Exemptions (40 CFR 52.21(x) and (y)) and Pollution Control Projects (40 CFR 52.21(z)).

V. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' as that term is defined in Executive Order 13211, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications because it will 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, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132 Federalism

This action does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve 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.

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

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not ''economically significant'' under Executive Order 12866.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This proposed 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.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 1, 2006.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

[FR Doc. E6–21502 Filed 12–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0926; FRL–8257–6]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Excess Emissions Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing two actions related to excess emissions provisions that were previously approved by EPA into the Nevada Department of Conservation and Natural Resources portion of the Nevada State Implementation Plan. These proposed actions include approval of a State request for rescission of certain provisions related to excess emissions and correction of an error made by the Agency in approving another provision also related to excess emissions. We are proposing to correct the error by disapproving the previously approved provision and thereby deleting the provision from the plan. The proposed approval of the rescission request is contingent upon receipt of certain public notice and hearing documentation from the State of Nevada. EPA is proposing these actions under the Clean Air Act authority to correct errors in approving, and obligation to take action on, State submittals of revisions to state implementation plans. The intended effect is to correct a past error in approving a particular provision into the plan and to allow for the rescission of closely-related provisions. EPA is taking comments on this proposal and plans to follow with a final action.

DATES: Any comments must arrive by *January 17, 2007.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0926, 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.*

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 *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 *www.regulations.gov* or e-mail. *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 *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: Julie A. Rose, EPA Region IX, (415) 947–4126.

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

Table of Contents

I. Which Provisions Are Covered by This Proposal?

This document provides notice of EPA's proposed actions on the following State rules approved by EPA under section 110 of the Clean Air Act (CAA or ''Act'') and thereby made a part of the applicable state implementation plan (SIP) for the State of Nevada.

Rule No.	Title or text	Submittal date	Most recent approval date and FR cite
NAC 445.677	Excess emissions: Scheduled maintenance; testing; malfunctions.	10/26/82	03/27/84 at 49 FR 11626.
NAQR Article 2.5.4	''Breakdown or upset, determined by the Director to be unavoidable and not the result of careless or marginal operations, shall not be considered a violation of these regulations''.	10/31/75	01/09/78 at 43 FR 1341.

II. What Is the Background for This Proposal?

In January 1972, in response to the Clean Air Amendments of 1970, the Governor of Nevada submitted the original SIP to EPA for approval. EPA approved certain portions of the original SIP and disapproved other portions under section 110(a) of the CAA. See 37 FR 10842 (May 31, 1972) and 40 CFR 52.1470(b). For some of the disapproved portions of the original SIP, EPA promulgated substitute provisions, referred to as Federal implementation plan (FIP) provisions, under section 110(c) of the Act. See, *e.g.*, EPA's final rule at 38 FR 7270 (February 25, 1974) in which EPA established provisions for review of new or modified indirect sources.

This original SIP included various rules, codified as articles within the Nevada Air Quality Regulations (NAQR), and various statutory provisions codified in title 40, chapter 445 of the Nevada Revised Statutes (NRS). In the early 1980's, Nevada reorganized and re-codified its air quality rules as sections within chapter 445 of the Nevada Administrative Code (NAC). Today, Nevada codifies its air quality regulations in chapter 445B of the NAC and codifies air quality statutes in chapter 445B of title 40 of the NRS.

The original SIP, approved by EPA in May 1972, included NAQR article 2.5 (''Scheduled Maintenance, Testing, and Breakdown or Upset''), which contained what are referred to as ''excess emissions'' or ''malfunction'' provisions. Herein, we use the term ''excess emissions,'' and in this context, ''excess emissions'' means emissions of an air pollutant in excess of an emission standard. NAQR article 2.5, as approved by EPA in May 1972, reads:

2.5 *Scheduled Maintenance, Testing, and Breakdown or Upset:*

2.5.1 Scheduled maintenance, testing approved by the control officer, or repairs which may result in emission of air contaminants prohibited by these regulations shall be performed during a time designated by the control officer as being favorable for atmospheric ventilation.

