

**§ 52.2075 [Removed and Reserved]**

■ 3. Section 52.2075 is removed and reserved.

**§ 52.2078 [Removed and Reserved]**

■ 4. Section 52.2078 is removed and reserved.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA–R09–OAR–2016–0287; FRL–9957–64–Region 9]

### Approval of Arizona Air Plan Revisions; Ajo and Morenci, Arizona; Second 10-Year Sulfur Dioxide Maintenance Plans and Technical Correction

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

**ACTION:** Direct final rule and technical correction.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the second 10-year maintenance plans for the Ajo and Morenci areas in Arizona for the 1971 National Ambient Air Quality Standards (NAAQS or “standards”) for sulfur dioxide (SO<sub>2</sub>), and correcting an error in the description of the Ajo SO<sub>2</sub> maintenance area in the Code of Federal Regulations. Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on these actions. If we receive adverse comments on this direct final rule, resulting in withdrawal of the entire rule or any part(s) of it, we will address those comments when we finalize the proposal. The EPA does not plan to institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**DATES:** This rule is effective March 10, 2017, without further notice, unless we receive adverse comments by February 8, 2017. If the EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that some or all of the provisions in this direct final rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0287 at <http://www.regulations.gov>, or via email to [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments

cannot be removed or edited from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may 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>.

You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours: Environmental Protection Agency, Region IX, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901. Copies of the State Implementation Plan materials are also available for inspection at the address listed here: Arizona Department of Environmental Quality, 1110 W. Washington Street, First Floor, Phoenix, AZ 85007, Phone: (602) 771–4335.

**FOR FURTHER INFORMATION CONTACT:** Wienke Tax, EPA Region IX, (415) 947–4192, [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

**SUPPLEMENTARY INFORMATION:** Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action. Throughout this document, the words “we,” “us,” or “our” mean EPA.

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## I. Summary of Action

We are approving the second 10-year maintenance plans for the Ajo and Morenci, Arizona SO<sub>2</sub> maintenance areas and correcting an error in the boundary description of the Ajo maintenance area in the Code of Federal Regulations (CFR).<sup>1 2</sup>

## II. Background

### A. What National Ambient Air Quality Standards are considered in this rulemaking?

Sulfur dioxide (SO<sub>2</sub>) is the pollutant that is the subject of this action. The NAAQS are health-based and welfare-based standards for certain ambient air pollutants. SO<sub>2</sub> is among the ambient air pollutants for which we have established a health-based standard. SO<sub>2</sub> causes adverse health effects by reducing lung function, increasing respiratory illness, altering the lung’s defenses and aggravating existing cardiovascular disease. Children, the elderly, and people with asthma are the most vulnerable. SO<sub>2</sub> has a variety of additional impacts, including acidic deposition, damage to crops and vegetation, and corrosion of natural and man-made materials.

In 1971, the EPA established both short- and long-term primary NAAQS

<sup>1</sup> For the definition of the Ajo maintenance area, see 40 CFR 81.303. Ajo is a town located in northwestern Pima County, in the southwestern portion of Arizona. The EPA designated the entire area of Pima County as nonattainment for SO<sub>2</sub> on March 3, 1978 for lack of a State recommendation. The EPA approved the State’s request that the SO<sub>2</sub>-affected portion of Pima County be limited to the townships surrounding Ajo on April 10, 1979 (44 FR 21261). Townships T11S, R6W; T11S, R5W; T12S, R6W; T12S, R5W; and T13S, R6W comprised the nonattainment area. Townships T11S, R7W; T12S, R7W; T13S, R5W; and T13S, R7W were designated as “cannot be classified.” At the time of our redesignation, we incorrectly identified the maintenance area as all townships and ranges T11S–13S, R5W–R6W as “better than national standards.” However, T11S, R7W; T12S, R7W; T13S, R7W; and T13S, R5W were originally designated as “cannot be classified” and should have remained such. Today, we are correcting that error.

<sup>2</sup> For the definition of the Morenci maintenance area, see 40 CFR 81.303. Morenci is a town in eastern Greenlee County near the border of Arizona and New Mexico. The EPA designated the entire area of Greenlee County as nonattainment for SO<sub>2</sub> on March 3, 1978 for lack of a State recommendation. The EPA approved the State’s request that the SO<sub>2</sub>-affected portion of Greenlee County be limited to the townships surrounding Morenci on April 10, 1979 (44 FR 21261). Within Greenlee County, Townships T3S, R28E; T3S, R29E; T3S, R30E; T4S, R28E; T4S, R29E; T4S, R30E; T5S, R28E; and T5S, R29E comprise the maintenance area. Township T5S, R30E is designated as “cannot be classified.”

for SO<sub>2</sub>. The short-term (24-hour) standard of 0.14 parts per million (ppm) was not to be exceeded more than once per year. The long-term standard specifies an annual arithmetic mean not to exceed 0.030 ppm.<sup>3</sup> See 40 CFR 50.4.

In 2010, the EPA revised the primary SO<sub>2</sub> NAAQS by establishing a new 1-hour standard of 75 parts per billion (ppb). The EPA revoked the existing 1971 primary standards at that time because they would not provide additional public health protection. See 75 FR 35550 (June 22, 2010). This action relates only to the revoked 1971 NAAQS. The State has requested that we take action on these maintenance plans.<sup>4</sup>

#### B. What is a State Implementation Plan?

The Clean Air Act (CAA or “Act”) requires states to attain and maintain ambient air quality equal to or better than the NAAQS. The state’s commitments for attaining and maintaining the NAAQS are outlined in the State Implementation Plan (SIP) for that state. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. The Act requires that SIP revisions be made periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the state legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date, or a contingency plan if the area fails to maintain the NAAQS once redesignated. The state must make the SIP available for public review and comment through a public hearing and the SIP must be adopted by the state and submitted to us by the governor or her/his designee.

