

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0028; FRL-9942-03-Region-09]

Approval of Air Plan Revisions; Arizona; Rescissions and Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Arizona State Implementation Plan (SIP) under the Clean Air Act. These revisions include rescissions of certain statutory provisions, administrative and prohibitory rules, and test methods. The EPA is also taking direct final action to correct certain errors in previous actions on prior revisions to the Arizona SIP and to make certain other corrections. The intended effect is to rescind unnecessary provisions from the applicable SIP and to correct certain errors in previous SIP actions.

DATES: This rule is effective on April 11, 2016 without further notice, unless the EPA receives adverse comments by March 14, 2016. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2016-0028 at <http://www.regulations.gov>, or via email to Andrew Steckel, Rules Office Chief, at Steckel.Andrew@epa.gov. For comments submitted at Regulations.gov, follow the

online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA will publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, (415) 972-3073, Gong.Kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. The State’s Rescissions

A. Which SIP provisions has the state rescinded?

On March 10, 2015 and January 13, 2016, the Arizona Department of Environmental Quality (ADEQ) submitted rescissions of certain statutory and regulatory provisions from the applicable Arizona State Implementation Plan (SIP). The rescissions relate to certain statutory provisions, administrative and prohibitory rules, and test methods. In the January 13, 2016 submittal, ADEQ included evidence of public notification of the rescissions (including the rescissions submitted on March 10, 2015), provision of a 30-day comment period, and opportunity for public hearing. See appendix A to the January 13, 2016 SIP revision submittal for documentation of ADEQ’s public process prior to adoption and submittal of the revision to the EPA.

Table 1 lists the statutory and regulatory provisions that ADEQ has rescinded,¹ the dates on which the EPA approved the provisions as part of the SIP, and the dates on which ADEQ submitted the rescissions to the EPA. Under section 110(k)(3) of the Clean Air Act (CAA or “Act”), the EPA is obligated to approve, disapprove, or conditionally approve SIPs and SIP revisions, including rescissions.

TABLE 1—ARIZONA SIP STATUTORY AND REGULATORY PROVISIONS THAT ADEQ HAS RESCINDED

Statutory or regulatory provision	Title	EPA Approval	Rescission submittal date
ARS 36-1700	Declaration of Policy	37 FR 10842 (May 31, 1972); 37 FR 15080 (July 27, 1972); 47 FR 26382 (June 18, 1982).	January 13, 2016.
ARS 36-1801	Jurisdiction over Indian Lands	37 FR 15080 (July 27, 1972).	January 13, 2016.
Chapter 2, section 2.9 of “The State of Arizona Air Pollution Control Implementation Plan”.	Legal Authority—Jurisdiction over Indian Lands.	37 FR 15080 (July 27, 1972).	January 13, 2016.
Rule 7-1-9.1	Policy and legal authority	37 FR 15080 (July 27, 1972).	January 13, 2016.
Rule R9-3-1001	Policy and legal authority	43 FR 34470 (August 4, 1978).	January 13, 2016.
Rule 7-1-4.3	Sulfite Pulp Mills	37 FR 15080 (July 27, 1972).	January 13, 2016.

¹ In addition to the provisions listed in table 1, ADEQ also submitted the rescission of R9-3-310, approved by the EPA at 49 FR 41026 (October 19,

1984). However, the EPA has already acted to approve the rescission of that particular provision from the Arizona SIP (see 80 FR 67319 (November

2, 2015)), and thus we will be taking no further action on that provision.

