Determining and Documenting Annual Utilization Rates:** 40 CFR 51.165(a)(3)(ii)(C)(1)(i) requires emission reductions to be quantifiable. Rule 205 requires the applicant to supply the annual average miles that the original fleet vehicles were utilized within the nonattainment area, and to monitor and record the VMT for each new fleet vehicle on an annual basis. The VMT data is critical for determining the quantity of MERCs issued and to verify that the certified number of actual emission reductions are being achieved.

Section 301.1b.(4) requires an application to include "Information on the methodology for quantifying the surplus reductions in qualifying emissions for each pollutant subject to the application, including emissions calculations." The rule does not contain sufficient requirements to provide the annual average utilization rate for each vehicle included in the proposed project, nor any requirement to document how these rates were determined. Rule 205 must specify that the application include information documenting the activity level claimed by the applicant.

6. **Installation and Operation of Fleet Monitoring System:** 40 CFR 51.165(a)(3)(ii)(C)(1)(i) requires emission reductions to be federally enforceable. Section 503 contains monitoring provisions for permitted generators and requires the VMT for each fleet vehicle to be monitored "as determined by GPS tracking." The rule does not define what constitutes "GPS tracking." Generally, a fleet owner would install and operate a complete fleet monitoring system to provide GPS tracking. To ensure enforceability of the emission reductions, the rule must contain requirements for the installation, operation and maintenance of a defined GPS tracking device and software system that will monitor and record VMT data, including whether the VMT occurred within the specific nonattainment area, in addition to the general operation and maintenance requirements in Section 503. These requirements must include provisions to require operation in accordance with manufacturer's instructions/specifications, including a requirement to periodically update the software and maps used by the GPS tracking system.

7. **Data Used to Calculate Emissions Reductions:** Appendix A.3. specifies that the "Baseline Pollutant Emissions Factor" is determined by using the "on-road vehicle emissions factors, in g/mile, in the latest applicable version of the United States Environmental Protection Agency's (EPA) Motor Vehicle Emission Simulator (MOVES) software." However, the "on-road vehicle emission factor, in g/mile" for a specific year, fuel, and class of vehicle is one that the MOVES software generates as a modeled output, after it factors in various local condition inputs. In order for the program to be based on current emissions factors, the rule must be revised to state that the g/mile emission factor is to be determined, for each project, using the latest version of MOVES. Additionally, the EIP support document must specify the MOVES input data fields to be used, how the MOVES software will be run, and that the Department will utilize the latest version of MOVES to calculate the creditable

quantity of qualifying emission reductions. The EIP support document should explain how the generator will obtain the MOVES generated emission factor data to be used in their application.

8. **Notification of Implementation of Emission Reductions:** Section 173(c)(1) of the CAA, regarding NSR offsets, states that emission reductions shall be in effect and enforceable by the time a new or modified source commences operation. Rule 205 allows a MERC certificate to be issued to the permitted generator based on their proposed emission reduction project, rather than a completed emission reduction project. Section 301.2c.(3) states that if the project has not been completed when the Department is prepared to issue a MERC certificate, then the MERC certificate must include a future completion date for the project. Section 301.2c.(1) requires the permit to incorporate the requirements of Section 302.2, but does not specify that a future completion date for the project be included in the permit. Rule 205 must be revised to require this date be included in the permit.

Section 304.1d. further provides that “Reductions in qualifying emissions reflected in the number of certified credits shall be implemented before actual operation of the new stationary source or modification begins.” While this provision is found under the rule section entitled “Use of the Certified Credits,” it is not clear who this provision applies to as only the permitted generator can implement the required reductions in qualifying emissions, but it is the credit user that is restricted from operating prior to the MERC generating project being fully implemented. This provision must be clarified to clearly state that the credit user cannot commence operation until the project to reduce qualifying emissions has been completed.

In turn, to ensure successful implementation and enforcement of the program, the rule must provide a mechanism to ensure that the public and credit user know when the credit generating project for any particular MERC certificate has been fully implemented. In addition, to track the implementation of MERCs and compliance with the NSR permit, the rule must include a requirement for the permitted generator to notify the Department when all replacement and/or retrofitted vehicles are in operation and all original vehicles have been properly removed or destroyed. Any mechanism for notifying the Department that the project has been completed must include the submittal of supporting documentation to demonstrate compliance with this requirement. Additionally, this completion notification should be provided to the credit user to document that the emissions reduction project generating the credits for their MERC certificate has been completed and that their project may commence operation.

9. **Requirements for Users of Certified Credits:** Rule 205 Section 102.2 states that the rule applies to owners or operators of a permitted stationary source that intend to use certified credits as offsets, but the rule does not provide a rule section to specify the requirements for credit users. Instead, these requirements are interwoven throughout the rule. We suggest gathering these requirements into one section of the rule. At a minimum, the rule must include provisions for the credit user that include the following

requirements: (1) the certified credits (MERCs) must be surplus when their permit is issued, not as of the application submittal date; (2) the credit user may not commence operation until the permitted generator has submitted to the Department the necessary documents to demonstrate the MERC project was completed (as described in Comment 8); (3) if notified of a VMT shortfall, the credit user must evaluate the VMT shortfall against the credit user's actual 12-month rolling emissions from the project that relied on the MERCs as offsets; and (4) the credit user must make up any actual emission reduction shortfall that occurs. This rule section must also provide options for the credit user to make up any shortfalls.

