§ 165.T09–036 Safety Zone; Detroit River, Grosse Ile, MI.

(a) *Location.* The safety zone will encompass all waters of the Detroit River surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°(10′4″ N, 083°(09′3″ W. The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective time and date.* This section is effective from 9 p.m. until 10:30 p.m. on July 6, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16. Section 165.23 also contains other applicable requirements.

Dated: June 24, 2002.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–16631 Filed 7–1–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–076–SIP; FRL–7238–8]

Finding of State Implementation Plan Inadequacy; Arizona—Salt River Monitoring Site; Metropolitan Phoenix PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA finds that the state implementation plan (SIP) for the Metropolitan Phoenix (Maricopa County), Arizona PM–10 nonattainment area is substantially inadequate to attain the 24-hour particulate (PM–10) air quality standard at the Salt River monitoring site, a small subarea of the nonattainment area. As required by the Clean Air Act upon a finding of SIP inadequacy, EPA is requiring that the State of Arizona submit a SIP revision to correct the inadequacy.

EFFECTIVE DATE: August 1, 2002.

ADDRESSES: You can inspect a copy of the administrative record for this action at EPA's Region IX office during normal business hours. See address below.

This document, the proposal for this final rule, and information on the PM–10 plans for the metropolitan Phoenix area are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 947–4155. Email: *wicher.frances@epa.gov.*

SUPPLEMENTARY INFORMATION:

Note: In this document, ''we'', ''us'' and ''our'' refer to EPA. ''CAA or the Act'' refers to the Clean Air Act as amended in 1990 and subsequently. ''PM–10'' refers to particulate matter with a diameter of 10 microns or less. ''24-hour standard'' refers to the 24-hour National Ambient Air Quality Standard for PM–10 established at 40 CFR 50.6(a). ''SIP'' or ''plan'' refers to a state implementation plan. ''ADEQ'' is the Arizona Department of Environmental Quality. ''BACM'' and ''RFP'' are acronyms, respectively, for best available control measure and reasonable further progress.

I. Background to Today's Action

The Phoenix area is classified as a ''serious'' PM–10 nonattainment area and violates both the annual PM–10 standard of 50 μg/m^3 and the 24-hour standard of 150 μg/m^3. 40 CFR 50.6. Between 1997 and 2001, Arizona has made several SIP submittals that collectively address the CAA's planning requirements for serious PM–10 nonattainment areas for both PM–10 standards. We have acted on these submittals in several rulemakings. For more background on the Phoenix PM–10 SIP and our actions on it, please see 65 FR 19964, 19965 (April 13, 2000) and 66 FR 50252, 50253 (October 2, 2001) and the Technical Support Documents for those actions.

In today's action, we are concerned with the Phoenix PM–10 SIP's provisions for attaining the 24-hour standard. In May, 1997, ADEQ submitted the *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area,* as a SIP revision. This plan, known as the microscale plan, included attainment and RFP demonstrations for the 24-hour PM–10 standard at the Salt River air quality monitoring site as well as three other ''microscale'' monitoring sites in the Phoenix area (Maryvale, Gilbert, and West Chandler). The demonstration for the Salt River site showed that, with additional controls adopted by the local air quality agency, the Maricopa County Environmental Services Department, attainment at the site would occur by May 1998. We approved the attainment and RFP demonstrations for the Salt River site and Maricopa County's controls on August 4, 1997. See 62 FR 41856. Since the microscale plan, Arizona has made no other submittals that address the 24-hour exceedances at the Salt River site.

According to its approved attainment demonstration, the Salt River site should not have violated the 24-hour PM–10 standard after May, 1998. *See* 62 FR 31026, 31035. The site, however, continues to violate the standard.[1] Based on data recorded in EPA's Aerometric Information Retrieval System (AIRS), the Salt River monitor had 51 expected exceedances in 1999, 43 expected exceedances in 2000, and 19 expected exceedances through 3 quarters in 2001 or an average of at least 37 expected exceedances per year over the past three years. The 24-hour PM–10 standard is violated when the expected number of exceedances averages more than 1 per year over a three year period. See 40 CFR 50.6(a). Thus the continuing violations at the Salt River monitor clearly show that the existing attainment demonstration for the site is faulty.