TABLE 1—ARIZONA SIP STATUTORY AND REGULATORY PROVISIONS THAT ADEQ HAS RESCINDED—Continued

Statutory or regulatory provision	Title	EPA Approval	Rescission submittal date
Rule 7–1–4.3 (R9–3–403)	Sulfur Emissions: Sulfite Pulp Mills	43 FR 33245 (July 31, 1978).	January 13, 2016.
AAC R9–3–511	Standards of Performance for Existing Secondary Lead Smelters.	47 FR 42572 (September 28, 1982); 47 FR 17483 (April 23, 1982).	March 10, 2015.
AAC R9–3–512	Standards of Performance for Existing Secondary Brass and Bronze Ingot Production Plants.	47 FR 17483 (April 23, 1982).	March 10, 2015.
AAC R9–3–513	Standards of Performance for Existing Iron and Steel Plants.	47 FR 42572 (September 28, 1982); 47 FR 17483 (April 23, 1982).	March 10, 2015.
AAC R9–3–517	Standards of Performance for Steel Plants; Existing Electric Arc Furnaces (EAF).	47 FR 42572 (September 28, 1982); 47 FR 17483 (April 23, 1982).	March 10, 2015.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.01.	Method 1 Sample and Velocity Traverses for Stationary Sources.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.02.	Method 2 Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.02.	Method 2A Direct Measurement of Gas Volume Through Pipes and Small Ducts.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.02.	Method 2B Determination of Exhaust Gas Volume Flow Rate from Gasoline Vapor Incinerators.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.03.	Method 3 Gas Analysis for Carbon Dioxide, Excess Air, Dry Molecular Weight.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.03.	Method 3A Determination of Oxygen and Carbon Dioxide Concentrations in Emissions from Stationary Sources (Instrumental Analyzer Procedure).	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.04.	Method 4 Determination of Moisture in Stack Gases.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.05.	Method 5 Determination of Particulate Emissions from Stationary Sources.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.06.	Method 6 Determination of Sulfur Dioxide Emissions from Stationary Sources.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.07.	Method 7 Determination of Nitrogen Oxide Emissions from Stationary Sources.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.08.	Method 8 Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.09.	Method 9 Visual Determination of the Opacity of Emissions from Stationary Sources.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.10.	Method 10 Determination of Carbon Monoxide Emissions from Stationary Sources.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.11.	Method 11 Determination of Hydrogen Sulfide Emissions from Stationary Sources.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.13.	Method 13B Determination of Total Fluoride Emissions from Stationary Sources—Specific Ion Electrode Method.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.13.	Method 13 Determination of Total Fluoride Emissions from Stationary Sources—SOADNS Zirconium Lake Method.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.14.	Method 14 Determination of Total Fluoride Emissions from Potroom Roof Monitors for Primary Aluminum Plants.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.15.	Method 15 Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions from Stationary Sources.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.16.	Method 16 Semicontinuous Determination of Sulfur Emissions from Stationary Sources.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.17.	Method 17 Determination of Particulate Emissions from Stationary Sources (In-Stack Filtration Method).	47 FR 17483 (April 23, 1982).	January 13, 2016.

TABLE 1—ARIZONA SIP STATUTORY AND REGULATORY PROVISIONS THAT ADEQ HAS RESCINDED—Continued

Statutory or regulatory provision	Title	EPA Approval	Rescission submittal date
Arizona Testing Manual for Air Pollutant Emissions, Section 3.19.	Method 19 Determination of Sulfur Dioxide, Removal Efficiency and Particulate, Sulfur Dioxide and Nitrogen Oxides Emission Rates from Electric Utility Steam Generators.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 3.20.	Method 20 Determination of Nitrogen Oxides, Sulfur Dioxide, and Diluent Emissions from Stationary Gas Turbines.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 4.01.	Performance Specification 1: Performance specifications and specification test procedures for transmissometer systems for continuous measurement of the opacity of stack emissions.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 4.02.	Performance Specification 2: Performance specifications and specification test procedures for monitors of SO ₂ and NO _x from stationary sources.	47 FR 17483 (April 23, 1982).	January 13, 2016.
Arizona Testing Manual for Air Pollutant Emissions, Section 4.03.	Performance Specification 3: Performance specifications and specification test procedures for monitors of CO ₂ and O ₂ from stationary sources.	47 FR 17483 (April 23, 1982).	January 13, 2016.