10. **Off-road vehicles:** The rule provides that qualifying emission reductions can be generated from either on-road or off-road vehicles. However, the calculation procedures provided in Appendix A only apply to on-road vehicles. In addition, since off-road vehicles are not registered, there are other issues related to ensuring any emission reductions are surplus and demonstrating these vehicles are permanently removed from the nonattainment area. Therefore, until these issues can be addressed, the off-road vehicle provisions in Rule 205 must be removed to ensure Rule 205 is fully approvable.
11. **Reductions Occurring in EJ Communities:** Appendix A, paragraph D. contains a provision which would allow a vehicle fleet located in an Environmental Justice (EJ) community to calculate the baseline emissions using the original fleet vehicle rather than a current model year vehicle. The rule requires use of current model year vehicle emissions as the baseline for granting ERCs to ensure the reductions are surplus to other attainment plan provisions that already take credit for fleet turnover. Since the use of an earlier model year vehicle as the baseline for calculating emission reduction credits would not ensure these reductions are surplus, this provision must be removed from the rule.
12. **Base Year Inventory:** The 2015 ozone attainment plan is based on a 2017 baseline emission inventory that includes input from the MOVES model using 2017 vehicle data. Therefore, credit cannot be given for any fleet conversion that occurred prior to 2017 or for any emission reductions the MOVES model has already credited for the transportation conformity demonstration. Rule 205 must explicitly contain this restriction.
13. **Monitoring, Recordkeeping, and Reporting Requirements:** CAA section 110(a)(2)(A) requires the elements of a SIP, including economic incentive programs, to be enforceable. 40 CFR 51.165(a)(3)(ii)(C)(1)(i) requires emissions reductions to be surplus, permanent, quantifiable, and federally enforceable to be creditable offsets. Rule 205 must therefore require sufficient monitoring, recordkeeping, and reporting provisions to ensure that the permitted generators and credit users are in compliance with the regulatory requirements and permit conditions, and it must provide that compliance data is made available to the public. While Rule 205 contains most of these provisions, additional specificity needs to be included. Section 503 – MERC Generation Monitoring, requires the generator to “monitor” certain information, but Section 504.3 needs further clarification to state the frequency of such monitoring, and requirements to retain a record of the monitored data. Rule 205 must be revised to provide more specificity to these two provisions.

Section 504 – MERC Generation Records, requires the generator to maintain all records supporting their application for certified credits, and includes a list of minimum records requirements. However, the specified records may not be available at the time of application if a proposed emission generating project was not completed prior to application, as allowed by the rule. Because the rule provides the option to obtain a MERC prior to project completion, the language in this provision must be revised to ensure all records pertaining to the credit generation are maintained by the applicant and the Department even if they were not included in the original application. See Section 4.1(a) of the Federal EIP Guidance for additional information.

14. **Demonstrating Permanence:** Section 503 – MERC Generation Monitoring, requires the generator to “monitor” the VMT for each replaced or retrofitted vehicle, but the rule does not contain any provisions which require the generator to continue to achieve the annual average VMT that was the basis for granting the MERC certificate. In part, permanence is assured by requiring the new fleet vehicles to achieve the same activity levels as the old fleet, which is demonstrated by ensuring the VMT for the new fleet remains at the same level or higher. Rule 205 is deficient because the rule does not require a fleet operator to demonstrate that they are achieving the same VMT used as the basis for granting their MERC certificate, which is inconsistent with enforceability requirements in CAA section 110(a)(2)(A) and 40 CFR 51.165(a)(3)(ii)(C)(1)(i). Rule 205 must be amended to require the generators ongoing compliance with the activity level that was the basis for MERC certificate issuance.
15. **Identifying Violations:** Section 110(a)(2)(A) requires the elements of a SIP, including economic incentive programs, to be enforceable. The regulations at 40 CFR 51.165 require emissions reductions to be surplus, permanent, quantifiable, and federally enforceable to be creditable offsets. Rule 205 relies on language that the generator or user “shall” or “must” do specific things, such as comply with the operating, maintenance, monitoring, removal/disposal, replacement, and recordkeeping requirements listed in Section 302.2. Thus, it would be a violation of the rule to not perform the required actions. At a minimum, the EIP support document must contain a robust discussion of how the Department will determine rule and program violations.

The Department has raised concerns regarding the permitted generator being in violation of the requirement to achieve a certain VMT if in fact they are still achieving more emission reductions than the credit user is emitting in any 12-month period. Accordingly, the EPA believes that it is appropriate for the rule to include a two-step process to determine if a shortfall in VMT resulted in fewer emission reductions than the actual emission increases the credit user generated over the same 12-month period. The rule could provide that the generator is in violation of the requirement to generate a specific quantity of fleet VMT if two conditions are met: (1) the VMT achieved for any rolling 12-month period is less than the annual fleet VMT for which the MERC certificate was issued, and (2) the actual emissions generated by the permitted generator using these specific MERCs over the same time period are more than the emission reductions achieved by the



actual VMT achieved. We believe this compliance option will provide some flexibility for both the permitted generator and credit user while still ensuring no adverse impacts to air quality. See Section 4.1(a) of the Federal EIP Guidance for additional information.

