Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, 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.

Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.920 to read as follows:

§ 165.920 Regulated Navigation Area: USCG Station Port Huron, Port Huron, MI, Lake Huron.

(a) *Location.* All waters of Lake Huron encompassed by the following: starting at the northwest corner at 43°00.4′ N, 082°25.327′ W; then east to 43°00.4′ N, 082°25.23.8′ W; then south to 43°00.3′ N, 082°25.238′ W; then west to 43°00.3′ N, 082°25.327′ W; then following the shoreline north back to the point of origin (NAD 83).

(b) *Special regulations.* No vessel may fish, anchor, or moor within the RNA without obtaining the approval of the Captain of the Port (COTP) Detroit. Vessels need not request permission from COTP Detroit if only transiting through the RNA. COTP Detroit can be reached by telephone at (313) 568–9580, or by writing to: MSO Detroit, 110 Mt. Elliot Ave., Detroit MI 48207–4380.

Dated: April 21, 2004.

Ronald F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 04–9623 Filed 4–27–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 063–0048; FRL–7638–2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing full approval and limited approval/ limited disapproval of revisions to the Pinal County Air Quality Control District (PCAQCD or District) portion of the Arizona State Implementation Plan (SIP) concerning visible emissions standards, limits on open burning, and carbon monoxide (CO) emissions from industrial processes. For the visible emissions standards and the open burning limits, EPA is finalizing a full approval of portions of those provisions and finalizing a simultaneous limited approval and limited disapproval for other portions. For CO emissions from industrial processes, EPA is finalizing a limited approval and limited disapproval. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate these emission sources and directs Arizona to correct rule deficiencies.

EFFECTIVE DATE: This rule is effective on May 28, 2004.

ADDRESSES: You can inspect a copy of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted rule revisions by appointment at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

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

Pinal County Air Quality Control District, Building F, 31 North Pinal Street (P. O. Box 987), Florence, AZ 85232.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118, *petersen.alfred@epa.gov.*

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

I. Proposed Action

On June 18, 2001 (66 FR 32783), EPA proposed a limited approval and limited disapproval of the rules in Table 1 that were submitted for incorporation into the Arizona SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted or amended or codified	Submitted
PCAQCD	2–8–300	Performance Standards [Visible Emissions]	06/29/93 adopted	11/27/95
PCAQCD	3–8–700	General Provisions [Open Burning]	02/22/95 amended	11/27/95
PCAQCD	5–24–1040	Carbon Monoxide Emissions—Industrial Processes	02/22/95 codified	11/27/95

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with one or more requirements of section 110 and/or part D of title I of the CAA.

On June 18, 2001 (66 FR 32783), we also proposed a full approval of the rules in Table 2 that were submitted for incorporation into the Arizona SIP.

TABLE 2.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted or amended	Submitted
PCAQCD	2–8–280	General [Visible Emissions]	06/29/93 adopted	11/27/95
PCAQCD	2–8–290	Definitions [Visible Emissions]	06/29/93 adopted	11/27/95
PCAQCD	2–8–310	Exemptions [Visible Emissions]	06/29/93 adopted	11/27/95
PCAQCD	2–8–320	Monitoring and Records [Visible Emissions]	06/29/93 adopted	11/27/95
PCAQCD	3–8–710	Permit Provisions and Administration [Open Burning].	02/22/95 amended	11/27/95

Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties:

Chuck Shipley, Arizona Mining Association (AMA); letter dated July 18, 2001, and received July 19, 2001.

Scott Davis, Pinnacle West Capital Corporation (PWCC); letter dated July 17, 2001, and received July 19, 2001.

Don Gabrielson, PCAQCD; letter dated July 18, 2001, and received July 18, 2001.

The comments and our responses are summarized below.