To assure that SIPs provide for timely attainment, section 110(k)(5) authorizes EPA to find that a SIP is substantially inadequate to meet an CAA requirement, and to require (''call for'') the State to submit, within a specified period not to exceed 18 months, a SIP revision to correct the inadequacy. This requirement for a SIP revision is known as a ''SIP call.''

On April 18, 2002 at 67 FR 19148, we published our proposed finding that the Arizona SIP is inadequate to assure attainment of the 24-hour PM–10 standard at the Salt River Site. Based on this proposed finding, we also proposed a SIP call that would require Arizona to revise its SIP to correct the deficiency and submit the corrections no later than 18 months after the publication of the final rule. We requested comments on our proposals and provided a 30-day comment period, which closed on May 20, 2002. We received no comments.

II. The Inadequacy Finding and Call for a SIP Revision

A. Inadequacy Finding and SIP Call

Because the attainment demonstration approved into the Phoenix area PM–10 SIP in 1997 is faulty and there has been no substitute attainment demonstration submitted to date, we find that the

[1] The Salt River site, approximately 32 square miles in area or about 1 percent of the 2880 square mile Phoenix nonattainment area, is located in an industrial area and its 24-hour violations are most likely due in large part to the industrial sources that surround it. This is in marked contrast to other monitoring sites in the rest of the Phoenix nonattainment area where 24-hour exceedances are almost exclusively due to windblown fugitive dust.

Phoenix area PM–10 SIP is substantially inadequate to attain the 24-hour PM–10 standard at the Salt River site. Therefore, pursuant to CAA section 110(k)(5), we require the State of Arizona to submit a revision to the Phoenix area SIP that corrects this deficiency and complies with all other applicable CAA requirements as described below.

B. Submittal Schedule

We set the date for submitting the revisions to the Salt River attainment demonstration and related provisions described below as 18 months after the effective date of the final rule, or February 2, 2004.

C. SIP Requirements

To fully respond to this SIP call for the Salt River attainment demonstration, Arizona will need to submit the following:

(a) A demonstration based on air quality modeling that the plan will provide for attainment no later than December 31, 2006 at the Salt River site. CAA sections 189(b)(1)(A) and 188(e).

(b) Provisions for implementing BACM as expeditiously as practicable for all sources or source categories that contribute significantly to exceedances of the 24-hour PM–10 standard in the Salt River area. CAA section 189(b)(1)(B).[2] In the SIP revision, Arizona need only provide for the implementation of BACM for those significant sources or source categories for which we have not already approved BACM.

(c) A demonstration that the revised SIP includes, and provides for expeditious implementation of, the most stringent measures (MSM) found in the implementation plan or achieved in practice that are feasible for the Phoenix nonattainment area for each significant source or source category for which we have not already approved a MSM showing.

(d) A demonstration that the revised SIP provides for reasonable further progress in the Salt River area. The SIP revision must also provide for quantitative milestones for the Salt River area which are to be achieved every 3 years and which are consistent with the RFP demonstration. To be consistent with the serious area plan, the milestone dates should be December 31, 2003 and December 31, 2006.

The SIP revision must also meet the general requirements applicable to all SIPs including reasonable notice and public hearing under section 110(l), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280 to carry out the SIP; and the description of enforcement methods for the adopted controls as required by 40 CFR 51.111.

Finally, any controls adopted to demonstrate attainment at the Salt River site or to meet the BACM or MSM requirements must be applied to all similar sources in the Phoenix nonattainment area.