The EPA takes action on the SIP submittal, thus rendering the rules and regulations federally enforceable. The

approved SIP serves as the state’s commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

#### C. What is the background for this action?

##### 1. When were the nonattainment areas established?

###### Ajo

Ajo is located in northwestern Pima County. On March 3, 1978, at 43 FR 8968, for lack of a State recommendation, we designated Pima County as a primary SO<sub>2</sub> nonattainment area based on monitored violations of the primary SO<sub>2</sub> NAAQS in the area between 1975 and 1977. At the request of the Arizona Department of Environmental Quality (ADEQ), the nonattainment area was subsequently reduced to five townships in and around Ajo. See 44 FR 21261 (April 10, 1979). As a result, townships T11S, R6W; T11S, R5W; T12S, R6W; T12S, R5W; and T13S, R6W made up the nonattainment area. Townships T11S, R7W; T12S, R7W; T13S, R7W; and T13S, R5W were classified as “cannot be classified” areas.

###### Morenci

Morenci is a town in eastern Greenlee County near the border of Arizona and New Mexico. On March 3, 1978, at 43 FR 8968, for lack of a state recommendation, we designated Greenlee County as a primary SO<sub>2</sub> nonattainment area based on monitored violations of the primary SO<sub>2</sub> NAAQS in the area between 1975 and 1977. At the request of the ADEQ, the nonattainment area was subsequently reduced to the townships in and around Morenci. See 44 FR 21261 (April 10, 1979). As a result, within Greenlee County townships T3S, R28E; T3S, R29E; T3S, R30E; T4S, R28E; T4S, R29E; T4S, R30E; T5S, R28E; and T5S, R29E made up the nonattainment area. Township T5S, R30E was classified as a “cannot be classified” area.

On the date of enactment of the 1990 CAA Amendments, SO<sub>2</sub> areas meeting the conditions of section 107(d) of the Act were designated nonattainment for the SO<sub>2</sub> NAAQS by operation of law. Section 107(d) describes the processes by which nonattainment areas are designated, including the pre-existing SO<sub>2</sub> nonattainment areas. Thus, the Ajo and Morenci areas remained nonattainment for the primary SO<sub>2</sub> NAAQS following enactment of the 1990 CAA Amendments on November 15, 1990.

##### 2. When were the Ajo and Morenci areas redesignated for SO<sub>2</sub>?

In 2004, we redesignated the Ajo and Morenci areas under the criteria used for areas with shut-down smelters and discontinued monitoring described in a memorandum from John Seitz to Regional Office Air Division Directors titled “Redesignation of Sulfur Dioxide Nonattainment Areas in the Absence of Monitored Data,” dated October 18, 2000 (“Seitz Memo”).<sup>5</sup>

###### Ajo

Phelps Dodge Mining Company’s Ajo Incorporated (PDAI) operation was the largest point source in the Ajo SO<sub>2</sub> nonattainment area. On April 4, 1985, the PDAI smelter was permanently deactivated. Dismantling of the Ajo facility began in 1995. By February 1996, the facility was completely dismantled. On October 15, 1997, ADEQ confirmed that the facility was dismantled and no longer existed at the former site. On November 3, 2003, the EPA finalized approval of the maintenance plan and redesignation request for the Ajo area, effective January 2, 2004 (see 68 FR 62239). At that time, we incorrectly identified the maintenance area as townships and ranges T11S–T13S, R5W–R6W as “better than national standards.” However, T13S, R5W was originally designated as “cannot be classified” and should have remained such. Additionally, townships T13S, R5W; T11S, R7W; T12S, R7W; and T13S, R7W were dropped from the CFR, and should be listed in 40 CFR 81.303 as “cannot be classified,” as they were upon Ajo’s original designation in 1979. Today, we are correcting those errors.

###### Morenci

The Phelps Dodge Morenci Incorporated (PDMI) operation was the largest SO<sub>2</sub> point source in the Morenci nonattainment area during its operation. PDMI was located next to the Morenci copper mine, one of the largest copper producing operations in North America. PDMI was located close to the community of Morenci, in eastern Greenlee County, near the Arizona/New Mexico border.

On December 31, 1984, the PDMI smelter was permanently deactivated. Dismantling of the Morenci facility began in 1995 and was complete by December 1996. On October 29, 1997, ADEQ confirmed that the facility was dismantled and no longer existed at the former site. On April 26, 2004, the EPA finalized approval of the maintenance

<sup>3</sup> Secondary NAAQS are promulgated to protect welfare. The secondary 1971 SO<sub>2</sub> NAAQS (3-hour) of 0.50 ppm is not to be exceeded more than once per year. The Ajo and Morenci areas are not classified nonattainment for the secondary standard, and this action relates only to the primary 1971 SO<sub>2</sub> NAAQS.

<sup>4</sup> This action is consistent with the CAA’s anti-backsliding provisions. EPA’s proposed rule on revocation of the 1971 SO<sub>2</sub> NAAQS discussed that maintenance SIPs would continue being implemented by states until such time as they are subsumed by new planning and control requirements associated with the revised NAAQS. See 74 FR 64810, 64863 (December 8, 2009).

