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

[EPA–R09–OAR–2009–0521; FRL–8946–1]

Revisions to the Arizona State Implementation Plan; Pinal County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Pinal County portion of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions from construction, earthmoving, and related activities, and commercial and residential unpaved parking lots. We are approving local rules that regulate these emission sources 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 September 16, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0521, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov*.
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@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 addressed by this proposal with the dates that they were adopted by Pinal County and submitted by the Arizona Department of Environmental Quality.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
Pinal County	2–8–302	Performance Standards—Hayden PM10 Non-attainment Area	01/07/09	06/12/09
	4–2–020	Fugitive Dust—General	12/04/02	06/12/09
	4–2–030	Fugitive Dust—Definitions	12/04/02	06/12/09
	4–4	PM–10 Non-attainment Area Rules; Dustproofing and Stabilization for Commercial Unpaved Parking, Drive and Working Yards.	06/03/09	06/12/09
	4–5	PM–10 Non-attainment Area Rules; Stabilization for Residential Parking and Drives.	06/03/09	06/12/09
	4–7	Construction Sites in Non-Attainment Areas—Fugitive Dust	06/03/09	06/12/09
	4–9	Test Methods	06/03/09	06/12/09

On July 15, 2009, EPA found these rule submittals were complete according to completeness criteria in 40 CFR Part 51 Appendix V. These criteria must be met before formal EPA review can begin.

B. Are there other versions of these rules?

There are no previous versions of these rules in the SIP.

C. What is the purpose of the submitted rules?

PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM emissions. Each of the submitted rules are discussed below.

Rules 4–2–020 and 4–2–030 are sections of Pinal County Code Chapter 4, Article 2—Fugitive Dust providing a general statement of article applicability within Section 020 and a set of definitions for the article within Section 030.

Rule 2–8–302 is a rule designed to limit the emissions of fugitive dust or particulate matter from construction, roadway building, use and maintenance, and bulk material handling, storage, and transport by subjecting these activities to a twenty percent opacity restriction.

Rule 4–4 is a rule designed to limit the emissions of fugitive dust or particulate matter from commercially operated unpaved parking lots, drive ways, and working yards. Rule 4–4 provisions include a 20% opacity and 0% visible emissions property line standard, silt content and silt loading stabilization standards and requirements for clean-up of material track-out onto paved public roads. The rule also includes requirements for recordkeeping of dust stabilization efforts.

Rule 4–5 is a rule designed to limit the emissions of fugitive dust or particulate matter from residential unpaved parking lots and drive ways. Rule 4–5 provisions include surface stabilization requirements and control measures and requirements for clean-up of material track-out onto paved public roads.

Rule 4–7 is a rule designed to limit the emissions of fugitive dust or particulate matter from development activity related to earthmoving and construction sites such as bulk material hauling, unpaved parking lots, vehicle track-out, and disturbed soil in open areas. Rule 4–7 provisions include a twenty percent opacity and zero percent visible emissions property line standard, requirements to implement Best Available Control Measures (BACM) for material track-out onto paved public roads, bulk material handling and movement, unpaved roadways and unpaved parking areas on a site. The rule also includes provisions for a dust control permit program, dust control plan requirements, and related recordkeeping requirements.

Rule 4–9 contains the test methods for determining compliance with the opacity and soil stabilization requirements of Rules 4–7, 4–4, and 4–5.

Rules 4–7, 4–4, and 4–5 apply to the Apache Junction portion of Pinal County within the Phoenix PM Nonattainment Area (NAA), referred to in the rule as T1N R8E (Township 1 North, Range 8 East). The rules do not apply to the remaining portion of Pinal County. These rules are part of the Pinal County contribution to the Phoenix serious area PM–10 attainment plan control strategy.

Rule 2–8–302 applies to the Hayden planning area PM–10 non-attainment area portion of Pinal County defined in 40 CFR 81.303 (See also 72 FR 14422, March 28, 2007). It is neither applicable to the Apache Junction serious PM–10 non-attainment area, nor the remainder of Pinal County.

EPA's technical support document (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 Act) and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM nonattainment areas, and Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)). As mentioned earlier, Pinal County regulates two PM nonattainment areas: The Hayden Area, classified as moderate; and, the Apache Junction area, classified as serious (see 40 CFR part 81). Consequently, Rule 2–8–302 must implement RACM, while Rules 4–7, 4–4, and 4–5 must implement BACM.

