

reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Dated: October 25, 1999

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(94)(i)(B) to read as follows:

§ 52.120 Identification of plan.

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- (c) * * *
- (94) * * *
- (i) * * *

(B) Rule 318 and Residential Woodburning Restriction Ordinance, revised on April 21, 1999.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 086-0018c; FRL-6468-8]

Interim Final Determination That State Has Corrected Deficiencies; State of Arizona; Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving revisions to the Arizona State Implementation Plan (SIP). EPA has also published a proposed rulemaking on the same subject. If a person submits adverse comments on EPA's direct final action, EPA will withdraw its direct final rule and will consider any comments received before taking final action on the State's SIP revisions. Based on the full approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which a sanctions clock began on April 30, 1998. This action will stay both the imposition of the offset sanction and the imposition of the highway sanction.

Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's approval of the State's SIP revisions, the direct final action published in today's **Federal Register** will also finalize EPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on EPA's approval EPA will publish a timely withdrawal of the direct final rule. If comments are received on this interim final action, EPA will publish a final determination taking into consideration any comments received.

DATES: *Effective Date:* November 8, 1999.

Comments: Comments must be received by December 8, 1999.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the SIP revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted revisions are also available for inspection at the following locations:

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

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

Maricopa County Environmental Services Division, Air Quality Division, 1001 North Central Avenue #201, Phoenix, AZ 85004

FOR FURTHER INFORMATION CONTACT:

Patricia Bowlin, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1188.

SUPPLEMENTARY INFORMATION:

I. Background

On August 31, 1995, the State of Arizona submitted Maricopa County Rule 318, Approval of Residential Woodburning Devices, and the Maricopa County Residential Woodburning Restriction Ordinance which EPA disapproved in part on March 31, 1998, 63 FR 15303. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted revised rules on August 4, 1999. EPA has taken direct final action on this submittal pursuant

to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's **Federal Register**, EPA has issued a direct final full approval of the State of Arizona's SIP revision. In addition, in the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State's revision.

Based on the direct final full approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's direct final full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will withdraw the direct final rule and either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have been corrected.

This action does not stop the sanctions clock that started for this area on April 30, 1998. However, this action will stay the imposition of the offset sanction and will stay the imposition of the highway sanction. See 59 FR 39832 (Aug. 4, 1994). If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed, or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832, codified at 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be stayed until EPA's direct final action fully approving the State's submittal becomes effective or until EPA takes action proposing or finally disapproving in whole or part

the State submittal. If EPA's direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed, stayed, or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this document is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA consults with those governments, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. 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 E.O. 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. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. 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 Office of Management and Budget, 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this 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. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, 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 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 approval action promulgated 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 Federal action approves 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. Submission to Congress and the Comptroller General

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**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

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 January 7, 2000. 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, Incorporation by reference, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: October 27, 1999.

Debbie Jordan,

Acting Regional Administrator, Region IX.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OK-3-1-5201a; FRL-6470-4]

Approval and Promulgation of Implementation, Plans Oklahoma; Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action approving a revision to the Oklahoma State Implementation Plan (SIP) involving the Oklahoma Visibility Protection Plan for the Federal Class I area. This action approves the general plan revisions and the long-term strategy and removes the disapproval of the Oklahoma SIP and resultant Federal

Implementation Plan (FIP) for failure to meet the Federal requirements. This action does not apply to areas of "Indian Country" over which the State of Oklahoma has not demonstrated authority.

DATES: This rule is effective on January 7, 2000, without further notice, unless EPA receives adverse comment by December 8, 1999. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," and "our" is used, we mean EPA.

I. What Is the Purpose of This Action?

This action approves the Oklahoma Visibility Protection Plan submitted by the Governor of Oklahoma on June 18, 1990, as a revision to the Oklahoma SIP. This plan includes revisions to sections 1.4.4(b), 1.4.4(f), and 1.4.4(g) of the Prevention of Significant Deterioration (PSD) rules in the Oklahoma Air Quality Control Regulations. This action removes the EPA disapproval of the Oklahoma visibility plan and resultant FIPs published in the **Federal Register** on June 24, 1986 (51 FR 22937), and November 24, 1987 (52 FR 45137), and codified in 40 CFR 52.1933.

II. Why Is EPA Taking This Action?

Section 169A of the Federal Clean Air Act (the Act) requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. Mandatory Class I Federal areas are defined as certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act. Mandatory Class I Federal areas in each State are listed in 40 CFR part 81, subpart D—Identification of Mandatory Class I Federal Areas Where Visibility is an Important Value.

Section 169A of the Act specifically required EPA to promulgate regulations requiring certain states to amend their SIPs to provide for visibility protection. These regulations have been promulgated in 40 CFR part 51, subpart P, Visibility Protection. See 45 FR 80089, December 2, 1980.

III. Does Oklahoma Have Any Federal Class I Areas?

Oklahoma has one mandatory Class I area. It is the Wichita Mountains National Wildlife Refuge in Comanche County near Fort Sill Military Reservation.

IV. What Is Meant by Part I and Part II Visibility SIPs?

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs. A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific schedule. We were required to promulgate FIPs for visibility in States where SIPs were deficient with respect to the visibility regulations. Specifically, the first part of the agreement required us to propose and promulgate FIPs which cover the visibility monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307, respectively. These requirements became known as the Part I Visibility SIP requirements. However the settlement allowed a State an opportunity to avoid Federal promulgation if it submitted an approvable part I SIP by May 6, 1985. Oklahoma was one of the States listed as having an inadequate NSR and monitoring plan for visibility protection.

The second part of the settlement agreement required EPA to determine the adequacy of the SIPs to meet the remaining provisions of the visibility regulations and to propose and promulgate FIPs for states with deficient