

documentation. A Categorical Exclusion Determination and environmental analysis checklist will be available for inspection and copying in the docket to be maintained at the address listed in ADDRESSES.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Regattas and Marine parades.

Regulation

For the reasons set out in the preamble the Coast Guard proposes to amend 33 CFR Part 100, section 100.1102, Table I, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. Section 100.1102, Table I is amended by adding an entry for the Laughlin Aquamoto Sports Challenge and Expo immediately following the entry for the Laughlin Classic to read as follows:

§ 100.102— Marine Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona).

* * * * *

Table 1

* * * * *

Laughlin Aquamoto Sports Challenge and Expo

Sponsor: Baja Promotions

Dates: The last Thursday of May every year, lasting a total of 4 days, ending on Sunday, per the following schedule: 1.) the first day of the event, the last Thursday of May each year, from 3 p.m. PDT to 5 p.m. PDT, 2.) the second day of the event, Friday, from 8 a.m. PDT to 2 p.m. PDT, and from 3:30 p.m. PDT to 6 p.m. PDT, 3.) the third day of the event, Saturday, from 8 a.m. PDT to 1:30 p.m. PDT, and from 4 p.m. PDT to 5 p.m. PDT; and, 4.) the fourth and final day of the event, Sunday, from 9 a.m. PDT to 1:30 p.m. PDT, from 3 p.m. PDT to 4 p.m. PDT, and from 6 p.m. PDT to 7 p.m. PDT.

Where: That portion of the Colorado River near Laughlin, Nevada, from Davis Dam to Harrah's Hotel and Casino.

Dated: December 19, 1997.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 98-1270 Filed 1-20-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 041-1041; FRL-5948-4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Missouri State Implementation Plan (SIP) related to the regulation of emissions of particulate matter as fugitive dust. These revisions include the addition of a new fugitive dust rule which replaces four previous fugitive dust rules. The new fugitive dust rule provides a consistent and enforceable mechanism to help maintain compliance with the National Ambient Air Quality Standards (NAAQS) for particulate matter.

DATES: This rule is effective on February 20, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Aaron J. Worstell at (913) 551-7787.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

On August 15, 1997, the EPA proposed revisions to the Missouri SIP related to the regulation of fugitive particulate emissions (see 62 FR 43679). Today, the EPA is taking final action on those proposed SIP revisions and is responding to comments received during the public comment period.

Missouri originally adopted new rule 10 CSR 10-6.170 (the fugitive dust rule) on June 28, 1990. The new fugitive dust rule replaced four previous SIP-approved rules that were rescinded by the state on September 28, 1990 (effective date). The new fugitive dust rule was amended by Missouri and submitted to the EPA for SIP approval on November 20, 1996. The SIP revisions approved here, the incorporation of the new fugitive dust rule and rescission of the four previous rules, will reconcile the Missouri state

regulations with the Federally approved SIP. In addition, the SIP revisions will strengthen the existing SIP by making the fugitive control requirements consistent throughout the state, by clarifying the actions which constitute prohibited emissions, and by clarifying the types of measures which must be implemented to minimize such emissions.

B. Response to Comments

On September 2, 1997, the EPA received comments from the Missouri AG Industry Council (MO-AG) on the proposed fugitive dust SIP revisions. Subsequently, the EPA received comments from the Missouri Limestone Producers Association (MLPA) on September 5, 1997, and additional comments from MO-AG on September 11, 1997. Many of the comments submitted from MO-AG and MLPA overlap and will be addressed together where appropriate.

Both commentors contend that the EPA has no authority to take final action on the fugitive dust SIP revisions in light of the pending appeal to the Missouri Air Conservation Commission (MACC). The appeal was requested on behalf of MLPA, the Missouri Concrete Association, and others, and is in regard to the Missouri Department of Natural Resources' (MDNR) request that the EPA approve 10 CSR 10-6.170 for incorporation into the SIP.

The EPA acknowledges that an appeal has been granted by the MACC in regard to inclusion of the fugitive dust rule in the Missouri SIP. However, this in no way stays the EPA's processing of the SIP revisions. The fugitive dust rule was submitted by the Director of the MDNR on February 24, 1997, pursuant to authority granted by the Missouri statutes and rule 10 CSR 10-1.010(2)(B)6. Moreover, Missouri has not withdrawn its request to include the fugitive dust rule in the SIP. Therefore, the EPA has determined that Missouri's submission meets the requirements of 40 CFR 51.103(a), relating to procedures for submission of plan revisions.