Comment I: AMA challenges EPA's analysis of whether the District's visible emissions standard satisfies the requirements for reasonably available control measures including reasonably available control technology (RACM/RACT). AMA asserts that EPA is not determining a RACM/RACT 20% opacity standard consistent with EPA's *PM–10 Guideline Document*, EPA–452/R093–008. Specifically, AMA argues that RACM/RACT must not be a blanket, nationwide determination, and EPA or PCAQCD must evaluate available control measures for reasonableness, considering the technological feasibility and the cost of control in the applicable area. AMA also asserts that the establishment of a national standard by guideline without full and fair national public notice and comment is unlawful.

Response: EPA is not promulgating a national RACM/RACT opacity standard by today's action. However, we believe that the widespread application of the 20% opacity standard, or its equivalent No. 1 Ringlemann, across the country is generally achievable and control equipment is reasonably available unless a State or local authority demonstrates otherwise given particular local circumstances. Table 3 lists some of the States and local agencies with a 20% opacity standard, or its equivalent of No. 1 Ringlemann, in their SIP rules.

TABLE 3.—STATE OR DISTRICT OPACITY EMISSION STANDARDS

State	Local agency	Per cent opacity	Ringlemann No. opacity	SIP rule No.
Michigan		20		R336.1301
New Mexico		20		20–2–61
Texas		20		111.111
Washington		20		173–400–040
California	Bay Area AQMD	20	1	Reg 6
California	Imperial County APCD		1	401
California	Mojave Desert AQMD		1	401
California	Sacramento Metropolitan AQMD		1	401
California	San Diego APCD		1	50
California	San Joaquin Valley Unified APCD		1	4101
California	South Coast AQMD		1	401

Based on the significant information before the Agency showing that a more stringent opacity standard is generally considered RACM/RACT and lacking a demonstration from the District to rebut this significant information, it is reasonable for EPA to conclude the 40% opacity limit of Rule 2–8–300 fails to fulfill RACM/RACT. *See National Steel Corp.* v. *Gorsuch*, 700 F.2d 314, 323 (6th Cir. 1983) (''Where a state fails to supply the information necessary for a proper [RACT] evaluation by the EPA, the EPA must be free to use its own acquired knowledge.''). After this final disapproval action, PCAQCD will have the opportunity to perform any appropriate RACM/RACT demonstration in a revised submittal of Rule 2–8–300. In performing this demonstration, the District should consider the widespread adoption of the 20% opacity standard, as well as any unique local factors that the District identifies.

While AMA's comments focus on the level of control to meet RACM/RACT, it is important to note that Rule 2–8–300 must in fact meet the more stringent requirements of best available control measures including best available control technology (BACM/BACT), because PCAQCD regulates a serious PM–10 nonattainment area. CAA section 189(b)(1)(B). BACM/BACT should not be less stringent than the 20% opacity standard shown to be in widespread use. 59 FR 41998, 42011 (Aug. 16, 1994) (''General Preamble Addendum'') (''BACM is intended to be a more stringent standard than RACM.''). While specific processes are

undoubtedly capable of meeting a more stringent opacity standard than 20% by implementing BACM/BACT, the visible emissions rule is generic and applies to sources from many types of processes located in different areas. Some of the sources covered by this generic rule might have difficulty meeting a more stringent standard than 20% opacity. As a result, the District may be able to demonstrate that a generic 20% opacity standard is appropriate for the purposes of Rule 2–8–300 to meet the CAA requirements for both RACM/RACT and BACM/BACT.

Comment II: AMA argues that, notwithstanding the broad application of 20% opacity standards as RACM/RACT, each area must be able to determine RACM/RACT based on the area's unique aspects. AMA concludes, that since EPA previously approved the 40% opacity standard for PCAQCD, the District had no reason to re-justify the standard. AMA implies that EPA should continue to rely on the justification for the original approval.

Response: EPA agrees that RACM/RACT is to be determined by each area taking into consideration unique local factors. That analysis, however, has not been conducted by the District here. At the time of the original approval of the 40% opacity visible emissions limit, the District did not include areas classified as nonattainment. As a result, the requirements for RACM/RACT and BACM/BACT did not apply. Any previous rationale for approval of the 40% opacity standard would no longer serve as an adequate basis for approval of the standard. Through this limited disapproval, we are directing the District to reconsider the level of the visible emission limit and demonstrate that it satisfies RACM/RACT and BACM/BACT.