2.5.2 The control officer shall be notified in writing on the time and expected duration at least 24 hours in advance of any scheduled maintenance which may result in emission of air contaminants prohibited by these regulations.

2.5.3 The control officer shall be notified within 24 hours after any breakdown or upset.

2.5.4 Breakdown or upset, determined by the control officer to be unavoidable and not the result of careless or marginal operations, shall not be considered a violation of these regulations.

The State of Nevada amended NAQR article 2.5, and submitted the amended versions to EPA, at various times during the 1970's and early 1980's. In January 1978, EPA approved amended versions of subsections 2.5.1, 2.5.2, and 2.5.4 that had been submitted on October 31, 1975 (see 43 FR 1341, January 9, 1978 and 40 CFR 52.1470(c)(11)) and, later that year, approved an amended version of subsection 2.5.3 that had been submitted on December 10, 1976 (see 43 FR 36932, August 21, 1978 and 40 CFR 52.1470(c)(12)). The amendments to article 2.5 approved in 1978 involved minor changes, such as the replacement of the term ''control officer'' with the term ''Director'' and the specification of a phone number for notifying the Director of the occurrence of breakdown or upset conditions.

In 1982, the State of Nevada amended, re-codified, and submitted NAQR article 2.5 as NAC 445.667 (''Excess emissions: scheduled maintenance; testing; malfunctions'') and NAC 445.668 (''Excess emissions: Determination of fault''). NAC 445.667 reflected minor revisions to the reporting requirements of former NAQR article 2.5 (*i.e.*, subsections 2.5.1, 2.5.2, and 2.5.3) but also included a new paragraph requiring owners and operators to provide within 15 days after any malfunction, breakdown, upset, startup or human

error ''sufficient information'' to enable the director to determine the seriousness of the excess emissions and specifying what constituted ''sufficient information''. In 1984, we approved NAC 445.667 and thereby effectively replaced all of NAQR article 2.5 in the applicable Nevada SIP except for subsection 2.5.4. See 49 FR 11626 (March 27, 1984). In contrast to NAC 445.667, EPA took no action to approve or disapprove NAC 445.668, the re-codified version of NAQR article 2.5.4. Thus, the excess emissions provisions in the applicable SIP currently include NAC 445.667, as approved in March 1984, and NAQR 2.5.4, as approved in January 1978.

In a SIP revision submittal dated January 12, 2006, the Governor's designee for SIP matters, the Nevada Division of Environmental Protection (NDEP), requested rescission of many rules from the applicable SIP, including NAC 445.667.[1] As discussed below, we are proposing to approve this request because of its connection to NAQR article 2.5.4, which we approved in error into the SIP, and for which we are now proposing disapproval.

NDEP has not requested rescission of NAQR article 2.5.4 from the applicable SIP. We propose, however, as discussed below, to initiate action herein to disapprove this previously-approved provision under CAA section 110(k)(6), which expressly provides EPA with authority to correct errors in prior SIP approvals, and thereby delete NAQR article 2.5.4 from the applicable SIP. In doing so, we find that approval of NAQR article 2.5.4 into the SIP in 1972, and then again in amended form, in 1978, was an error because NAQR article 2.5.4, which exempts certain occurrences of excess emissions from the potential for enforcement at the discretion of NDEP, is not consistent with attainment and maintenance of the national ambient air quality standards (NAAQS) nor with the regulatory framework of the Act, which gives EPA and citizens independent authority to enforce emissions limitations and other requirements approved into the SIP.

[1] The January 12, 2006 SIP submittal superseded in part an earlier SIP submittal dated February 16, 2005. The January 12, 2006 SIP submittal was not a complete re-submittal of the earlier submittal in that it did not include the documentation of public notice and hearing for new or amended rules adopted prior to 2005. CAA section 110(l) requires reasonable notice and public hearing prior to adoption of SIP revisions by States for subsequent submittal to EPA for approval or disapproval under CAA section 110(k)(3).