Additionally, the commentors dispute the EPA's statement that the fugitive dust rule will help maintain compliance with the PM₁₀ NAAQS. The commentors assert that the EPA has failed to provide sufficient scientific evidence to support this claim, that it is contrary to assertions made by MDNR staff when the consolidated rule was originally adopted, that the fugitive dust rule is in fact a "nuisance rule," and that EPA entered into an "agreement" with the MDNR not to include the fugitive dust rule in the SIP. The EPA does not believe that any of the

commentors' contentions are an adequate basis, nor are they fully accurate, to disapprove the Missouri submission, as discussed below.

In regard to the scientific evidence supporting the regulation of fugitive dust as a means of reducing PM₁₀ emissions and thereby contributing to efforts to maintain the NAAQS, it is well established that particulate matter size distribution for fugitive dust emissions typically includes a significant subset of particles with aerodynamic diameters in the range of 0 to 10 microns (i.e., particles meeting the definition of PM₁₀). This is evidenced by the particle size distributions provided in Appendix B of the EPA's Compilation of Air Pollution Emission Factors (AP-42), 5th ed. (1995). For example, when considering uncontrolled process fugitive emissions from material handling and processing of aggregate and unprocessed ore, Appendix B, Table B.2.2 of AP-42 indicates that the cumulative percent of particles with a particle diameter less than 10 microns is 50 percent. In addition, in AP-42 the emission factors and estimation methods provided for certain fugitive sources reinforce that fugitive dust is a significant source of PM₁₀. For example, particle size multipliers provided in the estimation methods for calculating fugitive PM₁₀ emissions from unpaved roads (section 13.2.1) and aggregate handling and storage (section 13.2.2) also indicate that PM₁₀ accounts for approximately 50 percent of all fugitive particulate emitted. These estimation methods are based on tests performed by a sound methodology at many randomly chosen facilities with a source population sufficient to minimize variability, and are therefore considered capable of providing an excellent estimation of emissions.

In light of the available technical information, the EPA has determined that control of fugitive dust emissions will assist in the protection of the PM₁₀ NAAQS, and is an appropriate emission control for meeting applicable requirements of the Act (section 110(a)(2)(A)). The EPA has also determined that the Missouri rule meets the other applicable requirements of section 110 of the Act. Although one commentor referenced an assertion by an MDNR official from a public hearing held in 1990 indicating that, at least at that time, MDNR did not believe that the then-existing fugitive dust rule had direct relevance to section 110, the commentor did not provide any technical information indicating the basis for this assertion, and the EPA is not aware of a technical basis for it. In

fact, when Missouri adopted revisions to the rule in 1996, MDNR specifically concluded that the Missouri rule helps to protect public welfare (21 MoReg 2015, col. 2, September 16, 1996), which is also the basis for the EPA's secondary PM₁₀, as explained below. Whatever the position might have been in 1990, Missouri now believes that the rule should be included in the SIP, and the available technical information clearly supports the benefit of fugitive dust controls in protecting the NAAQS. Therefore, the EPA does not have a basis under the Act to disapprove the state's submission, and is taking final action to approve it.

The commentors also assert that the fugitive dust rule should be treated as a nuisance rule. In fact, MO-AG specifically states that "the fugitive dust rule is a 'nuisance rule' and not a NAAQS compliance rule." The term "nuisance rule" is often associated with rules such as odor rules that may not be considered to directly protect public health. However, a nuisance rule may in fact have a beneficial impact on public welfare. For example, the reduction of fugitive particulate matter may help to protect vegetation and to prevent damage to and deterioration of property. In this respect, the fugitive dust rule will help to maintain secondary PM₁₀ NAAQS which is associated with public welfare. (See, section 302(h), which defines welfare effects, which secondary NAAQS are set to protect, to include effects on "damage to and deterioration of property" and effects on "personal comfort and well-being.") Thus, the mere fact that an air pollution control requirement may be characterized as a "nuisance rule" does not mean that the requirement is unrelated to protection of the NAAQS. In addition to the role of the fugitive dust rule in maintaining the secondary PM₁₀ NAAQS, it also serves to protect the primary PM₁₀ NAAQS. See the EPA's response to the previous comment.