Guidance and policy documents that we use to help evaluate specific enforceability and RACM or BACM requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
5. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).
6. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.
7. ''Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures,'' EPA 450/2–92–004, September 1992.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACM, BACM, and SIP relaxations.

On August 1, 2007, EPA gave a limited approval and limited disapproval to rules amending the SIP for Pinal County (see 72 **Federal Register** (FR) 41896). For further discussion, please see our October 17, 2006 proposal of this action at 71 FR 60934. In this rulemaking, we identified the deficiencies listed below.

(1) As written, Rule 4–2–020, Section B effectively exempts agricultural activities from the fugitive dust rules without justification.

(2) Rule 4–2–030, Definition 3, defines ''reasonable precaution'' in highly general terms. The term ''reasonable precaution'' is then used in every section of Rule 4–2–040, to define what actions must be taken to mitigate fugitive dust emissions from relevant activities. This general requirement is not sufficiently clear or enforceable.

(3) Rule 4–2–050 does not contain recordkeeping provisions. The absence of recordkeeping provisions makes the all of the submitted rules difficult to enforce.

Our final action on August 1, 2007 started sanctions clocks as required by Section 179 of the CAA. The first sanctions clock expired on March 1, 2009 and the offset sanctions have been in effect.

Pinal County's submittal of 4–2–020 and 4–2–030 is intended to address and

correct the exemption of agricultural activities from fugitive dust rules. In these submittals, the exemption for agricultural activities at subsection 4–2–020.B, along with the definition of ''normal farm cultural practice'' at subsection 4–2–030.2, were deleted; thus, correcting this deficiency. After the 12/02/02 adoption of this amendment, the Pinal County Governing Board amended its list of SIP measures (Chapter 1, Article 1, Section 105—SIP List) on 01/07/09 to reflect its 12/02/02 action and has submitted this list to EPA.

Pinal County's submittal of Rules 2–8–302, 4–4, 4–5, 4–7, and 4–9 is intended to address and correct the Rule 4–2–030 ''reasonable precautions'' and Rule 4–2–050 recordkeeping deficiencies in our limited disapproval.

Should EPA complete a final approval action on the submitted rules, we will find that Pinal County has corrected the deficiencies described above. Consequently, sanctions will be terminated and our Federal Implementation Plan (FIP) obligation will be removed.

Today, we are also publishing an interim final determination with this proposal that will stay sanctions during the public comment period and while we review any public comments we may receive.

The TSDs have more information on our evaluation. Because correcting the 4–2–020 and 4–2–030 deficiencies only involved removing the agricultural activities exemption, we have not provided a TSD discussing this amendment to Rules 4–2–020 and 4–2–030.

C. EPA Recommendations To Further Improve the Rules

The TSD for Rule 4–7 describes additional rule revisions that do not affect EPA's current action but are recommended for the next time Pinal County modifies Rule 4–7 and 4–9. Rule 4–9 contains an editorial error that should be corrected as soon as practicable.

D. 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 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 these rules into the federally enforceable SIP and remove all sanctions and FIP obligations associated with our August 1, 2007 limited disapproval.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 31, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–19651 Filed 8–14–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2005–0161; FRL–8945–6]

RIN 2060–A081

Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program; Notice of Availability of Expert Peer Review Record

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comments.

SUMMARY: The U.S. Environmental Protection Agency (''EPA'') announces the availability of documents pertaining to the expert peer review record completed on the Renewable Fuel Standard Program (RFS2) Lifecycle Greenhouse Gas (GHG) Analysis. On May 5, 2009, EPA announced proposed revisions to the National Renewable Fuel Standard program (commonly known as the RFS program) as required by the Energy Independence and Security Act (EISA) of 2007. EISA established new renewable fuel categories and eligibility requirements, including setting the first ever mandatory GHG reduction thresholds for the various categories of renewable fuels. EISA also defined the term lifecycle greenhouse gas (GHG) emissions. As part of proposed revisions to the RFS program and in accordance with the EISA definition of GHG emissions, EPA examined the GHG impacts associated with different types of renewable fuels. Several new pieces of analysis were developed to support this lifecycle assessment. EPA decided to initiate an independent peer review to help respond to stakeholder concerns and to ensure that the Agency makes decisions based on the best science available. The Agency, in accordance