<sup>5</sup> See 68 FR 62239 (November 3, 2003) for Ajo and 69 FR 22447 (April 26, 2004) for Morenci.

plan and redesignation request for the Morenci area, effective June 25, 2004 (see 69 FR 22447).

### 3. What is the current status of the areas?

The Ajo and Morenci areas remain sparsely settled, and only minor industrial or commercial activities that produce small quantities of SO<sub>2</sub> emissions are located in or near the nonattainment areas.

#### Ajo

In Ajo, the only remaining SO<sub>2</sub> point sources consist of emergency generators run by Freeport-McMoRan Corporation and Minerals Research and Recovery, which have a potential to emit (PTE) of 0.374 tons per year (tpy) of SO<sub>2</sub>.<sup>6</sup> The 50 kilometer (km) buffer area required to be evaluated by the Seitz Memo includes an Arizona Public Service emergency generator, a paper mill, the Gila Bend Air Force Auxiliary Field, and a cotton gin, with a combined PTE of 7.388 tpy.<sup>7</sup>

Currently, no ambient SO<sub>2</sub> monitors operate in the Ajo area. However, we do not expect the cumulative impact of the sources in and around Ajo to cause a violation of the NAAQS because the area's emissions are so low. No significant new sources have located in the area since our redesignation of the area to attainment in 2003.

#### Morenci

Minor industrial or commercial activities such as Freeport-McMoRan mining operations and emergency generators for the Morenci wastewater treatment plant operate in the area. The 50 km area around the nonattainment area also contains a construction company, well fields, and several other sources that all still have active permits and together produce about 135 tpy of SO<sub>2</sub> emissions.<sup>8</sup>

Currently, no ambient SO<sub>2</sub> monitors operate in the Morenci area. However, we do not expect the cumulative impact of the sources in and around Morenci to cause a violation of the NAAQS. No significant new sources have located in the area, and the smelter was the cause of past violations.

### *D. What are the applicable provisions for second 10-year maintenance plans for SO<sub>2</sub>?*

#### 1. What are the statutory provisions?

Section 175A of the CAA provides the general framework for maintenance plans. The initial 10-year maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, including any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain such contingency provisions as we deem necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the state will implement all control measures contained in the nonattainment SIP prior to redesignation.

Section 175A(b) of the CAA requires states to submit a subsequent maintenance plan revision (second 10-year maintenance plan) eight years after redesignation. The Act requires only that this second 10-year maintenance plan maintain the applicable NAAQS for ten years after the expiration of the first 10-year maintenance plan. Beyond these provisions, however, section 175A of the CAA does not define the content of a second 10-year maintenance plan.

#### 2. What general EPA guidance applies to SO<sub>2</sub> maintenance plans?

Our primary general guidance on maintenance plans and redesignation requests is a September 4, 1992 memo from John Calcagni, titled "Procedures for Processing Requests to Redesignate Areas to Attainment" ("Calcagni Memo"). Specific guidance on SO<sub>2</sub> redesignations also appears in a January 26, 1995 memo from Sally L. Shaver, titled "Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas" ("Shaver Memo").

Guidance on SO<sub>2</sub> maintenance plan requirements for an area lacking monitored ambient data, if the area's historic violations were caused by a major point source that is no longer in operation, is found in the Seitz Memo at section II.C.2 and footnote 4. The Seitz Memo exempts eligible areas from the maintenance plan requirements of continued ambient air quality monitoring.

While the Seitz Memo primarily addresses redesignations, we find it is appropriate to apply the Seitz Memo to second 10-year maintenance plans for areas that were redesignated in accordance with the memo and continue to experience similar

conditions to those at the time of redesignation.

#### 3. What are the requirements for maintenance plans for single-source SO<sub>2</sub> nonattainment areas in the absence of monitored data?

Our historic redesignation policy for SO<sub>2</sub> has called for eight quarters of clean ambient air quality data as a necessary prerequisite to redesignation of any area to attainment. The Seitz Memo provides guidance on SO<sub>2</sub> maintenance plan requirements for an area lacking monitored ambient data, if the area's historic violations were caused by a major point source that is no longer in operation. To allow for these areas to qualify for redesignation to attainment, this policy requires that the maintenance plan address otherwise applicable provisions, and include:

(1) Emissions inventories representing actual emissions when violations occurred; current emissions; and emissions projected to the 10th year after redesignation; all three inventories should include estimates of emissions in a 50 km buffer zone around the nonattainment area;

(2) dispersion modeling showing that no NAAQS violations will occur over the next 10 years and that the shut-down source was the dominant cause of the high concentrations in the past;

(3) evidence that if the shut-down source resumes operation, it would be considered a new source and be required to obtain a permit under the Prevention of Significant Deterioration (PSD) provisions of the CAA; and

(4) a commitment to resume monitoring before any major SO<sub>2</sub> source commences operation.

### **III. The EPA's Evaluation of the Arizona State Submittals**

#### *A. Did the State meet the CAA procedural requirements?*

##### Ajo

On February 22, 2013, ADEQ submitted to the EPA the "Final Arizona State Implementation Plan Revision, Maintenance Plan for the Ajo Sulfur Dioxide Planning Area (1971 NAAQS)" ("2013 Ajo Maintenance Plan"). The State verified that it had adhered to its SIP adoption procedures in Appendix E to the 2013 Ajo Maintenance Plan, which includes the notice of public hearing, the agenda for the February 7, 2013 public hearing, the sign in sheet, the public hearing officer certification and transcript of the hearing, and the State's responsiveness summary.