III. How Are We Eealuating These Provisions?

Under CAA sections 110(k)(2) and (3), EPA is obligated to approve or disapprove (in whole or in separable part) submittals by States of SIPs and SIP revisions found or deemed to be complete, and under CAA section 110(k)(6), EPA has the authority to correct errors made by the Agency in approving such SIPs and SIP revisions. EPA has reviewed the State's request for rescission of certain excess emissions provisions and considered the removal of another excess emissions provision for compliance with the CAA requirements for SIPs in general set forth in CAA section 110(a) and 40 CFR part 51 (particularly, subpart K ''Source Surveillance'') and also for compliance with CAA requirements for SIP revisions in CAA section 110(l) and 193.[2] We have also applied the principles set forth in the following EPA policy memoranda (collectively, ''excess emissions policy memoranda''):

- ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions'' from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation, dated September 28, 1982;
- ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions'' from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation, dated February 15, 1983;
- ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, EPA Assistant Administrator for Air and Radiation, dated September 20, 1999; and
- ''Re-Issuance of Clarification—State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' from Eric Schaeffer, Director, Office of Regulatory Enforcement and John S. Seitz, Director, Office of Air Quality Planning and Standards, dated December 5, 2001.

[2] CAA section 110(l) prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. CAA section 193 prohibits modifications in control requirements that were in effect before the Clean Air Act Amendments of 1990 in any nonattainment area unless the modification insures equivalent or greater emission reductions of the nonattainment pollutant.

IV. What Are Our Proposed Actions on These Provisions?

A. NAC 445.667

NAC 445.667 establishes reporting requirements under two circumstances involving the potential or the occurrence of excess emissions. First, NAC 445.667 requires advance notice to the Director of any scheduled maintenance or repairs that may result in excess emissions. Second, NAC 445.667 requires the Director to be notified within certain prescribed periods of any excess emissions that occur after any malfunction of process or pollution control equipment or during startup of such equipment.

Upon review of CAA section 110(a)(2) and 40 CFR part 51, subpart K (''Source Surveillance''), we find that the episodic reporting of excess emissions required under NAC 445.667 generally supports enforceability of the SIP and protection of the NAAQS. However, a review of the text of the excess emissions provisions themselves and the regulatory history of the State's submittals and EPA actions (or inaction as the case may be) on NAQR article 2.5, NAC 445.667, and NAC 445.668 convinces us that NAC 445.667 should not be separated from NAQR article 2.5.4 for the purposes of SIP actions under CAA section 110(k)(3) and related error corrections under CAA section 110(k)(6). Note, for example, that NAC 445.667 and NAC 445.668 were originally codified as subsections within a single rule, NAQR article 2.5, ''Scheduled Maintenance, Testing, and Breakdown or Upset.''

CAA section 110(k)(3) provides for full or partial approvals and disapprovals of SIP submittals. We consider ''separable'' portions of SIP submittals to be eligible for separate action under CAA section 110(k)(3). By ''separable,'' EPA means that the action it anticipates taking will not result in the approved rule(s) being more stringent than the State anticipated. See EPA memorandum from John Calcagni, Office of Air Quality Planning and Standards, entitled ''Processing of State Implementation Plan (SIP) Submittals,'' dated July 9, 1992. In the context of an error correction under CAA section 110(k)(6), we apply the principle of being separable to avoid a result in which the approved rule(s) in the SIP becomes more stringent than the State anticipated upon our removal of another rule or portion of that rule. In this case, we believe that the State intended the two excess emissions rules, i.e., reporting provisions of NAC 445.667 and the determination of fault provisions of NAQR article 2.5.4, to be considered together as a single

regulatory scheme whereby owners and operators can avoid enforcement proceedings triggered by excess emissions due to malfunctions if they follow the related reporting requirements and take the necessary remedial steps. In other words, we believe the State did not intend the excess emissions reporting requirements for malfunctions to exist independently in the SIP from the related determination of fault provisions.

