

**FOR FURTHER INFORMATION CONTACT:**

Melissa V. Hampshire, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504-7631, e-mail [mhampshire@cpsc.gov](mailto:mhampshire@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 12, 2006 (71 FR 39248), the CPSC proposed to amend its regulations to add a new part, 16 CFR 1119, titled "Civil Penalty Factors." The proposed rule would describe the factors the Commission may consider in determining the appropriateness and amount of a civil penalty for violations of section 19(a) of the CPSA, which includes the failure to furnish information required by section 15(b) of the CPSA.

The proposal was intended to provide further clarity and transparency in how the CPSC determines civil penalty amounts. The Commission believed that the proposed rule would result in a better understanding by the public of the Commission's approach to determining the appropriateness and amount of a civil penalty.

The Commission received four comments in response to the proposed rule. The CPSIA was subsequently enacted, and section 217 of the CPSIA revised certain sections of the CPSA, the FHSA, and the Flammable Fabrics Act. In general, section 217 of the CPSIA increased the maximum civil penalty amounts, described new factors for the CPSC to consider when determining civil penalty amounts, and instructed the CPSC to issue a final rule to interpret the "penalty factors described in section 20(b) of the [CPSA] section 5(c)(3) of the [FHSA] and section 5(e)(2) of the [FFA] as amended by subsection (a) [of the CPSIA]."

Section 217 of the CPSIA, therefore, effectively superseded the July 12, 2006 proposed rule by adding new factors for consideration and directing the Commission to issue a final rule providing its interpretation of all the factors in section 20(b) of the CPSA, section 5(c)(3) of the FHSA, and section 5(e)(2) of the FFA. Consequently, the Commission, through this notice, is withdrawing the July 12, 2006 proposal.

Elsewhere in this issue of the **Federal Register**, the Commission is issuing a new interim final rule to interpret the penalty factors pursuant to section 217 of the CPSIA.

Dated: August 19, 2009.

**Alberta E. Mills,**

*Acting Secretary, Consumer Product Safety Commission.*

[FR Doc. E9-20590 Filed 8-25-09; 8:45 am]

**BILLING CODE 6355-01-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2009-0558; FRL-8949-4]**

### **Revisions to the Arizona State PM-10 Implementation Plan; Maricopa County Air Quality Department**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions from non-metallic mineral mining and processing in the Maricopa County (Phoenix) serious PM-10 nonattainment area. We are proposing to approve a local rule that regulates 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 25, 2009*.

**ADDRESSES:** Submit comments, identified by docket number [EPA-R09-OAR-2009-0558], 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](mailto: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:**

Sona Chilingaryan, EPA Region IX, (415) 972-3368, [chilingaryan.sona@epa.gov](mailto:chilingaryan.sona@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, "we," "us" and "our" refer to EPA.

### **Table of Contents**

- I. The State's Submittal
  - A. What rule did the State submit?
  - B. Are there other versions of this rule?
  - C. What is the purpose of the submitted rule revision?
- II. EPA's Evaluation and Proposed Action
  - A. How is EPA evaluating the rule?
  - B. Does the rule meet the evaluation criteria?
  - C. EPA recommendations to further improve the rule.
  - D. Proposed action and public comment.
- III. Statutory and Executive Order Reviews

### **I. The State's Submittal**

#### *A. What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates on which it was adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

**TABLE 1—SUBMITTED RULES**

Local agency	Rule No.	Rule title	Adopted	Submitted
MCAQD .....	316	Nonmetallic Mineral Processing .....	3/10/08	7/10/08

The submittal became complete by operation of law on January 10, 2009 pursuant to section 110(k)(1)(B) of the Clean Air Act.

*B. Are there other versions of this rule?*

We approved a version of Rule 316 into the SIP on January 4, 2001. MCAQD adopted revisions to the SIP-approved version on June 8, 2005 and ADEQ submitted them to us on October 7, 2005. We proposed approval of the June 8, 2005 version of Rule 316 on July 12, 2006 (71 FR 39251). The June 8, 2005 version of the rule was superseded by the March 10, 2008 version of the rule. Therefore we will not be taking final action on our July 12, 2006 proposed approval.<sup>1</sup> We can act on only the most recently submitted version. We have, however, reviewed materials provided with previous submittals in evaluating the rule that is the subject of this proposed action.

*C. What is the purpose of the submitted rule?*

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. In addition, SIP rules in serious PM-10 nonattainment areas such as the Maricopa County area must implement at least Best Available Control Measures (BACM), including Best Available Control Technology (BACT) (see CAA section 189(b)(1)(B) and 40 CFR 81.303). Rule 316 limits the emissions of particulate matter from stack, fugitive and process sources at nonmetallic mineral processing plants. Among other things, Rule 316 has opacity requirements for stack emissions, requires that a minimum moisture content be maintained at crushers, shaker screens, and material transfer points, has silt loading and stabilization standards for unpaved roads and disturbed areas, as well as track out control provisions which require the use of rumble grates and wheel washers. EPA's technical support document (TSD) has more information about this rule.

<sup>1</sup> As a result, we are not responding to the comments we received on that proposed approval at this time. Commenters wishing to again raise issues raised in comments on that proposal should resubmit applicable comments to the docket for this rulemaking.

