37 CFR Part 7

Administrative practice and procedure, Trademarks.

■ The Office is correcting parts 2 and 7 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 2. Amend § 2.190 by revising paragraph (a) to read as follows:

§ 2.190 Addresses for trademark correspondence with the United States Patent and Trademark Office.

(a) Trademark correspondence. In general. All trademark-related documents filed on paper, except documents sent to the Assignment Services Division for recordation; requests for copies of trademark documents; and certain documents filed under the Madrid Protocol as specified in paragraph (e) of this section, should be addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451. All trademark-related documents may be delivered by hand, during the hours the Office is open to receive correspondence, to the Trademark Assistance Center, James Madison Building—East Wing, Concourse Level, 600 Dulany Street, Alexandria, Virginia 22314.

* * * * *

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

■ 3. The authority citation continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 4. Revise § 7.4, by revising paragraph (c) to read as follows:

§ 7.4 Receipt of correspondence.

* * * * *

(c) Hand-Delivered Correspondence. International applications under § 7.11, subsequent designations under § 7.21, responses to notices of irregularity under § 7.14, requests to record changes in the International Register under § 7.23 and § 7.24, requests for transformation under § 7.31, and petitions to the Director to review an action of the Office's Madrid Processing Unit, may be delivered by hand during the hours the Office is open to receive correspondence. Madrid-related hand-delivered correspondence must be delivered to the Trademark Assistance Center, James Madison Building—East Wing, Concourse Level, 600 Dulany Street, Alexandria, VA 22314, Attention: MPU.

* * * * *

Dated: October 26, 2004.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 04–24311 Filed 10–29–04; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 120–0063; FRL–7820–2]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a full approval of some revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP) and a limited approval/limited disapproval of another revision to the SIP. This action was proposed in the **Federal Register** on May 14, 2004 and concerns sulfur dioxide (SO_2) emissions from existing primary copper smelters. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves rules that regulate these emission sources and directs Arizona to correct rule deficiencies.

DATES: This rule is effective on December 1, 2004.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revisions by appointment at the following locations: Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

A copy of the rules may also be available via the Internet at *http://www.sosaz.com/public_services/Title_18/18–02.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, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

The following table lists the rules addressed by this action, with the dates that they were adopted and submitted by the ADEQ.

Local agency	Rule #	Rule title	Adopted	Submitted
ADEQ	R18–2–715 (sections F, G, and H).	Standards of Performance for Existing Primary Copper Smelters, Site-Specific Requirements.	08/09/02	09/12/03
ADEQ	R18–2–715.01	Standards of Performance for Existing Primary Copper Smelters, Compliance and Monitoring.	08/09/02	09/12/03
ADEQ	R18–2–715.02	Standards of Performance for Existing Primary Copper Smelters, Fugitive Emissions.	11/15/93	07/15/98
ADEQ	R18–2–appendix 8	Procedures for Utilizing the Sulfur Balance Method for Determining Sulfur Emissions.	11/15/93	07/15/98

On May 14, 2004 (69 FR 26786), EPA proposed a full approval of ADEQ's submitted Rules R18–2–715 (sections F, G, and H), R18–2–715.01, and R18–2–715.02 as fulfilling the requirements of RACT, SIP relaxations, and enforceability. On the same date, we proposed a limited approval and limited disapproval of Rule R18–2–appendix 8.

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions of Rule R18–2–appendix 8 conflict with section 110 and part D of the Act. These provisions include the following:

1. Sections A.8.1.2 and A.8.2 contain excessive Director's discretion by allowing the Director to approve an equivalent method to calculate the sulfur content without providing the criteria that will be used to determine approvability.

2. Sections A.8.1.2.1.1, A.8.1.2.1.2, and A.8.1.2.1.3 should clarify how a representative sample should be taken from belt feeders, railcars, and trucks so that the sampling process is not biased.

3. Sections A.8.1.2.3.1 and A.8.1.2.3.2 should provide specific test methods for the ''barium sulfate'' and ''potassium iodide'' procedures.