B. How is the EPA evaluating the rescissions?

Generally, SIP requirements must be enforceable (see section 110(a) of the Act), and SIP revisions must not modify the SIP inconsistent with sections 110(l) and 193. Section 110(l) prohibits the EPA from approving a revision to a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. Section 193 states that no control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any pollutant may be modified after November 15, 1990 in any manner unless the modification insures equivalent or greater emissions reductions of such air pollutant.

In today's action, we review, evaluate, and approve ADEQ's submittals dated March 10, 2015 and January 13, 2016 of revisions to the Arizona SIP involving rescissions of certain statutory and regulatory provisions that fall into four categories: (1) Declarations of policy and legal authority, (2) jurisdiction over Indian lands, (3) prohibitory rules, and (4) test methods and performance test specifications.

1. Declarations of Policy and Legal Authority

The EPA approved ARS section 36–1700 (“Declaration of Policy”) in May 1972 as part of the original Arizona SIP, and then approved it again in July 1972, and then again, as amended, in June

1982. See table 1 above. ARS section 36–1700 is a general statement of policy by the Arizona Legislature and sets forth the intent of the Legislature in establishing an air pollution control program in the state. As such, ARS section 36–1700 does not provide specific authority to any administrative agency to fulfill any particular regulatory function, nor does it establish any type of emissions standard or address any particular requirement for SIPs under the CAA. As such, we find that ARS section 36–1700 need not be retained in the Arizona SIP and thus find the state's corresponding rescission to be acceptable.

As shown in table 1, the EPA approved Arizona air pollution control rule 7–1–9.1 (“Policy and legal authority”) in July 1972 and then again as amended and renumbered (as R9–3–1001) in August 1978. Arizona rule 7–1–9.1 (R9–3–1001) cites the legal authority under which the rules relating to motor vehicle inspection and maintenance are adopted and also includes a general statement of policy. The specific statutory provisions cited by rule 7–1–9.1 (R9–3–1001) have been approved into the applicable SIP and, as discussed above, general statements of policy are not required for SIPs. As such, we find no need to retain rule 7–1–9.1 or its renumbered version R9–3–1001 in the applicable Arizona SIP. Therefore, we find the state's rescission of the two rules from the Arizona SIP to be acceptable.

2. Jurisdiction Over Indian Lands

The EPA approved chapter 2, section 2.9 (“Legal authority—Jurisdiction over

Indian Lands”) and ARS section 36–1801 (“Jurisdiction over Indian Lands”) in July 1972. As described in chapter 2, section 2.9 of the Arizona SIP, under ARS section 36–1801, the State of Arizona assumed jurisdiction relating to air pollution control on all lands within the state including Indian tribal lands, reservations, and allotments.

ARS section 36–1801 was recodified as ARS section 49–561 in 1986, but is no longer found in Arizona law. More importantly, the state's assumption of jurisdiction relating to air pollution control on Indian reservations conflicts with federal law. See generally CAA section 301(d) and the EPA's tribal authority rule at 40 CFR part 49 (“Indian country: air quality planning and management”). More specifically, within the boundaries of an Indian reservation and any other area for which the EPA or a tribe has demonstrated that a tribe has jurisdiction, the EPA or authorized tribe has regulatory jurisdiction under the Clean Air Act. See *Oklahoma Department of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014). As such, ARS section 36–1801 should not be retained, and the EPA finds the state's corresponding rescissions of chapter 2, section 2.9 and ARS section 36–1801 from the Arizona SIP to be appropriate.

3. Prohibitory Rules

On March 10, 2015, the ADEQ submitted rescissions of the following rules from the Arizona SIP because there are no secondary lead smelters, secondary brass and bronze ingot productions plants, iron and steel

plants, or electric arc furnaces (EAF) under the ADEQ's jurisdiction:

- R9-3-511, Standards of Performance for Existing Secondary Lead Smelters,
- R9-3-512, Standards of Performance for Existing Secondary Brass and Bronze Ingot Production Plants,
- R9-3-513, Standards of Performance for Existing Iron and Steel Plants, and
- R9-3-517, Standards of Performance for Steel Plants; Existing Electric Arc Furnaces (EAF).