Given the connection between NAQR article 2.5.4 and NAC 445.667, therefore, and because we erred in approving (and are proposing disapproval of) the former, as discussed below, we propose to approve the State's request for rescission of the latter. Neither the January 12, 2006 SIP revision submittal nor the February 16, 2005 SIP revision submittal (that the latter submittal replaced in part) included public participation documentation for this requested rescission, thus, our proposed approval of the rescission of NAC 445.667 from the SIP is contingent upon receipt of public notice and hearing documentation from the State of Nevada. Such documentation is required under CAA section 110(l) for all SIP revisions.

We note that approval of the rescission request for NAC 445.667 would have no effect on excess emissions reporting requirements that apply to stationary sources under other SIP rules, under 40 CFR part 60 (''Standards of performance for new stationary sources''), or 40 CFR parts 61 (''National emission standards for hazardous air pollutants'') and 63 (''National emission standards for hazardous air pollutants for source categories'').

B. NAQR Article 2.5.4

NAQR article 2.5.4 allows the Director (which, in this context, refers to NDEP) to exempt from enforcement certain excess emissions due to malfunction. NDEP's discretion in this regard is limited to conditions that NDEP determines to be unavoidable and not the result of careless or marginal operations but can be used to exempt such excess emissions from any source under NDEP jurisdiction regardless of the source's potential to cause or contribute to violations of the NAAQS. NAQR article 2.5.4 does not limit the duration of the exemption nor include any provisions that serve to protect ambient air quality during the exemption period for the purpose of avoiding violations of the NAAQS.

EPA's long-standing position is that provisions such as NAQR article 2.5.4 are not consistent with the fundamental purpose of a SIP, which as set forth in CAA section 110(a)(1) is to provide for implementation, maintenance, and enforcement of the NAAQS. See 42 FR 21472 (April 27, 1997), 42 FR 58171 (November 8, 1977), and EPA's excess emissions policy memoranda.[3] We view all excursions above SIP emission limits as violations because the purpose of SIP limits are to protect the NAAQS, and thus, any emissions above such limits may cause or contribute to violations of the NAAQS.

Moreover, SIPs must include enforceable emission limitations (see CAA section 110(a)(2)(A)), and Congress intended such limitations to be continuous in nature. See the definition of ''emission limitation'' in CAA section 302(k).[4] Allowing the Director to exempt from enforcement incidents during which emissions exceed the underlying emissions limitation means that none of the emission limitations in the SIP otherwise subject to enforcement under State law and the Clean Air Act are truly continuous in nature but rather may be discontinued for indefinite periods by the Director.

Lastly, by leaving enforcement of the underlying emission limitation in the sole hands of the Director of the State air pollution agency without explicit limits to his/her discretion, NAQR article 2.5.4 conflicts with the regulatory structure of the Clean Air Act, which is intended to provide for independent enforcement by EPA and citizens of emissions limitations and other requirements approved by EPA into SIPs. See, generally, CAA sections 113 (''Federal enforcement'') and 304 (''Citizen suits''). The purpose of SIPs to protect the NAAQS, the continuous nature of emissions limitations, and the independent authorities for EPA and citizen represent core elements of the Clean Air Act from as far back as the Clean Air Amendments of 1970. Thus, our approvals of NAQR article 2.5.4 as part of the Nevada SIP on May 31, 1972 (37 FR 10842), and then again, in amended form, on January 9, 1978 (43 FR 1341) were clearly in error.

Section 110(k)(6) of the Clean Air Act, as amended in 1990, provides, ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public.''

We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction (or we discover) that (1) We clearly erred in failing to consider or in inappropriately considering information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 57 FR 56762, at 56763 (November 30, 1992).

In this instance, we have found clear error in our 1972 and 1978 approvals of NAQR article 2.5.4 as a part of the Nevada SIP because at the time of our 1972 and 1978 actions approving this rule, the Clean Air Act required SIPs to implement, maintain, and enforce the NAAQS through continuous emissions limitations and provided for a regulatory scheme whereby EPA and citizens have enforcement authority separate from that of the State; whereas, NAQR article 2.5.4 provides for discontinuance of emission limitations under certain conditions without regard to protection of the NAAQS. Further, by determining that excess emissions are not a violation of the SIP, the Director can at his discretion cut off EPA or citizen enforcement of the underlying emissions limitation thereby confounding the regulatory scheme promulgated by Congress in the Clean Air Act. We also find that continued presence of NAQR article 2.5.4 in the applicable Nevada SIP undermines enforceability of the SIP and is potentially harmful to the environment.