Also, one commentor takes issue with the EPA's statement that "the impetus for the development of 10 CSR 10-6.170 was the need for a consistent, statewide rule that serves to protect the particulate matter NAAQS by limiting fugitive dust emissions." However, the rule was developed to replace four existing SIP rules that served just that function. These fugitive dust rules have been part of the Federally enforceable SIP since originally submitted in 1972 and have been revised as part of the SIP on a number of occasions. To remove these rules from the SIP, without replacing them with equivalent fugitive dust rule(s), would be considered a relaxation of the SIP under section 110,

the state would then be required to demonstrate that the rules are not needed for maintenance of the standard. The state has chosen to retain the fugitive dust controls in the SIP. The EPA has no basis under the Act for rejecting the state's choice. The EPA did receive a letter from the Director of MDNR requesting that the EPA rescind four old fugitive dust rules from the SIP, but suggesting that by "prior agreement" with the EPA the rescinded rules not be replaced by 10 CSR 10-6.170. This letter was dated September 6, 1990, and is acknowledged in Part II of the proposed rulemaking published in the August 15, 1997, **Federal Register**. However, any determination to include the fugitive dust rule in the SIP is appropriately made in consideration of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements, and not on any informal agreement that may have existed between the EPA and MDNR. The MDNR has determined that the consolidated fugitive dust rule should be submitted as part of the SIP, and the EPA has no basis to reject the state's determination. Moreover, the commentor has not provided any support for the assertion that the purported "breach" of some agreement between the EPA and MDNR is detrimental to the public. In fact, as has been substantiated here, the inclusion of the rule in the SIP is to the public benefit since it helps to maintain compliance with the PM₁₀ NAAQS and thereby protects the public health and welfare.

Although not specifically a concern relating to the SIP, the EPA also notes that the state determined that inclusion of the consolidated rule in the SIP would simplify the permitting process under Title V of the Act. This is accomplished by ensuring that the regulations adopted by the state and those maintained as part of the SIP are consistent, since both types of regulations would be required to be included in state operating permits. The state has determined that consolidation of the various fugitive dust rules and inclusion of all of the rules in the SIP will reduce the regulatory burden on the permitting authority and on regulated sources.

II. Final Action

In this document, the EPA takes final action to approve revisions to the Missouri SIP as submitted on September 25, 1990, and November 20, 1996 (with supplemental information submitted February 24, 1997). These revisions include the addition of new rule 10 CSR 10-6.170, Restriction of Particulate

Matter to the Ambient Air Beyond the Premises of Origin, and the rescission of rules 10 CSR 10-2.050, Preventing Particulate Matter From Becoming Airborne (Kansas City); 10 CSR 10-3.070 Restriction of Particulate Matter From Becoming Airborne (Outstate); 10 CSR 10-4.050, Preventing Particulate Matter From Becoming Airborne (Springfield); and CSR 10-5.100, Preventing Particulate Matter From Becoming Airborne (St. Louis).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. 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

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the 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, the 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 the EPA to

establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The 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 approves preexisting 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.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 23, 1998. 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, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: December 15, 1997.

Dennis Grams,
Regional Administrator.

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 AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(102) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(102) Revised regulations for the control of fugitive particulate matter emissions were submitted by the Missouri Department of Natural Resources (MDNR) on September 25, 1990, and on November 20, 1996.

(i) Incorporation by reference.

(A) Regulation 10 CSR 10-6.170, entitled Restriction of Particulate Matter Beyond the Premises of Origin, effective November 30, 1990, as amended October 30, 1996.

(B) Rescission of regulation 10 CSR 10-2.050, entitled Preventing Particulate Matter From Becoming Airborne, effective September 28, 1990.

(C) Rescission of regulation 10 CSR 10-3.070, entitled Restriction of Particulate Matter From Becoming Airborne, effective September 28, 1990.

(D) Rescission of regulation 10 CSR 10-4.050, entitled Preventing Particulate Matter From Becoming Airborne, effective September 28, 1990.

(E) Rescission of regulation 10 CSR 10-5.100, entitled Preventing Particulate Matter From Becoming Airborne, effective on September 28, 1990.

(ii) Additional material.

(A) Letter from Missouri submitted on February 24, 1997, pertaining to the submission of supplemental documentation.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-7245]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.
ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood