

reasonably available control measures (RACM) and best available control measures (BACM), the demonstration that attainment of the PM-10 annual standard by the Clean Air Act deadline of December 31, 2001 is impracticable,

- The demonstration that attainment of the PM-10 annual standard will occur by the most expeditious alternative date practicable, in this case, December 31, 2006,

- The demonstration that the plan provides for reasonable further progress and quantitative milestones,

- The demonstration that the plan includes to our satisfaction the most stringent measures found in the implementation plan of another state or are achieved in practice in another state, and can feasibly be implemented in the area.

- The demonstration that major sources of PM-10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations of the annual PM-10 standard, and

- The transportation conformity budget.

We also proposed to grant Arizona's request to extend the attainment date for the annual PM-10 standard from December 31, 2001 to December 31, 2006.

Finally, we are proposing to approve Maricopa County's fugitive dust rules, Rules 310 and 301.01, and its residential woodburning restriction ordinance.

The proposal action provided a 60 day public comment period that ended on June 12, 2000. We have already extended the comment period to July 3, 2000. In response to a request from City of Tempe, Arizona, we are extending the comment period for an additional 14 days.

Dated: July 5, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ-063-0026; FRL-6735-9]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a disapproval of revisions to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP). The revisions concern volatile organic compound (VOC) emissions from organic solvents, dry cleaners, coating operations, and degreasers. We have evaluated these revisions and are proposing to disapprove these revisions because they are not consistent with the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments are due on or before August 14, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted rules and EPA's technical support document (TSD) at our Region IX office during normal business hours.

You may also see copies of the submitted rules at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012

Pinal County Air Quality Control District, 31 North Pinal Street, Building F, Florence, AZ 85232

FOR FURTHER INFORMATION CONTACT:

Yvonne Fong, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1199.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the date that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
PCAQCD	5-9-278	Applicability	10/12/95	11/27/95
PCAQCD	5-9-280	Organic Solvents	10/12/95	11/27/95
PCAQCD	5-10-330	Petroleum Solvent Dry Cleaning	10/12/95	11/27/95
PCAQCD	5-11-350	Chlorinated Synthetic Solvent Dry Cleaning	10/12/95	11/27/95
PCAQCD	5-12-370	Architectural Coating Operations	10/12/95	11/27/95
PCAQCD	5-13-390	Spray Paint and Other Surface Coating Operations	10/12/95	11/27/95
PCAQCD	5-15-622	Degreasers	10/12/95	11/27/95
PCAQCD	7-3-3.4	Organic Solvents (rescission)	10/12/95	11/27/95

On February 2, 1996, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are no previous versions of Rules 5-9-278, 5-9-280, 5-10-330, 5-11-350, 5-12-370, 5-13-390, and 5-15-

622 (Chapter 5 Rules) in the SIP. These Chapter 5 Rules were adopted by the PCAQCD on October 12, 1995 and submitted to us by the ADEQ on November 27, 1995.

We approved a version of Rule 7–3–3.4 into the SIP on April 12, 1982. The PCAQCD rescinded the SIP-approved version of Rule 7–3–3.4 on October 12, 1995 and ADEQ submitted the rescission request to us on November 27, 1995.

C. What Is the Purpose of the Submitted Rules?

The submitted rules control emissions of VOCs from a variety of sources, including degreasers, dry cleaners, and coating operations. Except for Rule 5–9–278 which limits the applicability of Rule 5–9–280, the Chapter 5 Rules were meant to replace SIP approved Rule 7–3–3.4. Most of the provisions originally found in the SIP approved version of Rule 7–3–3.4 are now found in Rule 5–9–280. The TSD has more information about these rules.

D. What Revisions Do the Submitted Rules Make to the SIP?

The submitted rules revise the SIP approved version of Rule 7–3–3.4 by:

- Limiting the applicability of Rule 5–9–280 to an area along the northwest border of Pinal County,
- increasing the allowable discharge of organic materials exposed to heat from 15 to 40 pounds per day,
- Exempting sources subject to other portions of the PCAQCD Code of Regulations,
- Allowing some sources to exceed the 1.5 gallon disposal limit for photochemically reactive solvents, and
- Allowing the use of alternative “rational control technology” approved by the control officer.

II. EPA’s Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the

Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The PCAQCD regulates an ozone attainment area (see 40 CFR part 81), so the submitted rules are not required to meet RACT.

Guidance and policy documents that we used to evaluate the submitted rules include the following:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document,” (the “Blue Book”), notice of availability published in the May 25, 1988 **Federal Register**.

B. Do the Rules Meet the Evaluation Criteria?

These rules weaken the SIP by establishing less stringent emission limits and narrowing the scope of regulated sources. These rules are inconsistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

These provisions conflict with section 110 and part D of the Act and prevent approval of the SIP revision.

1. Rule 5–9–278 relaxes the SIP by regulating potentially fewer sources.
2. Rule 5–9–280 relaxes the SIP by increasing the allowable discharge of organic materials exposed to heat.
3. Eliminating the 1.5 gallon disposal limit for photochemically reactive solvents relaxes the SIP by allowing some sources to emit more VOCs.

4. Rule 5–9–280 is unenforceable because it gives the control officer discretion in approving the use of alternative controls.

5. Rule 5–9–280 is unenforceable because it refers to other portions of the PCAQCD Code of Regulations which have not been approved into the SIP.

D. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a disapproval of the submitted rules. This means that the version of Rule 7–3–3.4 that was approved into the SIP on April 12, 1982 will remain in the federally enforceable SIP. If this disapproval is finalized, the federal implementation plan (FIP) requirement under section 110(c) will not be triggered and section 179 sanctions will not be imposed even if EPA fails to approve subsequent SIP revisions that correct the rule deficiencies because PCAQCD is an ozone attainment area. Note that the submitted rules have been adopted by the PCAQCD, and EPA’s final disapproval would not prevent the local agency from enforcing them.

We will accept comments from the public on the proposed disapproval for the next 30 days.

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Executive Order 13045, entitled 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. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of

the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These rules are not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 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 in the Executive Order 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, 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. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed 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 merely acts on state rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. 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. 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 the proposed action does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

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.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 28, 2000.

Nora L. McGee,
Acting Regional Administrator, Region IX.
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