To determine that there are no operating facilities in the state that fall under one of the specified source categories, ADEQ reviewed its permit and emissions inventory systems and consulted with knowledgeable staff. As a result of these searches, ADEQ determined that there are no operating facilities within ADEQ's jurisdiction that fall under these source categories.

On January 13, 2016, ADEQ also submitted a rescission of another rule, Arizona air pollution control rule 7-1-4.3 ("Sulfur Pulp Mills"), which was approved by the EPA in July 1972 and again in July 1978 as rule 7-1-4.3 (R9-3-403) ("Sulfur Emissions: Sulfite Pulp Mills"). Like the four prohibitory rules discussed above, no facilities remain in operation in Arizona that are subject to the requirements of rule 7-1-4.3. Therefore, we find the ADEQ's rescissions of the prohibitory rules discussed above from the Arizona SIP to be acceptable.

4. Test Methods and Performance Specifications

In April 1982, the EPA approved sections 3 and 4 of the Arizona Testing Manual for Air Pollutant Emissions ("Arizona Testing Manual") as a revision to the Arizona SIP. Section 3 of the Arizona Testing Manual includes certain test methods from 40 CFR part 60, appendix A, and section 4 of the Arizona Testing Manual includes certain performance test specifications from 40 CFR part 60, appendix B. Both the test methods and performance test methods approved into the Arizona SIP date from the 1970s.

Over the years, the EPA's test methods and performance specifications in 40 CFR part 60 have been revised, and thus, the versions of the test methods and performance test specifications approved as part of the Arizona SIP are outdated. Also, in recent years, the EPA has approved two state rules that in effect incorporate more recent versions of the EPA's test methods and performance specifications into the Arizona SIP. See Arizona

Administrative Code (AAC) R18-2-311 ("Test Methods and Procedures") and appendix 2 ("Test Methods and Protocols") for AAC, title 18, chapter 2.² See 80 FR 67319 (November 2, 2015) and 79 FR 56655 (September 23, 2014). As such, the outdated test methods and performance test specifications approved as part of the Arizona Testing Manual need not be retained in the Arizona SIP. Thus, we find ADEQ's rescission of them to be acceptable.

C. Do the rescissions meet all applicable requirements?

The EPA has evaluated all the submittal documentation and has determined that the rescission of the statutory and regulatory provisions listed in table 1 is approvable because (1) the statements of policy and legal authority are not necessary to fulfill any CAA SIP purpose; (2) the provisions asserting jurisdiction over Indian reservations conflict with federal law; (3) ADEQ has adequately demonstrated that there are no existing sources subject to the listed prohibitory rules; and (4) the test methods and performance test specifications are outdated and other SIP provisions provide for use of more up-to-date procedures. Furthermore, with respect to the subject prohibitory rules, the emissions from any new facilities of the type that would have been subject to these rules will be subject to applicable New Source Review rules and New Source Performance Standards, which can reasonably be assumed to result in more stringent emission limits than would apply under these rules.

Therefore, rescission of the statutory provisions and rules listed in table 1 would not interfere with attainment or maintenance of any of the national ambient air quality standards or any other requirements of the Clean Air Act and would not affect emissions of nonattainment pollutants. As such, the rescission would comply with sections 110(l) and 193 of the Clean Air Act. For these reasons, we approve ADEQ's rescissions of the statutory and regulatory provisions listed in table 1 from the Arizona SIP.

II. Error Corrections

Section 110(k)(6) of the CAA provides in relevant part that, whenever the EPA determines that the EPA's action

² R18-2-311 provides that applicable procedures and testing methods contained in, among other references, 40 CFR part 60, appendices A through F, shall be used to determine compliance with state requirements for stationary sources. Appendix 2 for AAC, title 18, chapter 2 incorporates by reference 40 CFR part 60 appendices revised as of July 1, 2006.

approving, disapproving, or promulgating any SIP or SIP revision was in error, the EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the state. In today's action, we are correcting four errors made in previous rulemakings approving revisions to the Arizona SIP.