16. **Penalty Provisions for Violations of the Rule:** Rule 205 or the Department's EIP support document must include provisions for imposing penalties for violations. The EIP support document must explain what constitutes a violation of Rule 205 and the procedures the Department will use to determine the magnitude of a violation and how potential penalties will be determined. The Department must demonstrate in the program support document that it has the authority and ability to impose a maximum monetary penalty of at least \$10,000 per day per violation. The EIP support document must specify that it is a violation each and every day within the averaging period if a source does not meet any requirements of the rule (*e.g.*, not creating sufficient emission reductions, etc.) and specify the source may be subject to a monetary penalty of up to \$10,000 per day per violation. The Department must retain the right to impose and collect a monetary penalty, although you do not need to exercise this right for all violations. See Sections 5.1(c) and 6.1 of the Federal EIP Guidance for additional guidance on the enforcement elements to be included in the Department's EIP.
17. **Additional EIP Elements:** This section lists provisions that we believe are needed for an EIP to be approved into the SIP. These provisions can be provided as a narrative in the EIP support document or in the rule, as noted below. See Section 5.1 of the Federal EIP Guidance for additional information.
  - a. A discussion and demonstration of the environmental benefits of the Department's EIP. See Section 6.5(a) of the Federal EIP Guidance for additional information.
  - b. Because the Department's EIP is a trading program that allows VOC HAPs to be shifted from one facility to another, the EIP support document must address certain elements related to VOC HAP emissions, including: (1) options for preventing and/or mitigating impacts from potential or actual trades involving HAPs; (2) what information will be made available for meaningful review and participation by the public; and (3) periodic program evaluations of the impacts of VOC HAP trades on the health and environment of local communities. See Section 16.2(b) of the Federal EIP Guidance for additional information.
  - c. To avoid potential conflicts with EPA's or citizens' CAA enforcement authorities, Rule 205 must include the following statement in the section of the rule discussing enforcement: "Nothing herein restricts independent enforcement authorities under the Clean Air Act by other parties." See Section 5.1(c) of the Federal EIP Guidance for additional information.
  - d. The Department's EIP must ensure that the public has access to emissions related information in a manner that allows them to easily and accurately calculate the emissions or data relevant to the enforceable requirements of each participating source (*i.e.*, both the credit generator and user). Rule 205 must contain a provision

allowing the Department to obtain from the participating sources, all information necessary to calculate every source's emissions (tonnage). How this information will be provided to the public may be included in the EIP support document as opposed to the rule.

18. **Measuring and Tracking Results:** The EIP must include procedures to measure and track results. We believe many of these provisions can be provided as a narrative in the EIP support document. Any provisions that must be included in the Rule 205 text are noted below. See Section 5.3 of the Federal EIP Guidance for additional information.
  - a. The Department's EIP support document must discuss how the Department will ensure that the MERCs granted remain surplus to all other CAA requirements (*e.g.*, have not been relied upon in other required CAA demonstrations) and how these MERCs may affect the air quality planning emissions inventories and transportation conformity.
  - b. The Department's EIP support document must discuss the relationship between the Department and Maricopa Association of Governments (MAG) in ensuring this program will comply with applicable CAA planning requirements, particularly concerning development of the required attainment plan and ongoing transportation conformity determinations.
  - c. The Department's EIP support document must also contain provisions to make public all information regarding issued MERCs. At a minimum, you must maintain a record (often referred to as a Banking Register) for each MERC issued pursuant to Rule 205. This MERC Register would contain the information listed above in Comment 3. See Section 6.5(d) of the Federal EIP Guidance for additional information.
  - d. The Department's EIP support document must include specific program evaluation procedures for the EIP. The Department is responsible for submitting a review of the EIP to EPA Region 9 every 3 years to determine its success and to address any identified deficiencies.
  
19. **Enforcement Elements for EIPs:** The Department's EIP must include the following enforcement provisions. We believe many of these provisions can be provided as a narrative in the EIP support document. Because emission trading programs involve more than one party, the EIP support document must include provisions for identifying and assessing enforcement liability. Rule 205 currently refers to these parties as the "permitted generator" and the "user." See Section 6.1 of the Federal EIP Guidance for additional information.
  - a. The permitted generator must be liable for the truth and accuracy of the information provided in their application requesting the issuance of MERCs and in their monthly and annual recordkeeping and reporting requirements.
  - b. The permitted generator must be liable for any shortfalls in achieving, on a 12-month rolling basis, the emission reductions for which the ERC certificate was granted.

- c. The user must be liable for any emission increases that are not fully offset based on a 12-month rolling comparison of the quantity of emission reductions achieved by the permitted generator and the amount of actual emissions emitted by the user for that particular project.