

Service-wide administrative procedures, program processes, or instructions" that do not significantly affect the quality of the human environment. This proposed rule would allow for larger residential outbuildings on private lands within the Sawtooth National Recreation Area. The agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. Furthermore, public comments indicating that the current 400-square-foot limit is inadequate were previously received in response to an environmental assessment prepared in 2000 for the proposed amendment of the Sawtooth National Forest land and resource management plan. A final determination will be made upon adoption of a final rule.

#### *No Takings Implications*

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed rule does not pose the risk of a taking of Constitutionally protected private property.

#### *Federalism*

The agency has considered this proposed rule under the requirements of Executive Order 13132, Federalism, and has concluded that the proposed rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

#### *Consultation and Coordination with Indian Tribal Governments*

This proposed rule, which is applicable only to private lands within the Sawtooth National Recreation Area, does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with tribes is not required.

#### *Energy Effects*

This proposed rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

#### *Controlling Paperwork Burdens on the Public*

This proposed rule does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

#### *Unfunded Mandates Reform*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule does not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

#### *Civil Justice Reform*

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. After adoption of this rule as final, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect would be given to this rule; and (3) the Department would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

#### **List of Subjects in 36 CFR Part 292**

Mineral resources, Recreation and recreation areas.

Therefore, for the reasons set forth in the preamble, the USDA, Forest Service, proposes to amend 36 CFR part 292, subpart C as follows:

## **PART 292—NATIONAL RECREATION AREAS**

### **Subpart C—Sawtooth National Recreation Area—Private Lands**

1. The authority citation for subpart C continues to read as follows:

**Authority:** Sec. 4(a), Act of Aug. 22, 1972 (86 Stat. 613).

2. Amend § 292.16 by revising the second sentence in paragraph (e)(2)(ii) to read as follows:

#### **§ 292.16 Standards.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) \* \* \* Aggregate square foot area of outbuildings not to exceed 850 square feet and to be limited to one story not more than 22 feet in height.

\* \* \* \* \*

Dated: April 8, 2004.

**Sally Collins,**

*Associate Chief.*

[FR Doc. 04-9102 Filed 4-21-04; 8:45 am]

**BILLING CODE 3410-11-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[AZ 126-0074a; FRL-7650-2]

### **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 (ADEQ) portion of the Arizona State Implementation Plan (SIP). These revisions concern opacity standards related to particulate matter (PM-10) emissions from industrial processes. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments must arrive by May 24, 2004.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revisions, EPA's technical

support document (TSD) and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions at the following locations:

- Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B-102, 1301 Constitution Avenue, NW., Washington, DC 20460.
- Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

A copy of the rules may also be available via the Internet at [http://www.sosaz.com/public\\_services/Title\\_18/18-02.htm](http://www.sosaz.com/public_services/Title_18/18-02.htm).

Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4118, [petersen.alfred@epa.gov](mailto:petersen.alfred@epa.gov).

**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 we are proposing to approve with the dates that they were revised and submitted by the ADEQ.

**TABLE 1.—SUBMITTED RULES**

Local agency	Rule No.	Rule title	Revised	Submitted
ADEQ .....	R18-2-101 (paragraphs 41 and 111)	Definitions [“existing source” and “stationary source”] .....	09/26/90	01/16/04
ADEQ .....	R18-2-702 .....	General Provisions [Visible Emissions] .....	08/08/03	01/16/04

On March 19, 2004, the submittal of Rule R18-2-101 (paragraphs 41 and 111) and Rule R18-2-702 was 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?*

We approved a version of Rule R18-2-101 (paragraphs 41 and 111) into the SIP on August 10, 1988 (53 FR 30220) as Rule R9-3-101. We approved a version of Rule R18-2-702 into the SIP on April 23, 1982 (47 FR 17485) as Rule R9-3-501.

On September 23, 2002 (67 FR 59456), we published a full disapproval of ADEQ Rule R18-2-702 as revised locally on November 13, 1993 and submitted on July 15, 1998. Offset sanctions would start on April 24, 2004 if the deficiencies were not corrected.