If Arizona fails to submit the required SIP revisions in response to a final SIP call, we are required to issue a finding that the State failed to make a required SIP submittal under section 179(a), a finding which starts an 18 month clock for the implementation of sanctions under the CAA and a two year clock for a federal implementation plan. See 40 CFR 52.31.

VI. Administrative Requirements

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under 12866.

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action under Executive Order 12866.

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs on the States, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. This SIP call is required by the Clean Air Act because the current SIP is substantially inadequate to attain the 24-hour PM–10 standard. Arizona's direct compliance costs will not be substantial because the SIP call requires Arizona to submit only those revisions necessary to address the SIP deficiency and applicable Clean Air Act requirements. Finally, EPA has consulted with the State and local agencies prior to making this SIP call.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it is in keeping with the relationship and the distribution of power and responsibilities between EPA and the States as established by the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Executive Order 13175 does not apply to this rule because this rule will not effect any tribal government or any tribal lands and thus will have no tribal implications.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any proposed rule subject to notice and

[2] Under CAA section 189(b)(1)(B), BACM is to be implemented no more than 4 years after an area is reclassified from moderate to serious for PM–10, or June 10, 2000 for the Phoenix area. Because this deadline has now passed, the applicable deadline is ''as expeditiously as practicable'' under *Delaney* v. *EPA,* 898 F.2d 687 (1990).

comment rulemaking requirements unless the agency certifies that the rule, if finalized, will not have a significant economic impact on a substantial number of small entities. For the reasons described in the proposal, EPA certified that this action does not have a significant impact on a substantial number of small entities. See 67 FR 19148, 19151.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements for any rule requiring a budgetary impact statement. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more in any one year to either State, local, or tribal governments in the aggregate, or to the private sector and has therefore not prepared a budgetary impact statement. This proposed rule, if finalized, will not significantly or uniquely impact any small governments.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In making a finding of SIP deficiency, EPA's role is to review existing information against previously established standards (in this case, what constitutes a violation of the 24-hour PM–10 standard). In this context, there is no opportunity to use VCS. Thus, the requirements of NTTAA section 12(d) (15 U.S.C. 272 note) do not apply to this rule.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, particulate matter.

Dated: June 19, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–16271 Filed 7–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7240–4]

RIN 2060–AJ57

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On April 5, 2002, the EPA promulgated amendments to the national emission standards for the portland cement manufacturing industry as a direct final rule with a parallel proposal if we received any adverse comments on the direct final amendments. Because adverse comments were received on some of the provisions in the direct final rule, we are withdrawing the corresponding parts of that direct final rule. We will address the adverse comments in a subsequent final rule based on the parallel proposal published on April 5, 2002.

DATES: As of July 2, 2002, EPA withdraws amendments to §§ 63.1340(c), 63.1344(a)(3), 63.1349(e)(3), and 63.1350(a)(4), (c)(2)(i), (d)(2)(i), and (e) published at 67 FR 16614 on April 5, 2002. The remaining provisions published on April 5, 2002, will be effective July 5, 2002.

ADDRESSES: Docket number A–92–53, containing supporting information used in the development of this notice is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. EPA, Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Wood, P.E., Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5446, facsimile number (919) 541–5600, electronic mail address: *wood.joe@epa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2002, we published a direct final rule (67 FR 16614) and a parallel proposal (67 FR 16625) amending the national emission standards for the portland cement manufacturing industry (40 CFR part 63, subpart LLL). The amendments made improvements for implementation of the standards, primarily in the areas of applicability, testing, and monitoring, to resolve issues and questions raised since promulgation of the rule on June 14, 1999.

We stated in the preamble to the direct final rule and parallel proposal that if we received significant material adverse comment by May 6, 2002, on one or more distinct provisions of the direct final rule, we would publish a timely withdrawal of those distinct provisions in the **Federal Register**. We subsequently received adverse comments on seven of the amendments:

- § 63.1340(c), related to applicability of the rule to crushers at portland cement plants with on-site nonmetallic mineral processing facilities;