

(3) Appellate review by the Board of Patent Appeals and Interferences or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability and if the patent is not subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct from that under appellate review. If an application is remanded by a panel of the Board of Patent Appeals and Interferences and the remand is the last action by a panel of the Board of Patent Appeals and Interferences prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the remand shall be considered a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(2) as amended by section 532(a) of the Uruguay Round Agreements Act, Public Law 103-465, 108 Stat. 4809, 4983-85 (1994), and a final decision in favor of the applicant under paragraph (c)(3) of this section. A remand by a panel of the Board of Patent Appeals and Interferences shall not be considered a decision in the review reversing an adverse determination of patentability as provided in this paragraph if there is filed a request for continued examination under 35 U.S.C. 132(b) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.

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■ 3. Section 1.702 is amended by revising paragraph (e) to read as follows:

§ 1.702 Grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

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(e) *Delays caused by successful appellate review.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to review by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued under a decision in the review reversing an adverse determination of patentability. If an application is remanded by a panel of the Board of Patent Appeals and Interferences and the remand is the last action by a panel of the Board of Patent Appeals and Interferences prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the remand shall be considered a decision

by the Board of Patent Appeals and Interferences as that phrase is used in 35 U.S.C. 154(b)(1)(A)(iii), a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii), and a final decision in favor of the applicant under § 1.703(e). A remand by a panel of the Board of Patent Appeals and Interferences shall not be considered a decision in the review reversing an adverse determination of patentability as provided in this paragraph if there is filed a request for continued examination under 35 U.S.C. 132(b) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.

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■ 4. Section 1.703 is amended by revising paragraph (f) to read as follows.

§ 1.703 Period of adjustment of patent term due to examination delay.

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(f) The adjustment will run from the expiration date of the patent as set forth in 35 U.S.C. 154(a)(2). To the extent that periods of delay attributable to the grounds specified in § 1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed. The term of a patent entitled to adjustment under § 1.702 and this section shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping, less the sum of the periods calculated under § 1.704. The date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation.

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■ 5. Section 1.704 is amended by revising paragraph (d) to read as follows.

§ 1.704 Reduction of period of adjustment of patent term.

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(d) A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent

office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

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■ 6. Section 1.705 is amended by revising paragraph (d) to read as follows:

§ 1.705 Patent term adjustment determination.

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(d) If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.

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Dated: April 16, 2004.

Jon W. Dudas,

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

[FR Doc. 04-9144 Filed 4-21-04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 126-0074b; FRL-7650-3]

Interim Final Determination That State Has Corrected a Deficiency in the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona

State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern ADEQ Rule R18-2-702.

DATES: This interim final determination is effective on April 22, 2004. However, comments will be accepted until May 24, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to steckel.andrew@epa.gov, or submit comments at <http://www.regulations.gov>.

You can inspect a copy of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours by appointment. You may also see a copy of the submitted rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

A copy of the rules may also be available via the Internet at http://www.sosaz.com/public_services/Title_18/18-02.htm. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

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

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 2002 (67 FR 59456), we published a full disapproval of ADEQ Rule R18-2-702 as revised locally on November 13, 1993 and submitted by the State on July 15, 1998. We based our full disapproval action on deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after October 23, 2002 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On August 8, 2003, ADEQ adopted revisions to Rule R18-2-702 that were intended to correct the deficiencies identified in our limited disapproval action. On January 16, 2004, the State submitted these revisions to EPA. In the Proposed Rules section of today's

Federal Register, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our September 23, 2002, disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our September 23, 2002, full disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised ADEQ Rule R18-2-702, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with ADEQ Rule R18-2-702 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the

deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

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.

This action 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.

The Administrator certifies that this action 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.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*).

This 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 (65 FR 67249, November 9, 2000).

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 rule 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.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, 5 U.S.C. 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 22, 2004. 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 21, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 5, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04-9040 Filed 4-21-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 218-0433a; FRL-7640-7]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). The KCAPCD revisions concern stack sampling, standards for granting applications, and the emission of particulate matter (PM-10) from agricultural burning and prescribed burning. We are approving local rules that administer regulations and regulate emission sources under the Clean Air Act as amended (CAA or the Act).

DATES: This rule is effective on June 21, 2004 without further notice, unless EPA receives adverse comments by May 24, 2004. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to steckel.andrew@epa.gov, or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSDs at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, 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.

Table of Contents

- I. The State's Submittal
 - A. What rules did the State submit?
 - B. Are there other versions of these rules?
 - C. What is the purpose of the rule revisions?
- II. EPA's Evaluation and Action
 - A. How is EPA evaluating the rules?
 - B. Do the rules meet the evaluation criteria?
 - C. EPA recommendation to further improve the rules
 - D. Public comment and final action
- III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
KCAPCD	108	Stack Sampling	07/24/03	11/04/03
KCAPCD	208	Standards for Granting Applications	09/17/98	10/27/98
KCAPCD	417	Agricultural and Prescribed Burning	07/24/03	11/04/03.

On December 23, 2003, the submittal of Rules 108 and 417 was found to meet

the completeness criteria in 40 CFR part 51, appendix V, which must be met

before formal EPA review. On December