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Stanley F. Mires,

Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 063-0029a; FRL-6866-1]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Arizona State Implementation Plan (SIP) which concern the control of sulfur emissions within the Pinal County Air Quality Control District (PCAQCD). We are approving three local rules and rescinding one local rule that regulate

these emissions under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on November 28, 2000 without further notice, unless EPA receives adverse comments by October 30, 2000. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

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

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

FOR FURTHER INFORMATION CONTACT:

Christine Vineyard, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1197.

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 approving and the rule we are rescinding with the dates that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality.

TABLE 1.—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|--------------|-----------|---|----------|-----------|
| PCAQCD | 5-22-950 | Fossil Fuel Fired Steam Generator Standard Applicability | 02/22/95 | 11/27/95 |
| PCAQCD | 5-22-960 | Fossil Fuel Fired Steam Generator Sulfur Dioxide Emission Limitation. | 02/22/95 | 11/27/95 |
| PCAQCD | 5-24-1024 | Sulfite pulp mills—sulfur compound emissions | 02/22/95 | 11/27/95 |
| PCAQCD | 7-3-2.5 | Other Industries (repealed) | 06/20/96 | 10/07/98 |

On February 2, 1996 and April 24, 1999, 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. What Is The Purpose of the Submitted Rule Revisions?

The rules submitted by the PCAQCD are intended to replace existing SIP rules that apply to both Pinal and Gila Counties formerly known as the Pinal-Gila Counties Air Quality Control District.¹ Therefore, the submitted rule revisions are applicable to the Pinal County Air Quality Control District

only. The SIP rules as applicable to Gila County will not change. TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

In determining the approvability of the SO₂ rules, EPA must evaluate each rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

While the portion of PCAQCD applicable to these submittals is in attainment with the SO₂ NAAQS, many of the general SIP requirements regarding enforceability and SIP relaxation (see 110(l) and 193 of the Act), for example, are still appropriate for these rules.

Guidance and policy documents that we used to define specific enforceability requirements include the following:

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

2. "SO₂ Guideline Document," EPA-452/R-94-008.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The rule revisions are primarily administrative, where PCAQCD rennumbers existing SIP regulations to make them applicable to Pinal County only and rescinds one rule that is no longer applicable. The TSD has more information on our evaluation.

¹ Pinal County was a participant in a multi-county air quality control district known as the Pinal-Gila Air Quality Control District. In 1988 the respective Boards of Supervisors of Pinal County and Gila County agreed to dissolve the Pinal-Gila Counties Air Quality Control Districts. Gila County terminated its participation in the air district and gave jurisdiction for air quality control in Gila County to the State of Arizona. PCAQCD was formed to regulate air quality in Pinal County.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by October 30, 2000, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 28, 2000. This will incorporate these rules into the federally enforceable SIP and remove the rescinded rule from the SIP for Pinal County.

III. Background Information

Why Were These Rules Submitted?

40 CFR 81.303 provides the attainment status designations for air districts in Arizona. In Pinal County, there are two clearly defined sulfur dioxide nonattainment areas. One surrounds the BHP copper smelter located in San Manuel; the other surrounds the ASARCO Hayden copper smelter complex. Since Arizona statutes have exclusive jurisdiction over copper smelters, the Arizona Department of Environmental Quality prepares and executes the implementation plans for those sulfur dioxide nonattainment areas. The rules submitted by the PCAQCD applies to sources in the portion of the county designated "attainment" for sulfur dioxide.

Sulfur dioxide is formed by the combustion of fuels containing sulfur compounds. High concentrations of SO₂ affect breathing and may aggravate existing respiratory and cardiovascular disease.

IV. Administrative Requirements

A. Executive Order 12866

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

This rule is 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 affects 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. If the mandate is unfunded, EPA must provide to 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 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 Executive Order 13084 do not apply to this 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 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 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. Thus, the requirements of section 6 of the Executive Order 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 act on 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.

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 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 costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This 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 action because it does not require the public to perform activities conducive to the use of VCS.

H. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

I. 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 November 28, 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 relations, Ozone, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: August 18, 2000.

Nora McGee,

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. 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 paragraphs (c)(18)(iv)(C) and (c)(84)(i)(E) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(18) * * *

(iv) * * *

(C) Previously approved on December 17, 1979 and now deleted without replacement Rule 7-3-2.5.

* * * * *

(84) * * *

(i) * * *

(E) Rules 5-22-950, 5-22-960, and 5-24-1045 codified on February 22, 1995.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY43a-212, FRL-6873-2]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the New York State Implementation Plan for ozone concerning the control of volatile organic compounds and oxides of nitrogen. This revision was submitted to comply with provisions of the Clean Air Act (CAA) relating to the adoption of vehicle refueling controls or comparable measure(s) in the upstate portion of New York State. The intended effect of this action is to approve a program required by the CAA which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

DATES: This direct final rule is effective on November 28, 2000 without further notice, unless EPA receives adverse comment by October 30, 2000. 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: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.