First, on July 31, 1978 (43 FR 33245), we approved certain state prohibitory rules as a revision to the Arizona SIP. Among the rules listed as approved was R9-3-301 ("Visible emissions—General"). However, the preamble of our July 31, 1978 final rule clearly indicates that the EPA did not intend to take action on this rule (see 43 FR 33245, at 33246) but mistakenly listed R9-3-301 as approved in the regulatory portion of the final rule. In this action, we are correcting the error in our July 31, 1978 final rule by removing the entry for R9-3-301 from the relevant paragraph in 40 CFR 52.120 ("Identification of plan").

Second, on October 10, 1980 (45 FR 67345), we approved the state's January 26, 1979 request to redesignate the Air Quality Control Regions (AQCRs) in Arizona as a revision to the Arizona SIP. However, the state's request for redesignation of the Arizona AQCRs was made under section 107, not section 110, of the CAA, and while the EPA appropriately made certain administrative changes to 40 CFR part 52 ("Approval and promulgation of implementation plans"), subpart D ("Arizona") and 40 CFR part 81 ("Designation of areas for air quality planning purposes"), subpart B ("Designation of air quality control regions"), the redesignation request itself was not a SIP revision. As such, we erred in listing the state's January 26, 1979 redesignation request as an approved revision to the Arizona SIP in 40 CFR part 52 ("Approval and promulgation of implementation plans"), subpart D ("Arizona"), section 52.120 ("Identification of plan"), paragraph 52.120(c)(30). In today's action, we are removing the entry of the state's January 26, 1979 redesignation request from 40 CFR 52.120.

Third, on June 18, 1982 (47 FR 26382), we approved certain statutory provisions as a revision to the Arizona SIP. In so doing, we approved Arizona Revised Statutes (ARS) section 36-1720.02 ("Defenses"). However, the correct citation for this particular statutory provision was ARS section 36-1720.01, not ARS section 36-1720.02. In today's action, we are correcting the citation to this statutory provision in the relevant paragraph in 40 CFR 52.120 ("Identification of plan").

Fourth, on March 10, 2005 (70 FR 11882), we approved a request submitted on September 13, 2004 by the ADEQ to clarify the description of the air quality planning area for the Phoenix PM₁₀ nonattainment area. In our March 10, 2005 final rule, we revised the PM₁₀ table in 40 CFR part 81 (“Designation of areas for air quality planning purposes”), subpart C (“Section 107 attainment status designations”), section 81.303 (“Arizona”) accordingly, but we also listed the state’s September 13, 2004 boundary clarification request as an approval of a revision to the Arizona SIP. However, the state’s September 13, 2005 request was submitted under CAA section 107, not as a revision to the SIP under section 110, and thus our listing of it as part of the SIP in 40 CFR 52.120 (“Identification of plan”) was in error. In today’s action, we are removing the entry of the ADEQ’s September 13, 2004 boundary clarification request from 40 CFR 52.120.

Lastly, in a final rule published by the Federal Communications Commission at 63 FR 16441 (April 3, 1998), 40 CFR 52.111 (“Toll free number assignment”) was inadvertently added to subpart D (“Arizona”) of part 52 (“Approval and promulgation of implementation plans”). The provisions now found at 40 CFR 52.111 were intended to be promulgated in title 47, not title 40, and have nothing to do with SIPs. In today’s action, we are correcting this error by removing 40 CFR 52.111 from the CFR.

III. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, the EPA is approving the state’s rescission of the statutory and regulatory provisions listed in table 1 from the Arizona SIP because we believe they are no longer necessary to retain. Under section 110(k)(6), we are also correcting errors in certain previous actions by the EPA on prior Arizona SIP revisions. The error corrections relate to an inadvertent listing of a rule on which the EPA did not take action in the Arizona SIP, a typographical error, and erroneous approvals of non-SIP submittals as part of the SIP.