4. Section A.8.2.5.5 should provide a specific test method for ''chemical gravimetric means.'' Also the accuracy is stated as +50%, but it should be a ± number. The accuracy of a gravimetric procedure is normally about ±1%, not ±50%.

5. The reference in A8.3.1 should be changed from R18–2–715(C)(4) to R18–2–715.01(K)–(O). Also, the reference in A.8.3.2 should be changed from R18–2–715(C)(7)(v) to R18–2–715.01(Q).

Based on information received during the comment period of our proposed action, we no longer consider deficiency #2 or the second part of deficiency #4 above to be deficiencies in Rule R18–2–appendix 8. *See* Comments and Responses #3 and #4. Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittals.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period ending on June 14, 2004. We received comments from the following parties:

Kenneth Evans, Arizona Mining Association (AMA); letter dated June 14, 2004 and received on June 14, 2004.

Nancy Wrona, ADEQ; letter dated June 11, 2004 and received on June 11, 2004.

The comments and our responses are summarized below.

Comment 1: EPA cited as a deficiency excessive ADEQ Director's discretion to approve alternate analytical procedures in Appendix 8. AMA and ADEQ state that Title V permits, which could include alternate analytical procedures approved by the ADEQ Director's discretion, are then subject to EPA approval by the review and objection authority granted to EPA under Title V. Therefore, requiring another EPA approval of an alternate analytical procedure approved by the ADEQ Director's discretion is duplicative and unwarranted.

Response: Appendix 8 in its present form allows the ADEQ Director to approve an ''equivalent method'' without regard to the status of a Title V permit or EPA's approval of that permit. First, as noted in our proposed rule, the term ''equivalent method'' should be replaced with the term ''alternative method,'' as these phrases have distinct meanings. Second, not all alternative procedures under Appendix 8 would necessarily end up in a Title V permit. Finally, depending on EPA's workload, we may not review every Title V permit thoroughly, and our default approval of an alternative procedure by our oversight, would not comply with the intent of Clean Air Act section 110(i). Appendix 8 must be revised to provide the criteria that will be used to determine approvability of an alternative method or must explicitly require the approval of both the ADEQ Director and EPA of an alternate analytical procedure.

Comment 2: EPA cited as a deficiency the absence of references to specific test methods for barium sulfate and potassium iodine procedures, as well as ''chemical gravimetric means.'' AMA states that the chemical gravimetric means of analysis in sections A.8.1.2.3.1, A.8.1.2.3.2, and A.8.2.5.5 of appendix 8 are taken from *Standard Methods of Chemical Analysis*, 6th edition, N. Howell Furman, Ph.D, editor, D. Van Nostrand Co., Inc. (1962). This has been the ''bible'' of chemical analytical methods since the 1930s.

Response: We concur that this is an excellent reference for chemical gravimetric means and chemical analytical methods. However, this reference is missing from the submitted rule. It should be explicitly cited in Appendix 8.

Comment 3: EPA requested clarification of sampling procedures for sulfur-bearing materials introduced into the smelting process, so that sampling is not biased. ADEQ states that the materials sampled are a fine homogeneous mixture of concentrate from the flotation process, and therefore the current methods in sections A.8.1.2.1.1, A.8.1.2.1.2, and A.8.1.2.1.3 of appendix 8 are adequate to assure accurate accounting of the sulfur-bearing materials.

Response: As noted by ADEQ, sampling bias can occur when there is a large variation in the size of materials being sampled. However, sampling from a homogeneous mixture of finely ground material can be considered reliable and unbiased. Additional sulfur bearing materials are also introduced to the smelting process along with the homogeneous dry floatation concentrate mentioned by ADEQ, but the concentrate contains over 90% of the sulfur content in the mixture. EPA concurs that the methods described in the sections cited in Comment 3 are adequate for the type of sulfur-bearing material described. Therefore, we are not finalizing our concern regarding sampling procedures as a deficiency.