On August 22, 2013, the 2013 Ajo Maintenance Plan was deemed complete by operation of law. See 40

<sup>6</sup> Final Arizona State Implementation Plan Revision, Maintenance Plan for the Ajo Sulfur Dioxide Planning Area (1971 NAAQS) (2013 Ajo Maintenance Plan), page (p.) 23, Table 4.6.

<sup>7</sup> 2013 Ajo Maintenance Plan, p. 24, Table 4.7.

<sup>8</sup> Proposed Arizona State Implementation Plan Revision, Maintenance Plan for the Morenci Sulfur Dioxide Planning Area (1971 NAAQS), p. 20, active permits only.

CFR part 51, appendix V, for the EPA's completeness criteria, which must be satisfied before EPA formal review.

#### Morenci

On December 18, 2014, ADEQ submitted to the EPA the "Proposed Arizona State Implementation Plan Revision, Maintenance Plan for the Morenci Sulfur Dioxide Planning Area (1971 NAAQS)" ("2014 Morenci Maintenance Plan"). The State verified that it had adhered to its SIP adoption procedures in Appendix E to the 2014 Morenci Maintenance Plan, which includes the notice of public hearing, the agenda for the December 15, 2014 public hearing, the sign in sheet, the public hearing officer certification and transcript of the hearing, and the State's responsiveness summary.

On May 10, 2015, the 2014 Morenci Maintenance Plan was deemed complete by operation of law. See 40 CFR part 51, appendix V, for the EPA's completeness criteria, which must be satisfied before EPA formal review.

#### *B. Has the State met the substantive maintenance plan requirements?*

1. Were the area's violations caused by a major point source of SO<sub>2</sub> emissions that is no longer in operation?

As discussed above, the only major source of SO<sub>2</sub> emissions within the Ajo nonattainment area was the Phelps Dodge Mining Company's PDAI copper smelter, which ceased operation in 1985 and was completely dismantled by February 1996. The last recorded 24-hour or annual average exceedances of the primary NAAQS at PDAI occurred in 1984. During the monitoring network's history, annual average SO<sub>2</sub> levels were generally half of the current NAAQS (0.030 ppm). See 2013 Ajo Maintenance Plan, page (p.) 17. ADEQ removed the SO<sub>2</sub> monitor in 1985, and the smelter operating permits expired. The smelting equipment was removed over a period of years, and the smelter was completely dismantled by February 1996. No new sources of SO<sub>2</sub> of the magnitude of PDAI have located in the area. Thus, Ajo meets this criterion for review under the Seitz Memo.

As discussed above, the only major source of SO<sub>2</sub> emissions within the Morenci nonattainment area was the Phelps Dodge Mining Company's PDMI copper smelter, which was permanently deactivated by December 31, 1984 and was completely dismantled by December 1996. The last recorded 24-hour or annual average exceedances of the primary NAAQS at PDMI occurred in 1984. During the monitoring network's history, annual average SO<sub>2</sub>

levels were generally half of the current NAAQS (0.030 ppm). See 2014 Morenci Maintenance Plan, p. 15–16. ADEQ removed the SO<sub>2</sub> monitors in 1985, and the smelter operating permits expired. The smelting equipment was removed over a period of years, and the smelter was completely dismantled by December 1996. No new sources of SO<sub>2</sub> of the magnitude of PDMI have located in the area. Thus, Morenci meets this criterion for review under the Seitz Memo.

2. Has the state met the requirements for second 10-year maintenance plans?

The 2013 Ajo Maintenance Plan and 2014 Morenci Maintenance Plan both extend the maintenance period for ten years after the expiration of the first 10-year maintenance plans, as required by Section 175A(b) of the CAA. As discussed below, the State has addressed the requirements in the Seitz Memo for emissions inventories, modeling, permitting of major new sources, and agreement to commence monitoring if a new major source locates in either the Ajo or Morenci areas. Therefore, the State has met the specific criteria in the Seitz Memo for approval of maintenance plans and redesignation requests where a single source was the historic cause of violations and the source is now shut down. We provide more details on each requirement and how the 2013 Ajo Maintenance Plan and the 2014 Morenci Maintenance Plan meet each requirement in the following sections.

#### Ajo

##### a. Emissions Inventories

In addition to reproducing the emissions inventories in the Ajo Sulfur Dioxide Nonattainment Area State Implementation Plan and Maintenance Plan (June 18, 2002) ("2002 Ajo maintenance plan"), the 2013 Ajo Maintenance Plan includes new emissions inventories for 2008, representing an updated "current" emissions inventory (the most recent National Emissions Inventory (NEI) available at the time), 2010, 2015, 2020, and 2025 for the second 10-year maintenance period.<sup>9</sup> Continued

<sup>9</sup> The State provided the three emissions inventories specified in the Seitz Memo for the sources in, and within 50 kilometers of, the Ajo nonattainment area in the 2002 Ajo maintenance plan. For a representative year when the copper smelter was in operation (1981), direct SO<sub>2</sub> emissions from smelting operations were 39,596 tpy. ADEQ's 2002 submittal identified only a single existing point source within the Ajo Area, the Phelps Dodge Generator Station. Phelps Dodge has since shut down the generators and no longer uses them as emergency/back up electric supply. See

maintenance of the Ajo area for 10 years following the initial 10-year maintenance period is demonstrated in part by showing that future SO<sub>2</sub> emissions in the area are not expected to exceed the level of the attainment emissions inventory.

