Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ103–0037; FRL–6978–1]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Arizona Department of Environmental Quality's portion of the Arizona State Implementation Plan (SIP). These revisions concern the establishment of affirmative defenses for excess emissions due to malfunctions, startups, and shutdowns, and reporting requirements for excess emissions. We are proposing to approve the rules under 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: Any comments must arrive by June 11, 2001.

ADDRESSES: Mail comments to Ginger Vagenas, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

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

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1252.

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?

This proposal addresses two rules that were adopted on February 15, 2001 and submitted on March 26, 2001 by Arizona Department of Environmental Quality: R18–2–310, Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown; and R18–2–310.01, Reporting Requirements.

On May 1, 2001, this rule submittal was found to meet the completeness criteria in 40 CFR part 51 appendix V.

B. Are There Other Versions of These Rules?

There are no previous versions of Rules 310 or 310.01 in the SIP, although the Arizona Department of Health Services submitted an earlier version of these rules (R9–3–309) to us on October 24, 1985. We proposed to approve Rule R9–3–309 into the SIP on September 22, 1986, but did not take final action.

C. What Is the Purpose of the Submitted Rules?

Emissions in excess of the limits that apply to a source are violations of the applicable emission limitation. State agencies must always retain the option to enforce such violations, however, under certain circumstances, an affirmative defense to enforcement proceedings based on violations of emission limits can be included in a SIP. Rule 310 establishes an affirmative defense to civil or administrative enforcement proceedings, other than a judicial action seeking injunctive relief, providing certain criteria have been met. Rule 310.01 sets out reporting requirements that the source must meet if it has emissions in excess of its limits.

II. EPA's Evaluation and Action

How Is EPA Evaluating the Rules?

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the Clean Air Act (CAA) and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements appears in EPA policy guidance documents. EPA policy on excess emissions occurring during startup and shutdown is contained in a memorandum dated September 20, 1999, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (the Excess Emissions Policy). In general, the guidance document cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted rules meet Federal requirements, are fully enforceable, and strengthen or maintain the SIP.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the Clean Air Act and the relevant policy and guidance regarding excess emissions. Under the CAA, EPA has a fundamental responsibility to ensure that SIPs provide for attainment and maintenance of the national ambient air quality standards and protection (NAAQS) of prevention of significant deterioration (PSD) increments. See, e.g., sections 110(a) and (l) of the CAA, 42 U.S.C. sections 7410(a) and (l) (EPA cannot approve a SIP revision that would interfere with attainment of a NAAQS or any other requirement of the CAA).[1] Accordingly, EPA believes that an acceptable affirmative defense provision may only apply to actions for penalties, but not to actions for injunctive relief. This restriction ensures that both state and federal authorities remain able to protect air quality standards and PSD increments. Rule 310 includes the following provisions:

[1] Pursuant to Section 110(1), EPA may not approve a SIP revision if ''the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this chapter.'' See also CAA section 193, 42 U.S.C. 7575, and the definitions of ''emission limitation'' and ''emission standard'' contained in CAA section 302(k), 42 U.S.C. section 7602(k).

1. All periods of excess emissions are treated as violations of the emission limitation.

2. The rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction, startup, and shutdown episodes. There is no affirmative defense to actions for injunctive relief.

3. The rule includes criteria consistent with EPA's excess emissions policy that restrict the availability of affirmative defenses to malfunctions that are sudden, unavoidable, and unpredictable, and to excess emissions during startup and shutdown that could not have been avoided through careful planning and design. In all cases, all possible steps must have been taken to minimize excess emissions.

4. An affirmative defense is not available if during the period of excess emissions, there was an exceedence of the relevant ambient air quality standard that could be attributed to the emitting source.

5. The defendant has the burden of proof of demonstrating it has met the criteria set out in Rule 310.

Rule 310.01 requires that the owner or operator of a source must notify ADEQ within 24 hours of learning that the source has emitted pollutants in excess of its limits. A detailed written report must be submitted within 72 hours of the initial notification. In order to qualify for an affirmative defense under Rule 310, the source must comply with the requirements of Rule 310.01.

C. Public comment and final action.

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revisions to any state implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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: May 4, 2001.

Michael Schultz,

Acting Regional Administrator, Region IX.

[FR Doc. 01–11916 Filed 5–10–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0054; FRL–6978–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Denver 1-Hour Ozone Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 30, 2000, the Governor of Colorado submitted a request to redesignate the Denver-Boulder metropolitan (Denver) ''transitional'' ozone nonattainment area to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). As part of this request, the Governor asked that EPA parallel process a proposed maintenance plan for the Denver area. In conjunction with the Governor's submittal, EPA is also proposing approval of revisions to Colorado's Regulation No. 3 ''Air Contaminant Emissions Notices'' and Colorado's Regulation No. 7 ''Emissions of Volatile Organic Compounds'' that were previously submitted by Governor