Comment 4: EPA commented that the accuracy of gravimetric methods is normally about ±1% instead of the ±50% accuracy required in section A.8.2.5.5. This requirement addresses the sulfur content of copper ingots. The sulfur content of copper ingots at one facility over a one-month period was 4 to 108 ppm sulfur with an average of 24.5 ppm. At these very low sulfur contents, an accuracy of ±1% is not feasible.

Response: EPA believes that better accuracy than ±50% for sulfur in copper ingots is feasible, although not close to ±1%. However, a ±50% error in the sulfur content of copper ingots would cause a maximum error in the sulfur balance of ±0.03%. Other measurements in the sulfur balance are subject to greater maximum errors, such as ±5%, therefore an accuracy of better than ±50% is not reasonably required for the section A.8.2.5.5 contribution to the sulfur balance. Therefore, we are not finalizing our concern about the accuracy of gravimetric methods as a deficiency. However, as specified in deficiency #4 above, Section A.8.2.5.5 should provide a specific test method for ''chemical gravimetric means,'' and should be revised to specify the maximum error as ±50%, rather than ±50%.

III. EPA Action

Although some submitted comments led us to not finalize some deficiencies listed in the proposed action, the remaining deficiencies in Rule R–18–2-appendix 8 conflict with section 110 and part D of the CAA and prevent full approval of this rule. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a full approval of ADEQ's submitted Rules R18–2–715 (sections F, G, and H), R18–2–715.01, and R–18–2–715.02. We are also finalizing a limited approval of Rule R–18–2-appendix 8. This action

incorporates the submitted rules into the Arizona SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the Rule R–18–2-appendix 8. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rules have been adopted by the ADEQ, and EPA's final limited disapproval does not prevent the local agency from enforcing them.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

This 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.*)

C. 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 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).

D. Unfunded Mandates Reform Act

Under sections 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 the 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 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.

E. Executive Order 13132, Federalism

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 approves 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.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. 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.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 1, 2004.

K. 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 3, 2005. 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 14, 2004.

Wayne Nastri,

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 paragraphs (c)(110)(i)(A)(*2*) and (c)(116) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(110) * * *

(i) * * *

(A) * * *

(*2*) Rules R18–2–715.02 and R18–2–715, Appendix 8 amended on November 15, 1993.

* * * * *

(116) New and amended regulations were submitted on September 12, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) Rules R18–2–715 (sections F, G, and H) and R18–2–715.01 amended on August 9, 2002.

[FR Doc. 04–24334 Filed 10–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID–02–003; FRL–7825–3]

Approval and Promulgation of Air Quality Implementation Plans; Idaho; Correcting Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendments.

SUMMARY: This action corrects the incorporation by reference provisions in the approval of the Idaho PM_{10} State Implementation Plan (SIP) maintenance plan for the Ada County/Boise, Idaho area published on October 27, 2003.

DATES: This action is effective November 1, 2004.

ADDRESSES: Copies of the supporting documentation used in developing this action and the action being corrected are available for inspection during normal business hours at the following locations: U.S. Environmental Protection Agency, Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101; Idaho Operations Office, 1435 North Orchard Street, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Colleen Huck at (206) 553–1770 or Donna Deneen at (206) 553–6706 or at the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: On October 27, 2003, (68 FR 61106), EPA approved an Idaho SIP maintenance plan which addressed the attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for PM_{10} in the Ada County/Boise, Idaho area. PM_{10} air pollution is suspended particulate matter with a diameter less than or equal to a nominal ten micrometers.

In approving the Ada County/Boise, Idaho PM_{10} maintenance plan, EPA incorporated by reference specific permit conditions limiting particulate matter emissions for a number of facilities in the Ada County/Boise Idaho area (68 FR 61110). In doing so, EPA inadvertently incorporated by reference permit conditions relating to the installation of a beet cleaning system, a transformer evaporator, and mill heaters in the State of Idaho Air Pollution Operating Permit for the Amalgamated Sugar Company LLC, Permit No. 027–00010, issued September 30, 2002.

Idaho subsequently provided information to EPA indicating that the installation of the beet cleaning system,