Comment III: AMA states that PCAQCD is not authorized to impose a 20% opacity standard. PCAQCD is prohibited by Arizona law from adopting a rule that is more stringent than an Arizona Department of Environmental Quality (ADEQ) rule unless PCAQCD makes a specific finding that a more stringent rule is necessary to meet a local condition or Federal law. PCAQCD has not made such a finding.

Response: This final notice directs Arizona to correct deficiencies in local rules in order to comply with the Federal CAA. This could necessitate changes to State law. There is no need to respond to the specific details of this comment because State law cannot interfere with compliance with Federal law. As AMA notes, PCAQCD may need to make a finding that a more stringent standard is necessary to meet Federal law.

We also note that EPA has recently disapproved a similar generic opacity standard adopted by ADEQ (R18–2–702). *See* 67 FR 59456 (September 23, 2002). EPA directed ADEQ to revise the opacity standard to satisfy RACM/RACT. On October 26, 2003, ADEQ finalized changes to Rule R18–2–702 that established a statewide general opacity standard of 20%. Accordingly, even under commenter's interpretation of State law, the revised ADEQ rule may no longer preclude a more stringent PCAQCD visible emissions rule under State law.

Comment IV: AMA asserts that EPA fails to consider the following PCAQCD nonattainment provisions:

- Any source, except *de minimis* sources, must obtain a permit to operate. See Rule 3–1–040.
- A new or modified major source must implement the lowest achievable emission rate (LAER), which is more stringent than BACM/BACT. *See* Rule 3–3–220.
- Any source located in the PM–10 nonattainment area is required to meet the more stringent standards found in chapter 5 of the PCAQCD Regulations.
- Rule 2–8–300 is found in chapter 2 of the PCAQCD Regulations, and is not applicable to sources in nonattainment areas.

AMA implies that these provisions obviate the need for more stringent visible emission standards to meet nonattainment requirements.

Response: EPA has reviewed the District's rules and continues to conclude that, even taken as a whole, these rules do not ensure that significant sources of PM–10 in the nonattainment portions of the District will be subject to the required level of control (*i.e.*, RACM/RACT or BACM/BACT).

- The permitting requirements of Rule 3–1–040 do not include specific controls that ensure RACM/RACT or BACM/BACT is fulfilled. Instead, the permitting requirements specify that the permit contain enforceable emission limitations and standards that assure compliance with applicable requirements. See PCAQCD Rule 3–1–081. Unless the underlying applicable requirements, such as Rule 2–8–300, meet RACM/RACT or BACM/BACT, the permitting provisions are not adequate to ensure RACM/RACT or BACM/BACT will be imposed on sources as required.
- The LAER requirements of Rule 3–3–220, as AMA acknowledges, only apply to new or modified major sources. RACM/RACT is required for existing as well as new or modified sources and is not limited to major stationary sources. *See* 57 FR 13498, 13541 (April 16, 1992) (''General Preamble''). In addition, BACM/BACT is required for all significant sources of emissions in nonattainment areas including existing sources and new sources that might not be considered ''major'' under the District's rules. *See* 59 FR 42012.
- The source-specific performance standards in Chapter 5 may also fail to ensure RACM/RACT or BACM/BACT will be required for emission sources in the nonattainment portions of the District. Several of these standards contain no specific PM–10 standards and several rules include the same 40% opacity standards that we are finding do not meet the requirements of either RACM/RACT or BACM/BACT.
- Finally, there is no provision in PCAQCD rules that limits the applicability of Rule 2–8–300 or other rules in Chapter 2 to attainment areas. In its current form, Rule 2–8–300 applies to both attainment areas and nonattainment areas of PCAQCD. Thus EPA must review Rule 2–8–300 with respect to CAA requirements for nonattainment areas.