The emissions inventories in the 2013 Ajo Maintenance Plan include estimates of SO<sub>2</sub> from all relevant source categories, which the 2013 Plan divides among stationary, and area and mobile. Point source information was received from the Pima County Department of Environmental Quality (PDEQ) and the Maricopa County Air Quality Division's annual emissions inventory data. The Ajo maintenance area contains two point sources (*i.e.*, Freeport-McMoRan Corporation Childs Well Field Emergency Generator, and Minerals Research and Recovery, Inc.), which together emit less than 1 tpy SO<sub>2</sub>. The 50 km buffer area contains four point sources, including a cotton gin, a paper mill, an Air Force auxiliary field, and an emergency generator. The 2013 Ajo Maintenance Plan includes a description of current facility types, emitting equipment, permitted emissions limits, operating rates, and emissions calculation methods.

Area and mobile sources in ADEQ's 2008 and subsequent year inventories were derived from the EPA's NEI and local agency records. Historical and 2008 emissions inventories demonstrate that no significant area or mobile sources existed in the Ajo area prior to or subsequent to the smelter operation, which closed in 1985.

Based on our review of the emissions inventories in the 2013 Ajo Maintenance Plan and the supporting information in Appendix C, we conclude that the inventories are complete, accurate, and consistent with applicable CAA provisions and the Seitz Memo.

##### b. Dispersion Modeling

Past EPA policy memoranda on SO<sub>2</sub> redesignations all recommend dispersion modeling to show that the NAAQS is met and will be maintained. The Seitz Memo recommends dispersion modeling of all point sources within

50 km of the nonattainment area boundary. Screening modeling can be used to conservatively show that non-smelter sources have only an insignificant contribution to average SO<sub>2</sub> concentrations in a nonattainment area.

2013 Ajo Maintenance Plan, p. 32 and Appendix C–1.

For the 2002 Ajo Maintenance Plan, screening dispersion modeling was performed using the SCREEN3 model run with conservative assumptions about source parameters and meteorology. At the time of the 2002 Ajo Maintenance Plan, the Ajo nonattainment area had one minor point source of SO<sub>2</sub> emissions (*i.e.*, Phelps-Dodge Generating Station) and one permitted minor point source in the 50 km buffer (*i.e.*, the proposed Gila Bend Regional Landfill). The model predicted that the impact from these two sources would not exceed 66% of the 1971 SO<sub>2</sub> NAAQS, even assuming constant worst-case conditions about high-sulfur content fuel use.

The Seitz Memo also requires a modeling analysis that shows that the point sources that were shutdown were the dominant sources contributing to high SO<sub>2</sub> concentrations in the airshed. Since the emissions of non-smelter sources in the area had changed relatively little since the time that emission controls were placed on the smelter, this same screening modeling was used to show that the non-smelter sources were insignificant in the past, and thus the smelter was the dominant source contributing to past high SO<sub>2</sub> concentrations.

ADEQ did not conduct a new modeling analysis for the 2013 Ajo Maintenance Plan. As described above, the modeling for the 2002 Ajo Maintenance Plan modeled the existing two sources at maximum projected emissions rates from 2004 to 2015 and showed the area would not exceed 66% of the NAAQS. Since that modeling analysis was conducted, the Phelps-Dodge Generating Station has shut down, the Gila Bend Regional Landfill was never constructed, and the permit for the landfill was allowed to expire.

Currently, only two sources operate within the nonattainment area (*i.e.*, Freeport-McMoRan Incorporated Childs Well Field Emergency Generator, and Minerals Research and Recovery), and they are permitted to emit less than 1% of the emissions modeled in the 2002 Ajo Maintenance Plan. Point sources within the 50 km buffer surrounding the nonattainment area emit about 25% of emissions modeled in the 2002 Ajo Maintenance Plan. 2025 projections show that these low emissions are expected to persist through the second 10-year maintenance period. *See* 2013 Ajo Maintenance Plan, pp. 33 and 34.

ADEQ proposes, and we concur, that because current emissions in the maintenance area and the 50 km buffer are a small fraction of modeled emissions from 2002, the ambient SO<sub>2</sub> modeling requirement for second 10-

year maintenance plans is met by the prior modeling, and the State has demonstrated that the 1971 SO<sub>2</sub> NAAQS is adequately protected.

#### c. Treatment of New Sources of SO<sub>2</sub> Emissions

In nonattainment areas, section 172(c)(5) of the CAA requires New Source Review (NSR) permits prior to the construction and operation of new major stationary sources and major modifications at existing major stationary sources. However, in attainment areas, section 165 of the CAA requires major sources and major modifications to obtain PSD permits. The PSD program requires stationary sources to apply the best available control technology and ensure that projects will not cause or contribute to a violation of a NAAQS or maximum allowable increase.

ADEQ and the PDEQ have PSD permitting programs (*i.e.*, Arizona Administrative Code (A.A.C.) R18–2–406 and Pima County Code 17.16.590) that were established to preserve the air quality in areas where ambient standards have been met. The State's updated PSD program was approved into the SIP on November 2, 2015 (80 FR 67319). PDEQ's PSD program is not SIP-approved, but the federal PSD permitting program at 40 CFR 52.21 was delegated to PDEQ effective April 14, 1994.

The PSD program has applied to any major source or major modification in the Ajo area since the area was redesignated to attainment for SO<sub>2</sub> in 2003, except for coarse particulate (PM<sub>10</sub>), for which the area is designated nonattainment. Under section 172(c)(5) of the CAA, major sources and major modifications of PM<sub>10</sub> in the Ajo area remain subject to the nonattainment NSR program, while all other NSR regulated pollutants are subject to the PSD program. Thus the existing ADEQ and PDEQ PSD and NSR programs satisfy the preconstruction permit provision of the Seitz Memo as one of the prerequisites to redesignation for the Ajo SO<sub>2</sub> nonattainment area.