Therefore, under CAA section 110(k)(6), we are proposing to correct our errors in approving NAQR article 2.5.4 as part of the Nevada SIP on May 31, 1972 (37 FR 10842) and on January 9, 1978 (43 FR 1341) by disapproving the previously approved versions of the rule and thereby deleting the rule from the applicable SIP. If finalized as

[3] EPA's interpretation of section 110 in the context of State excess emissions provisions has been upheld by the United State Court of Appeals for the Sixth Circuit in *Michigan Mfrs. Ass'n* v. *Browner*, 230 F.3d 181 (6th Cir. 2000).

[4] Under CAA section 302(k), the terms ''emission limitation'' and ''emission standard'' mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter.

proposed, we will codify the error correction by amending 40 CFR 52.1470(b), 52.1470(c)(11), and 52.1483 accordingly.[5]

V. Proposed Actions, Public Comment and Final Actions

Under section 110(k)(3) of the CAA, EPA is proposing approval of a request by the State of Nevada for rescission of NAC 445.667 (''Excess emissions: Scheduled maintenance; testing; malfunctions'') from the applicable SIP because of the connection between NAC 445.667 and NAQR article 2.5.4, which we approved in error and for which we are proposing disapproval.

EPA is also proposing, under section 110(k)(6) of the CAA, to correct errors made by the Agency in approving NAQR article 2.5.4 in 1972 and again in 1978 as part of the applicable SIP by disapproving the previously approved versions of the rule and thereby deleting NAQR article 2.5.4 from the applicable SIP. We are proposing this correction because the subject rule provides an exemption from enforcement at the State's discretion for certain excess emissions and is thereby inconsistent with the fundamental purpose of the SIP, which is to provide for implementation, maintenance, and enforcement of the NAAQS, inconsistent with Congressional intent for continuous emission limits, and inconsistent with the regulatory structure of the Clean Air Act which provides for independent enforcement authority by EPA and citizens.

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 rule that will rescind NAC 445.667, and that will delete NAQR article 2.5.4, from the applicable Nevada SIP, and to codify the latter action by amending 40 CFR 52.1470(b), 52.1470(c)(11), and 52.1483 accordingly.

[5] We note that our proposed action herein of disapproving a previously approved excess emissions rule is consistent with actions we have taken on similar excess emissions provisions in other portions of the Nevada SIP and in other SIPs. For example, in 1981, we disapproved section 12, an excess emissions rule adopted by Clark County (that we had previously approved as part of the Clark County portion of the Nevada SIP) on similar grounds as described herein. See 46 FR 43141 (August 27, 1981) and 69 FR 54006 (September 7, 2004). In 1978, we disapproved similar excess emissions rules adopted by 22 different air pollution control districts in the State of California and, in some instances, reversed previous approvals of prior versions of those rules. See 43 FR 33915 (August 2, 1978).

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to delete previously approved state rules that, viewed collectively, fail to meet Federal requirements and imposes no additional requirements. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to rescind or delete pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to delete previously approved state rules that, viewed collectively, fail to implement a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: December 8, 2006.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E6–21500 Filed 12–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–WI–0002; FRL–8258–1]

Federal Implementation Plan Under the Clean Air Act for Certain Trust Lands of the Forest County Potawatomi Community Reservation if Designated as a PSD Class I Area; State of Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 29, 1995, and July 10, 1997, EPA proposed to approve a request by the Forest County Potawatomi Community (FCP Community) to redesignate certain trust lands within its reservation as Class I with respect to the Clean Air Act (CAA) Prevention of Significant Deterioration (PSD) construction permit program. In these proposals, EPA did not explicitly state the mechanism it would use if it granted the redesignation request nor did the Agency include a draft of its codification. In this action, EPA is proposing that it will promulgate a Federal Implementation Plan (FIP) if it approves FCP Community's request and