We do not think anyone will object to these actions, so we are finalizing them without proposing them in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing rescission of the same provisions and correction of the same errors. If we receive adverse comments by March 14, 2016, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action

based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 11, 2016.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely rescinds state statutes, rules, and test methods as unnecessary to retain in the applicable SIP and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 April 11, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 25, 2016.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart D—Arizona

§ 52.111 [Removed]

■ 2. Remove § 52.111.

■ 3. Section 52.120 is amended by:

■ a. Adding paragraphs (b)(1)(i), (c)(3)(ii) introductory text and (c)(3)(ii)(A), and (c)(6)(i) introductory text and (c)(6)(i)(A);

■ b. Revising paragraph (c)(19);

■ c. Adding paragraphs (c)(20)(i) introductory text and (c)(20)(i)(A), (c)(27)(i)(D), and (c)(29)(i)(B);

■ d. Removing and reserving paragraph (c)(30);

■ e. Adding paragraphs (c)(43)(i)(D) and (c)(45)(i)(E);

■ f. Revising paragraph (c)(50)(ii)(B);

■ g. Adding paragraphs (c)(50)(ii)(D) and (c)(54)(i)(I); and

■ h. Removing and reserving paragraph (c)(120).

The additions and revisions read as follows:

§ 52.120 Identification of plan.

* * * * *

(b) * * *

(1) Arizona State Department of Health.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement: Arizona Revised Statutes section 36–1700 (“Declaration of Policy”)

(c) * * *

(3) * * *

(ii) Arizona State Department of Health.

(A) Previously approved on July 27, 1972 in paragraph (c)(3) of this section and now deleted without replacement: Chapter 2 (“Legal Authority”), Section 2.9 (“Jurisdiction over Indian lands”); Arizona Revised Statutes sections 36–1700 (“Declaration of Policy”) and 36–1801 (“Jurisdiction over Indian Lands”); and Arizona State Department of Health, Rules and Regulations for Air Pollution Control 7–1–4.3 (“Sulfite Pulp Mills”) and 7–1–9.1 (“Policy and Legal Authority”).

* * * * *

(6) * * *

(i) Arizona State Department of Health.

(A) Previously approved on July 31, 1978 in paragraph (c)(6) of this section and now deleted without replacement: Arizona Air Pollution Control Regulation 7–1–4.3 (R9–3–403) (“Sulfur Emissions: Sulfite Pulp Mills”).

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(19) Arizona Air Pollution Control Regulations, submitted on September 16, 1975: R9–3–102 (Definitions), R9–3–108 (Test Methods and Procedures), R9–3–302 (Particulate Emissions: Fugitive Dust), R9–3–303 (Particulate Emissions: Incineration), R9–3–304 (Particulate Emissions: Wood Waste Burners), R9–3–305 (Particulate Emissions: Fuel Burning Equipment), R9–3–307 (Particulate Emissions: Portland Cement Plants); and R9–3–308 (Particulate Emissions: Heater-Planers), submitted on September 16, 1975.

(20) * * *

(i) Arizona State Department of Health.

(A) Previously approved on August 4, 1978 in paragraph (c)(20) of this section and now deleted without replacement: Arizona Air Pollution Control Regulation R9–3–1001 (“Policy and Legal Authority”).

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(27) * * *

(i) * * *

(D) Previously approved on April 23, 1982, in paragraph (c)(27)(i)(B) of this section and now deleted without replacement: R9–3–511 (Paragraph B), R9–3–512 (Paragraph B), R9–3–513 (Paragraphs B and C), and R9–3–517 (Paragraphs B and C).

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(29) * * *

(i) * * *

(B) Previously approved on April 23, 1982, in paragraph (c)(29)(i)(A) of this section and now deleted without replacement: Arizona Testing Manual for Air Pollutant Emissions, Sections 3.0 and 4.0.

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(43) * * *

(i) * * *

(D) Previously approved on April 23, 1982, in paragraph (c)(43)(i)(B) of this section and now deleted without replacement: R9–3–511 (Paragraph A.1 to A.5), R9–3–512 (Paragraph A.1 to A.5), R9–3–513 (Paragraph A.1 to A.5), and R9–3–517 (Paragraph A.1 to A.5).