#### d. Commitment to Resume Monitoring

ADEQ commits to resume monitoring before any major source of SO<sub>2</sub> commences to operate in the Ajo maintenance area. *See* 2013 Ajo Maintenance Plan, p. 38. This addresses the monitoring provision of the Seitz Memo.

#### Morenci

##### a. Emissions Inventory

The 2014 Morenci Maintenance Plan includes historical inventories that were

submitted as part of the Morenci Sulfur Dioxide Nonattainment Area State Implementation Plan and Maintenance Plan (submitted June 21, 2002) ("2002 Morenci maintenance plan") as well as a current-year inventory for 2011 (the most recent NEI available at the time), and projected inventories for 2015, 2020, 2025, and 2030 for the second 10-year maintenance period.<sup>10</sup>

The emissions inventories in the 2014 Morenci Maintenance Plan include estimates of SO<sub>2</sub> emissions from all relevant source categories, which are divided among stationary, area, and mobile source categories. Additional information on how the inventories were developed, including activity data and emissions calculations, is provided in Appendix C of the 2014 Morenci Maintenance Plan. Point source information was developed by ADEQ from permit information and the NEI. The 2011 inventory identifies two existing point sources within the Morenci maintenance area: The Freeport-McMoRan Morenci mine with 2011 actual emissions of 48.5 tpy SO<sub>2</sub>, and the Morenci Townsite Wastewater Treatment Plant Emergency Generators with 2011 actual emissions of 0.003 tpy SO<sub>2</sub>. In 2011, 13 point additional sources with actual emissions of 38.05 tpy SO<sub>2</sub> were located within 50 km of the Morenci maintenance area boundary. As of 2014, six of these sources had terminated their permits, resulting in slightly lower emissions.

Area and mobile source emissions in ADEQ's 2011 and subsequent year inventories were derived from the NEI. The year 2011 was a historically high wildfire year, and included the largest wildfire in Arizona history (*i.e.*, the Wallow fire), which burned in Greenlee County and surrounding areas.<sup>11</sup> ADEQ

<sup>10</sup> In the 2002 Morenci Maintenance Plan, the State provided the three emissions inventories specified in the Seitz Memo for the sources in, and within 50 kilometers of, the Morenci nonattainment area. For a representative year when the copper smelter was in operation (1984), direct actual SO<sub>2</sub> emissions from smelting operations were 82,432 tpy. During its operation, the Morenci primary copper smelter was the only major point source in the area. The 2002 Morenci Maintenance Plan included inventories for 1984 (a year the smelter was in operation), 1999 (a year the area was attaining the SO<sub>2</sub> standard), and 2015 (the projected inventory for the horizon year of the maintenance period). Sources in the 50 km buffer around the Morenci area were estimated to emit 186.5 tpy in 1999, based on PTE, but had actual emissions significantly lower, at 1.2 tpy. *See* 2014 Morenci Maintenance Plan, p. 18.

<sup>11</sup> National Interagency Fire Center's Web site at [https://www.nifc.gov/fireInfo/fireInfo\\_statistics.html](https://www.nifc.gov/fireInfo/fireInfo_statistics.html), "Historical year-end statistics by state," and [https://en.wikipedia.org/wiki/List\\_of\\_Arizona\\_wildfires](https://en.wikipedia.org/wiki/List_of_Arizona_wildfires). Acres burned in 2011 in Arizona were more than 10 times higher than 2010 acres burned in Arizona due to wildfires, and about five

assumed the 2011 wildfire emissions remained constant when projecting emissions into the future.

Based on our review of the emissions inventories in the 2014 Morenci Maintenance Plan and the supporting information in Appendix C, we conclude that the inventories are complete, accurate, and consistent with applicable CAA provisions and the Seitz Memo.

#### b. Dispersion Modeling

The EPA policy memoranda on SO<sub>2</sub> redesignations recommend dispersion modeling to show that the NAAQS is met and will be maintained. The Seitz Memo recommends dispersion modeling of all point sources within 50 km of the nonattainment area boundary. For the 2002 Morenci Maintenance Plan, screening dispersion modeling was performed using the SCREEN3 model, which was run with conservative assumptions about source parameters and meteorology. The modeling results indicated that the impact of existing sources on concentrations within the nonattainment area would not exceed 25 percent of the 1971 SO<sub>2</sub> NAAQS.

The Seitz Memo also requires a modeling analysis that shows point sources that were shutdown were the dominant sources contributing to high SO<sub>2</sub> concentrations in the airshed. The screening modeling described above was used in the 2002 Morenci Maintenance Plan to show that the non-smelter sources have an insignificant contribution, and thus the smelter was the dominant source contributing to past high SO<sub>2</sub> concentrations.

For the 2014 Morenci Maintenance Plan, ADEQ conducted a modeling analysis similar to the analysis in the 2002 Morenci Maintenance Plan. The two largest sources in the maintenance area and within the 50 km buffer area were modeled. The two sources are Freeport-McMoRan Morenci Mine (FMMM) in the maintenance area, with a PTE of 88 tpy SO<sub>2</sub>, and the Freeport-McMoRan Safford Mine (FMSM) in the 50 km buffer area, with a PTE of 81 tpy SO<sub>2</sub>. Other point sources were not modeled because of their small or negligible emissions.