Comment V: AMA notes that EPA previously proposed to disapprove a similar opacity standard promulgated by ADEQ in 65 FR 79037 (December 18, 2000). AMA requests that EPA consider the Arizona SIP as a whole before making its proposals. In particular, AMA requests that EPA examine Arizona's nonattainment plans before using concerns about nonattainment areas as a pretext for proposals to disapprove a regulation governing attainment areas.

Response: Since AMA submitted its comments, EPA has finalized its disapproval of ADEQ's opacity standards. *See* 67 FR 59456 (September 23, 2002). That action, while consistent with the action being taken here, does not have any direct impact on the evaluation of the District's visible emission rule. PCAQCD is generally outside of the area regulated by ADEQ rules and attainment plans. Therefore, decisions on ADEQ attainment plans do not relieve the District from the need to ensure that Rule 2–8–300 meets the CAA requirements for SIP approval.

Rule 2–8–300 regulates all of PCAQCD, which includes both attainment areas and nonattainment areas. As a result, Rule 2–8–300 must meet RACM/RACT or BACM/BACT requirements for nonattainment areas. EPA does not have a mechanism to approve the rule only as it applies in the attainment area and disapprove it as it applies in the nonattainment area.

Comment VI: AMA asserts that EPA lacks a legal basis for the proposed limited disapproval of PCAQCD Rules 2–8–300, 3–8–700, and 5–24–1040 and relies exclusively on guidance documents. AMA requests that EPA cite to and rely upon statutes and rules subjected to notice and public comment in identifying alleged deficiencies in proposed SIP revisions.

Response: EPA has issued a limited disapproval of PCAQCD Rules 2–8–300, 3–8–700, and 5–24–1040 because the rules do not meet all applicable requirements of the CAA. SIP rules must be enforceable (*see* section 110(a) of the CAA), must require RACM/RACT or BACM/BACT for sources in nonattainment areas (*see* section 189), must not interfere with applicable requirements including requirements concerning attainment (*see* section 110(1)), and must not relax existing requirements in effect prior to enactment of the 1990 CAA amendments (*see* section 193). These provisions of the CAA provide the statutory basis for EPA's conclusion that PCAQCD Rules 2–8–300, 3–8–700, and 5–24–1040 are legally deficient.

EPA acknowledges that guidance and policy documents are not a legal basis for EPA's actions. However, guidance and policy documents are generally careful analyses and interpretations of the CAA. Such guidance and policy documents are valuable in assuring fairness and consistency in evaluating submitted SIP rules. The proposed actions that result from an evaluation with the assistance of guidance and policy documents are always noticed in the **Federal Register** for public review and comment.

Comment VII: AMA asserts that EPA makes unsubstantiated claims in justifying disapproval of the PCAQCD rules. For example, PCAQCD proposes to include orchard heaters in the list of exemptions from open burning requirements in Rule 3–8–700. EPA states that this may be a SIP relaxation and the exemption should be removed ''because there are no orchard heaters in PCAQCD.'' AMA asserts that EPA offers no basis for this statement. AMA cites no other specific instances where EPA made and allegedly unsubstantiated claim justifying its SIP disapproval.

Response: With respect to the one specific example noted by AMA, AMA misunderstands the recommendation made by EPA. First, EPA concluded as a legal matter that the addition by PCAQCD of a new exemption from Rule 3–8–700 for orchard heaters amounts to a SIP relaxation, which, unless justified by PCAQCD, is not consistent with section 110(1) of the CAA. PCAQCD stated (telephone conversation with Don Gabrielson on July 21, 2000) that there are no orchard heaters in PCAQCD. Therefore, we recommended that, rather than attempting to demonstrate that the new exemption does not violate CAA section 110(1), the District should simply remove this exemption from the rule. Whether the District's statement regarding the absence of orchard heaters is true or not does not alter the basic legal conclusion that the exemption cannot stand without a demonstration of compliance with CAA section 110(1).