## II. EPA's Evaluation and Proposed Action

*A. How is EPA evaluating the rule?*

Generally, SIP rules must be enforceable (see CAA section 110(a)) and must not relax existing requirements (see section 110(l)). As stated above, SIP rules must also implement at least Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM-10 nonattainment areas such as the Maricopa County area. The CAA does not clearly define what level of control constitutes BACM for specific activities. In guidance, we have defined it to be, among other things, the maximum degree of emission reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic, environmental impacts and other costs.<sup>2</sup> We have outlined in our guidance a four-step process for identifying BACM. Addendum at 42010-42014. These steps include developing a detailed emissions inventory of PM-10 sources and source categories, evaluating the impact on PM-10 concentrations of the various sources and source categories to determine which are significant,<sup>3</sup> identifying potential BACM for significant source categories and evaluating their reasonableness, considering technological feasibility, costs, and energy and environmental impacts, and providing for the implementation of the BACM or providing a reasoned justification for rejecting any potential BACM.

SIP rules in serious PM-10 nonattainment areas, such as the Maricopa area, for which the State has requested an attainment date extension beyond 2001, must also meet the Most Stringent Measures (MSM) requirement in section

<sup>2</sup> "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," (Addendum), 59 FR 41998, 42010 (August 16, 1994).

<sup>3</sup> We have established a presumption that a "significant" source category is one that contributes 5 µg/m<sup>3</sup> or more of PM-10 to a location of 24-hour violation. Addendum at 42011. ADEQ identified industrial sources as significant contributors to PM-10 24-hour exceedances at the Salt River monitors (see the *Revised PM-10 State Implementation Plan for the Salt River Area*, September 2005, Table 4.2.1, pgs. 26 and 27). ADEQ found that the vast majority of industrial source PM-10 emissions are generated by nonmetallic mineral processing sources. Additional information about the Salt River Plan can be found at 71 FR 39251 (July 12, 2006).

188(e).<sup>4</sup> The CAA section 188(e) requirement for MSM is similar to the requirement for BACM. Under section 188(e), serious PM-10 areas applying for an attainment date extension are required to include in their attainment plans the most stringent measures included in other SIPs or in practice in other states and which can be feasibly implemented in the area. Given the similarity between the BACM requirement and the MSM requirement, we believe that determining MSM should follow a process similar to determining BACM, but with one additional step, to compare the potentially most stringent measure against the measures already adopted in the area to determine if the existing measures are most stringent. See 66 FR 50252, 50281, 50284 (October 2, 2001) for a discussion of our interpretation of the BACM and MSM requirements as applied to the Maricopa area.

Guidance and policy documents that we used to help evaluate specific enforceability and BACM requirements include the following:

1. "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**.

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

3. "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).

4. "PM-10 Guideline Document," EPA 452/R-93-008, April 1993.

5. "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," EPA 450/2-92-004, September 1992.

We also compared Rule 316 to several regulations in other PM-10 nonattainment areas, which are further described in the TSD.

*B. Does the rule meet the evaluation criteria?*

We believe this rule is consistent with the relevant guidance and meets the requirements in CAA section 110(a) regarding enforceability, the

<sup>4</sup> EPA granted the attainment date extension requested by the State on July 25, 2002 (67 FR 48718).

requirements in CAA section 110(l) regarding SIP relaxation, and the requirements in CAA sections 189(b)(1)(B) and 188(e) regarding BACM and MSM. Monitoring, recordkeeping, reporting and associated requirements generally ensure that the submitted rule can be enforced. The March 10, 2008 version of Rule 316 is more stringent than the SIP-approved rule. Moreover, in addition to reviewing the analysis submitted by ADEQ, we have compared the requirements in Rule 316 to requirements in comparable rules in other PM-10 nonattainment areas and believe that Rule 316 is generally as stringent as the requirements in those other areas. The TSD has more information on our evaluation.

#### *C. EPA Recommendations To Further Improve the Rule*

The TSD describes additional rule revisions that do not affect EPA's current proposed action but are recommended for the next time MCAQD modifies the rule.

#### *D. Proposed Action and Public Comment*

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it pursuant to CAA section 110(k)(3) as meeting the requirements of sections 189(b)(1)(B) and 188(e). 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 this rule into the Federally enforceable SIP.

### **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. E9-20597 Filed 8-25-09; 8:45 am]

**BILLING CODE 6560-50-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

#### **42 CFR Parts 410, 411, 414, 415, 485, and 489**

[CMS-9061-N]

#### **Electronic Public Comment Transmission Error for Two Medicare Program Rules**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Request for resubmission of comments.

**SUMMARY:** This document requests that the public resubmit their comments on the CY 2010 Physician Fee Schedule or CY 2010 Hospital Outpatient Prospective Payment System/Ambulatory Surgical Center Payment System proposed rule before the close of the comment period for these rules (that is, August 31, 2009) if their comments were originally submitted via [www.regulations.gov](http://www.regulations.gov) during the period from July 26, 2009 through July 30, 2009.

**DATES:** To be assured consideration, comments on the CY 2010 Physician Fee Schedule proposed rule published July 13, 2009 (74 FR 33520) and the CY 2010 Hospital Outpatient Prospective Payment System/Ambulatory Surgical Center Payment System proposed rule published July 20, 2009 (74 FR 35232), must be received at one of the addresses provided below, no later than 5 p.m. on August 31, 2009.

**ADDRESSES:** In commenting, please refer to file code—

- CMS-1413-P (for the CY 2010 Physician Fee Schedule proposed rule); or
- CMS-1414-P (for the CY 2010 Hospital Outpatient Prospective Payment System/Ambulatory Surgical Center Payment System proposed rule).

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on either of these proposed rules via <http://www.regulations.gov>. Enter one of the following docket identification numbers in the keyword search field:

- a. CMS-2009-0058, for the CY 2010 Physician Fee Schedule proposed rule.
- b. CMS-2009-0060, for the CY 2010 Hospital Outpatient Prospective