The EPA dispersion model AERSCREEN (version 11126) was used to conservatively estimate the impact of FMMM and FMSM on maintenance in the Morenci planning area.<sup>12</sup> The results

times higher than acres burned in Arizona in 2012 due to wildfires.

<sup>12</sup> AERSCREEN has replaced SCREEN3 as the EPA's preferred screening model. See Memorandum dated April 11, 2011, from Tyler Fox to the EPA Regional Modeling Contacts, "AERSCREEN

of the AERSCREEN modeling indicated that the impact of these existing sources would have a cumulative potential impact of 42–53% of the 1971 annual and 24-hour SO<sub>2</sub> NAAQS respectively. See 2014 Morenci Maintenance Plan, p. 29. Projections for 2030 show that this low level of emissions is expected to persist through the second maintenance period. See 2014 Morenci Maintenance Plan, p. 32. We therefore conclude that the State has demonstrated that the 1971 SO<sub>2</sub> NAAQS is adequately protected.

#### c. Treatment of New Sources of SO<sub>2</sub> Emissions

In nonattainment areas, section 172(c)(5) of the CAA requires NSR permits prior to the construction and operation of new major stationary sources and major modifications at existing major stationary sources. However, in attainment areas, section 165 of the CAA requires major sources and major modifications to obtain PSD permits. The PSD program requires stationary sources to apply the best available control technology and ensure projects will not cause or contribute to a violation of a NAAQS or maximum allowable increase.

ADEQ has a PSD permitting program (*i.e.*, A.A.C. R18–2–406) that was established to preserve the air quality in areas where ambient standards have been met. The State's updated PSD program was approved into the SIP on November 2, 2015 (80 FR 67319). The PSD program has applied to any major source or major modification in the Morenci area since the area was redesignated to attainment for SO<sub>2</sub> in 2004. Thus the ADEQ's existing PSD program satisfies the preconstruction permit provision of the Seitz Memo as one of the prerequisites to redesignation for the Morenci SO<sub>2</sub> nonattainment area.

#### d. Commitment To Resume Monitoring

ADEQ commits to resume monitoring before any major source of SO<sub>2</sub> commences to operate. See 2014 Morenci Maintenance Plan, p. 16. This addresses the monitoring provision of the Seitz Memo.

### 3. Other CAA Requirements

#### a. Contingency Plan

As discussed above, section 175A of the CAA sets forth the statutory requirements for maintenance plans, and the Calcagni, Seitz and Shaver Memos cited above contain specific EPA guidance. The only maintenance plan element not covered by the Seitz Memo

Released as EPA Recommended Screening Model" in the docket for this action. SCREEN3 was used for the 2002 Morenci Maintenance Plan.

is the contingency provisions. Section 175A(d) of the CAA requires that maintenance plans contain contingency provisions deemed necessary by the Administrator to assure that the state will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.

#### Ajo

The 2013 Ajo Maintenance Plan includes the State's commitment to continue to track maintenance of the SO<sub>2</sub> NAAQS through updates to the emissions inventory. Additionally, ADEQ commits to reestablish an appropriate air quality monitoring network before any major source of SO<sub>2</sub> begins operations in the Ajo maintenance area. See 2013 Ajo Maintenance Plan, p. 38.

Since the primary cause of future violations of the 1971 SO<sub>2</sub> NAAQS in the area would be from modified or new point sources, ADEQ's current operating permit program places limits on SO<sub>2</sub> emissions from existing sources. Should a new facility be constructed in the Ajo area or an existing facility want to upgrade or increase SO<sub>2</sub> emissions, the facility would also be subject to PSD as required in the Calcagni Memo.

The Calcagni Memo emphasizes the importance of specific contingency measures, schedules for adoption, and action levels to trigger implementation of the contingency plan. Since there are no remaining sources of SO<sub>2</sub> emissions of the magnitude of the PDAI smelter, and there is no SO<sub>2</sub> monitoring in the Ajo area, we agree with the State that the level of specificity recommended in the Calcagni Memo is not necessary, and we conclude that the State's commitment satisfactorily addresses the CAA provisions. We find that the State's commitment to continue to track maintenance of the SO<sub>2</sub> NAAQS through updates to the emissions inventory and the State's PSD permitting programs are sufficient to assure that the Ajo area will not violate the NAAQS.

#### Morenci

The 2014 Morenci Maintenance Plan includes the State's commitment to continue to demonstrate maintenance of the SO<sub>2</sub> NAAQS through updates to the emissions inventory. Additionally, ADEQ commits to reestablish an appropriate air quality monitoring network before any major source of SO<sub>2</sub> begins operations in the Morenci maintenance area. See 2014 Morenci Maintenance Plan, p. 32.

Since the primary cause of future violations of the 1971 SO<sub>2</sub> NAAQS in

the area would be from modified or new point sources, ADEQ's current operating permit program places limits on SO<sub>2</sub> emissions from existing sources. Should a new facility be constructed in the Morenci area or an existing facility want to upgrade or increase SO<sub>2</sub> emissions, the facility would also be subject to PSD as required in the Calcagni Memo.

The Calcagni Memo emphasizes the importance of specific contingency measures, schedules for adoption, and action levels to trigger implementation of the contingency plan. Since there are no remaining sources of SO<sub>2</sub> emissions of the magnitude of the PDMI smelter, and there is no SO<sub>2</sub> monitoring in the Morenci area, we agree with the State that the level of specificity recommended in the Calcagni Memo is not necessary, and we conclude that the State's commitment satisfactorily addresses the CAA provisions. We find that the State's commitment to continue to track maintenance of the SO<sub>2</sub> NAAQS through updates to the emissions inventory and the State's PSD permitting programs are sufficient to assure that the Morenci area will not violate the NAAQS.