Should the District choose to retain the orchard heater exemption, PCAQCD could comply with section 110(1) by showing that its decision would not interfere with any applicable requirements of the CAA, including attainment and reasonably further progress requirements. In making such a demonstration, claims regarding the presence or absence of orchard heaters would require factual support.

Comment VIII: PWCC believes that LAER instead of BACT should be required in serious nonattainment areas.

Response: PWCC's comments confuse the requirements for new source review (NSR) (*e.g.*, CAA section 173) with the more general requirements governing existing sources in nonattainment areas (*e.g.*, CAA section 189(b)(1)(B)). PWCC is correct that the CAA provisions governing NSR require BACT in attainment areas and LAER in nonattainment areas. Section 189, however, specifies the level of control required for existing sources in PM–10 nonattainment areas. SIP provisions covering moderate PM–10 nonattainment areas must assure implementation of RACM/RACT to those existing sources in the nonattainment area that are reasonable to control. *See* CAA section 172(c)(1) and 189(a)(1)(C); *see also* 57 FR 13541. EPA interprets section 189(b)(1)(B) as requiring BACM (including BACT) for all (except *de minimis*) stationary PM–10 sources in serious PM–10 nonattainment areas. See 59 FR 42012. For a discussion on the relationship between BACM as required under 189 and BACT as required by the CAA provisions for prevention of significant deterioration, *see* the General Preamble Addendum, 59 FR at 42008–42011.

Comment IX: PWCC concurs with EPA's determination that sources located in the serious PM–10 nonattainment area within PCAQCD should probably be subject to a 20% opacity standard. However, PWCC argues that the 20% opacity standard is inappropriate for the sources located within the moderate PM–10 area. PWCC refers to comments it submitted by letter of February 15, 2001, regarding the 20% opacity standard proposed in 65 FR 79037 (December 18, 2000) for ADEQ Rule R18–2–702. In those comments, PWCC argued that, at a minimum, EPA should approve the rule for all areas in the State, except the small PM–10 nonattainment areas. Likewise, AMC and PCAQCD question the validity of EPA's determination that the 20% opacity standard applies to sources located outside of the serious PM–10 nonattainment area.

Response: As we explained in our Response to Comment I, EPA believes that PCAQCD's 40% opacity standard does not fulfill the requirements for RACM/RACT and that a 20% opacity standard is achievable with reasonably available control equipment. Accordingly, it is reasonable to expect the District to adopt a 20% opacity standard to fulfill RACM/RACT in moderate PM–10 nonattainment areas.

Furthermore, Rule 2–8–300 applies in all of PCAQCD. EPA does not have a mechanism to approve the rule as it applies in the moderate nonattainment areas and disapprove it in the serious nonattainment areas. Accordingly, EPA must ensure that Rule 2–8–300 fulfills RACM/RACT and BACM/BACT requirements in the District's moderate PM–10 nonattainment area and serious PM–10 nonattainment area, respectively.

Comment X: PWCC contends that the 20% opacity standard should not be imposed throughout PCAQCD because the majority of sources are in attainment areas or in unclassified areas. PWCC recommends that EPA approve Rule 2–8–300 for all areas in the District that are in attainment or unclassified and direct PCAQCD to determine RACM/RACT (or BACM/BACT) for those areas that are in nonattainment and develop a new rule or rules, if necessary.

Response: EPA agrees that only portions of PCAQCD are nonattainment areas for PM–10. However, because Rule 2–8–300 applies to sources in the nonattainment portions of the District, the rule must meet the relevant requirements of CAA sections 110 and 188–190 for nonattainment areas. For the reasons discussed above, Rule 2–8–300 does not comply with the requirements of section 189 and therefore cannot be fully approved.

EPA declines to follow PWCC's recommendation that the rule be approved as it applies in the attainment portions of the District. The rule was not presented to EPA in a form that would allow EPA to approve a separable piece of the rule that applies only in attainment areas. Thus, EPA has no mechanism to approve the rule in the

attainment portion of the District while disapproving it in the nonattainment portions. This final notice directs Arizona to correct the rule deficiencies. Arizona has the opportunity to direct PCAQCD to take appropriate action to ensure sources in the nonattainment portions of the District are subject to RACM/RACT or BACM/BACT as required.