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(45) * * *

(i) * * *

(E) Previously approved on April 23, 1982, in paragraph (c)(45)(i)(B) of this section and now deleted without

(6) * * *

(i) Arizona State Department of Health.

(A) Previously approved on July 31, 1978 in paragraph (c)(6) of this section and now deleted without replacement: Arizona Air Pollution Control Regulation 7–1–4.3 (R9–3–403) (“Sulfur Emissions: Sulfite Pulp Mills”).

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(19) Arizona Air Pollution Control Regulations, submitted on September 16, 1975: R9–3–102 (Definitions), R9–3–108 (Test Methods and Procedures), R9–3–302 (Particulate Emissions: Fugitive Dust), R9–3–303 (Particulate Emissions: Incineration), R9–3–304 (Particulate Emissions: Wood Waste Burners), R9–3–305 (Particulate Emissions: Fuel Burning Equipment), R9–3–307 (Particulate Emissions: Portland Cement Plants); and R9–3–308 (Particulate Emissions: Heater-Planers), submitted on September 16, 1975.

(20) * * *

(i) Arizona State Department of Health.

(A) Previously approved on August 4, 1978 in paragraph (c)(20) of this section and now deleted without replacement: Arizona Air Pollution Control Regulation R9–3–1001 (“Policy and Legal Authority”).

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(27) * * *

(i) * * *

(D) Previously approved on April 23, 1982, in paragraph (c)(27)(i)(B) of this section and now deleted without replacement: R9–3–511 (Paragraph B), R9–3–512 (Paragraph B), R9–3–513 (Paragraphs B and C), and R9–3–517 (Paragraphs B and C).

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(29) * * *

(i) * * *

(B) Previously approved on April 23, 1982, in paragraph (c)(29)(i)(A) of this section and now deleted without replacement: Arizona Testing Manual for Air Pollutant Emissions, Sections 3.0 and 4.0.

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(43) * * *

(i) * * *

(D) Previously approved on April 23, 1982, in paragraph (c)(43)(i)(B) of this section and now deleted without replacement: R9–3–511 (Paragraph A.1 to A.5), R9–3–512 (Paragraph A.1 to A.5), R9–3–513 (Paragraph A.1 to A.5), and R9–3–517 (Paragraph A.1 to A.5).

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(45) * * *

(i) * * *

(E) Previously approved on April 23, 1982, in paragraph (c)(45)(i)(B) of this section and now deleted without

replacement: R9–3–511 (Paragraph A); R9–3–512 (Paragraph A); R9–3–513 (Paragraph A); R9–3–517 (Paragraph A); Section 3, Method 11; Section 3.16, Method 16; Section 3.19, Method 19; and Section 3.20, Method 20.

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(ii) * * *

(B) Arizona State: Chapter 14, Air Pollution, Article 1. State Air Pollution Control, Sections 36–1700 to 36–1702, 36–1704 to 36–1706, 36–1707 to 36–1707.06, 36–1708, 36–1720.01, and 36–1751 to 36–1753.

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(D) Previously approved on June 18, 1982, in paragraph (c)(50)(ii)(B) of this section and now deleted without replacement: Arizona Revised Statutes section 36–1700.

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(54) * * *

(i) * * *

(I) Previously approved on September 28, 1982, in paragraph (c)(54)(i)(C) of this section and now deleted without replacement: R9–3–511 (Paragraph A to A.1 and A.2), R9–3–513 (Paragraph A to A.1 and A.2), and R9–3–517 (Paragraph A to A.1).

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[Docket No. FWS–R9–ES–2011–0072; Docket No. 120106026–4999–03]

RIN 1018–AX88; 0648–BB80

Interagency Cooperation—Endangered Species Act of 1973, as Amended; Definition of Destruction or Adverse Modification of Critical Habitat

AGENCIES: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), collectively referred to as the “Services” or “we,” revise a regulatory definition that is