*C. What Is the Purpose of the Submitted Rule Revisions?*

Particulate matter (PM-10) harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM-10 emissions. Rule R18-2-702 establishes general opacity requirements that help control PM-10 emissions.

The purpose for the Rule R9-3-101 (paragraph 41) revision relative to the SIP Rule R9-3-101 (paragraph 62) is as follows:

- To change the definition of “existing source” from those commencing construction or alteration before May 14, 1979 to those which do not have a New Source Performance Standard (NSPS) for PM-10. Rule R18-

2-702 applies to “existing sources.” This revised definition will ensure that all existing sources not otherwise subject to an opacity limit are covered by Rule R18-2-702. This includes many more sources in the applicability of the rule, so strengthens the SIP.

The purpose for the Rule R9-3-101 (paragraph 111) revision relative to the SIP Rule R9-3-101 (paragraph 158) is as follows:

- To clarify the definition of “stationary source” and, as a result, to clarify the sources covered by Rule R18-2-702. This revision will strengthen the SIP by removing potential ambiguity.

The purpose for the Rule R18-2-702 revisions relative to the SIP Rule R9-3-501 is to remedy deficiencies in the full disapproval of the version revised on November 18, 1993. See 67 FR 59456 (September 23, 2002). The deficiencies cited [in brackets] and the remedies are as follows:

- [The previous version of Rule R18-2-702 relaxed the SIP by changing the scope of the rule to apply to only “existing sources.”] The revised rule cross-references the definition of “existing source” in Rule R9-3-101(41) which has been changed to “sources without an NSPS.” This expands the scope of the rule to include more than 100 existing sources and exempts only those new sources already subject to NSPS opacity standards. Therefore, both new and existing sources are covered by an opacity standard, and there is no relaxation of the SIP in Rule R18-2-702.

- [The previous version of Rule R18-2-702 included a 40% opacity standard which EPA concluded does not meet the requirements of RACM/RACT.] The

standard has been changed to 20% opacity for stationary sources in nonattainment and maintenance areas. This standard fulfills the requirements of RACM/RACT.

- [The previous version of Rule R18-2-702 included inappropriate discretion for the Director to relax the opacity standard if the source complies with the associated mass standard for the source.] Revised Rule R18-2-702.E requires that the ADEQ Director approving an alternate opacity standard submit the proposed alternate opacity standard to EPA for approval. This will assure that RACM/RACT and other SIP requirements are fulfilled for such revisions.

The TSD has more information about these rules.

**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 CAA), must require RACM, including RACT, for significant source categories in moderate PM-10 nonattainment areas (see sections 172(c)(1) and 189(a)), and must not relax existing requirements (see sections 110(l) and 193). The area regulated by the rule contains five counties that are PM-10 moderate nonattainment areas: Cochise County, Santa Cruz County, Gila County, Mohave County, and Yuma County. Therefore, rules with emission standards for these nonattainment areas must meet the requirements of RACM/RACT.

Documents that we used to help evaluate enforceability and RACT

requirements consistently include the following:

- PM-10 Guideline Document (EPA-452/R-93-008).

#### *B. Do the Rules Meet the Evaluation Criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACM/RACT, and SIP relaxations. The TSD has more information on our evaluation.

#### *C. Public Comment and Final Action*

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the CAA. 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 these rules into the federally enforceable SIP.

### **III. Statutory and Executive Order Reviews**

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. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve 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 (2 U.S.C. 1501 *et seq.*).

This proposed rule also does not have tribal implications because it will 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). This

action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve 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 "Protection of Children from Environmental Health Risks and Safety Risks" (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) do not apply. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 5, 2004.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*  
[FR Doc. 04-9041 Filed 4-21-04; 8:45 am]

**BILLING CODE 6560-50-P**

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[CA 218-0433b; FRL-7640-8]

#### **Revisions to the California State Implementation Plan, Kern County Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). The KCAPCD revisions concern stack sampling, standards for granting applications, and the emission of particulate matter (PM-10) from agricultural burning and prescribed burning. We are proposing to approve local rules that administer regulations and regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by May 24, 2004.

**ADDRESSES:** Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B-102, 1301 Constitution Avenue, NW., Washington, DC 20460.  
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.  
Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbltx.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR-4),