Comment XI: PCAQCD asserts that BACM/BACT should be determined on a case-by-case basis since the nature and extent of a nonattainment problem may vary within the area and from one area to another. The District claims that such an analysis must be conducted in the context of the *Apache Junction Portion of the Metropolitan Phoenix PM–10 Serious State Implementation Plan* (August 1999) (Apache Junction Plan). The Apache Junction Plan identifies construction activity and stationary sources as the only relevant categories of PM–10.

The District points out that significant stationary sources within the Apache Junction Plan area must obtain operating permits pursuant to PCAQCD Rule 3–1–040 and that and that under Ariz. Rev. Stat. section 49–480.F.5, the District may include any other conditions that are necessary to ensure compliance with the Clean Air Act in operating permits issued to these sources. The District argues that the operating permit requirement in conjunction with the general requirements of Ariz. Rev. Stat. section 49–480.F.5 obviates the need for a more stringent opacity standard within the Apache Junction Plan area.

Response: EPA agrees that BACM/BACT is to be determined on a case-by-case basis. See 59 FR 42014. However, Rule 2–8–300, as the District concedes, does not include any analysis demonstrating that the generic visible emissions rule satisfies BACM/BACT and/or RACM/RACT requirements. EPA understands that no such analysis was conducted because at the time the District submitted the rule, the District did not include nonattainment areas. Now that portions of the District have been redesignated to nonattainment, however, the District must prepare the necessary analysis to support SIP approval of the rule as it applies to the nonattainment portions of the District. Without contrary specific data on technological feasibility and the cost of control in the applicable geographical area, we cannot conclude based on the information before us that an opacity standard less stringent than 20% fulfills RACM/RACT and BACM/BACT.

The District's reliance on the general language of Ariz. Rev. Stat. § 49–480.F.5 is also misplaced. In our General Preamble we explain that procedures for determining compliance with a rule must be ''sufficiently specific and nonsubjective so that two independent entities applying the procedures would obtain the same result.'' *See* 57 FR 13568 (April 16, 1992). A SIP must also include ''clear, unambiguous, and measurable requirements'' for ensuring that sources are in compliance with control measures. *Id.* The State of Arizona's general commitment to require permit emission limits as necessary to assure compliance with applicable requirements, including requirements of the CAA, is not meaningful if the standards adopted into the SIP do not themselves satisfy RACM/RACT or BACM/BACT as appropriate. Accordingly, EPA cannot conclude that PCAQCD's general commitment to assure compliance with the CAA represents the application of RACM/RACT or BACM/BACT.

Comment XII: The District argues that a 20% opacity standard cannot be implemented for the construction industry because the monitoring requirements contained in PCAQCD Rule 2–8–320 should not be applied to construction sources. The District contends that attempts to measure construction dust opacity using EPA Reference Method 9, as Rule 2–8–320 requires, are futile because Method 9 cannot be practicably applied to mobile sources. Rather, the District suggests that ''implementation of far more detailed control requirements'' for construction sources, such as those imposed by Maricopa County, would be consistent with EPA guidance calling for a case-by-case analysis of what measures should be characterized as BACM.

Response: EPA agrees that a more detailed control strategy for construction site dust may satisfy RACM/RACT or BACM/BACT requirements for PM–10 nonattainment areas located within PCAQCD. However, until PCAQCD submits such a detailed control strategy, EPA cannot approve the District's SIP on that basis. We note that contrary to the District's own claim regarding implementability, PCAQCD Rule 4–3–090, which has not been approved in the SIP, requires construction activities generally to meet a 20% opacity limit using the same Method 9. This rule combined with other provisions setting standards for all specific significant sources of PM–10 in the nonattainment areas, could replace the need for a generic visible emission standard for construction sources in the nonattainment areas.

Upon resubmittal of the visible emissions rule, the District may demonstrate that all sources significantly contributing to nonattainment are subject to RACM/RACT or BACM/BACT as appropriate.

Comment XIII: PCAQCD relates that the 40% opacity standard was originally adopted as a ''general SIP'' rule or ''attainment area'' rule. Subsequent action by EPA designated the Phoenix Planning Area, which includes the Apache Junction area of PCAQCD, as a serious PM–10 nonattainment area. *See* 61 FR 21372 (May 10, 1996). PCAQCD acknowledges that a further ''curative'' SIP submittal must be made for nonattainment areas. Such a ''curative'' SIP submittal exists as the Apache Junction Plan. PCAQCD objects to EPA's treatment of Rule 2–8–300 as a nonattainment plan provision. PCAQCD submits that it is wholly improper for the EPA to refrain from taking action on the pending ''curative'' Apache Junction Plan, while at the same time citing purported inadequacies in that ''curative'' SIP submittal as a basis for disapproving a separate and distinct ''general SIP'' submittal. PCAQCD also argues that EPA is effectively acting on the Apache Junction Plan without public notice and comment.

Response: As discussed above, nothing in PCAQCD's rules suggests that Rule 2–8–300 applies only to a specific area within PCAQCD. Because the rule applies to all of PCAQCD, the rule must satisfy the most stringent requirements, that apply to nonattainment areas within the District, including BACM/BACT for the Apache Junction serious PM–10 nonattainment area of PCAQCD. CAA section 189(b)(1)(B). EPA has no mechanism for approving the rule to apply only to attainment areas within PCAQCD. Our proposed action on rules independent of the Apache Junction Plan is appropriate because we believe that several of these rules plainly fail to meet CAA requirements, and that we can make this determination without evaluating the Apache Junction Plan.

III. EPA Action

No comments were submitted to change our assessment of the other rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) and 301(a) of the CAA, EPA is finalizing a limited approval of submitted PCAQCD Rule 2–8–300. This action incorporates the submitted rule 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. As a result, sanctions will be imposed for PCAQCD

Rule 2–8–300 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 CAA as described in 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 rule has been adopted by the local agency, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

EPA is also finalizing a limited approval of submitted PCAQCD Rules 3–8–700 and 5–24–1040. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rules. This action incorporates the submitted rules into the Arizona SIP, including those provisions identified as deficient. No sanctions will be imposed for Rule 3–8–700, because the source category has insignificant (*de minimis*) PM–10 emissions to make an effect on attainment. No sanctions will be imposed for Rule 5–24–1040, because the area is attainment for CO.

EPA is also finalizing full approval of submitted PCAQCD Rules 2–8–280, 2–8–290, 2–8–310, 2–8–320, and 3–8–710 for incorporation into the Arizona SIP.

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. section 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. section 804(2). This rule will be effective May 28, 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 June 28, 2004. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: March 8, 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)(84)(i)(I), (84)(i)(J), and (84)(i)(K) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(84) * * *

(i) * * *

(I) Rules 2–8–280, 2–8–290, 2–8–300, 2–8–310, and 2–8–320, adopted on June 29, 1993.

(J) Rules 3–8–700 and 3–8–710, amended on February 22, 1995.

(K) Rule 5–24–1040, codified on February 22, 1995.

* * * * *

[FR Doc. 04–9558 Filed 4–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–0AR–2003–FL–0001–200414(w); FRL–7654–5]

Approval and Promulgation of Implementation Plans: Florida; Broward County Aviation Department Variance; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule to approve revisions to State Implementation Plan submitted by the State of Florida for the purpose of a department order granting a variance from Rule 62–252.400 to the Broward County Aviation Department. In the direct final rule published on April 6, 2004, (69 FR 17929), we stated that if we received adverse comment by May 6, 2004, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on April 6, 2004, (69 FR 18006). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The Direct final rule is withdrawn as of April 28, 2004.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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