#### b. Transportation and General Conformity

Conformity is required under section 176(c) of the CAA to ensure that federal actions are consistent with ("conform to") the purpose of the SIP. Conformity to the purpose of the SIP means that federal activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Conformity applies to areas that are designated nonattainment and to maintenance areas. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded, or approved under Title 23 U.S.C. and the Federal Transit Act ("Transportation conformity") as well as to other federally supported or funded projects ("general conformity").

Transportation conformity applies to projects that require Federal Highway Administration or Federal Transit Administration funding. 40 CFR part 93 describes the requirements for federal actions related to transportation plans, programs, and projects to conform to the purposes of the SIP. Because the EPA does not consider SO<sub>2</sub> a transportation-related criteria pollutant,<sup>13</sup> only the requirements related to general conformity apply to the Ajo and Morenci areas.

Section 176(c)(4) of the CAA establishes the framework for general conformity. Besides ensuring that federal actions not covered by the transportation conformity rule will not interfere with the SIP, the general conformity regulations encourage consultation between the federal agency and the state or local air pollution control agencies before and during the environmental review process, as well as public notification of and access to federal agency conformity determinations, and allows for air quality review of individual federal actions.

Section 176(c) of the CAA required the states to revise their SIPs to establish criteria and procedures to ensure that federally supported or funded projects in nonattainment and maintenance areas "conform" to the air quality planning goals in the applicable SIP. SIP revisions intended to meet the conformity requirements in section 176(c) are referred to as "conformity SIPs." In 2005, Congress amended section 176(c), and under the amended conformity provisions, states are no longer required to submit conformity SIPs for general conformity, and the conformity SIP requirements for transportation conformity have been reduced to include only those relating to consultation, enforcement, and enforceability. CAA section 176(c)(4)(E).

The EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of a redesignation request under section 107(d)(3)(E)(v) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall v. EPA*, 265 F. 3d 426 (6th Cir. 2001), upholding this interpretation. Because both Ajo and Morenci have already been redesignated for this standard, we believe it is reasonable to apply the interpretation of conformity SIP requirements as not applying for the purposes of redesignation to the approval of second ten-year maintenance plans.

Criteria for making determinations and provisions for general conformity are contained in Arizona Administrative Code R18-2-1438. Arizona has an approved general conformity SIP.<sup>14</sup>

#### Ajo

ADEQ commits in the 2013 Ajo Maintenance Plan to review and comment, as appropriate, on any federal agency draft general conformity determination it receives consistent

with 40 CFR 93.155 for any federal plans or actions in this planning area, although none are currently planned for the area. *See* 2013 Ajo Maintenance Plan, p. 13.

#### Morenci

ADEQ commits in the 2014 Morenci Maintenance Plan to review and comment, as appropriate, on any federal agency draft general conformity determination it receives consistent with 40 CFR 93.155 for any federal plans or actions in this planning area, although none are currently planned for the area. *See* 2014 Morenci Maintenance Plan, p. 11.

#### IV. Technical Correction

##### A. History of the Ajo Nonattainment and Maintenance Area Boundary

On November 3, 2003, the EPA finalized approval of the maintenance plan and redesignation request for the Ajo area, effective January 2, 2004 (*see* 68 FR 62239). To codify this rulemaking, we amended 40 CFR 81.303 that lists the designations for air quality planning areas in Arizona, but we incorrectly identified the Ajo maintenance area in the Arizona SO<sub>2</sub> table by dropping township T13S, R5W from the maintenance area, and inadvertently deleted other townships and ranges in the "cannot be classified" description. Township T13S, R5W as well as townships T11S, R7W; T12S, R7W; and T13S, R7W should have remained "cannot be classified."

Section 110(k)(6) of the CAA provides that when the EPA's action approving any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the EPA may in the same manner revise such action. Under the EPA's authority under section 110(k)(6) of the Act, we are taking direct final action to amend the Arizona-SO<sub>2</sub> table in 40 CFR 81.303 by re-codifying and correcting the previous detailed descriptions of the Ajo maintenance area and townships identified as "cannot be classified."

The maintenance area consists of townships T11S, R6W; T11S, R5W; T12S, R6W; T12S, R5W; and T13S, R6W. In addition, townships T13S, R5W; T11S, R7W; T12S, R7W; and T13S, R7W are listed in 40 CFR 81.303 as "cannot be classified," as they were upon the Ajo area's original designation in 1979.

#### V. Final Action

We are approving the second 10-year SO<sub>2</sub> maintenance plans for the Ajo and Morenci areas in Arizona under sections 110 and 175A of the CAA and correcting

<sup>13</sup> 40 CFR 93.102(b)(1).

<sup>14</sup> 64 FR 19916, April 23, 1999.



an error made in the description of the Ajo maintenance area and in the identification of townships as “cannot be classified” in the CFR when we redesignated the area in 2003. As authorized in section 110(k)(3) of the Act, the EPA is fully approving the submitted SIPs because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted SIPs. If we receive adverse comments by February 8, 2017, we will publish a timely withdrawal in the **Federal Register** to notify the public that some or all of the provisions of 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 March 10, 2017. This will incorporate these SIPs into the federally enforceable SIP.

## VI. 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 approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 March 10, 2017. 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 this **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

### 40 CFR Part 52

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

### 40 CFR Part 81

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

Dated: December 15, 2016.

Alexis Strauss,

Acting Regional Administrator, EPA Region IX.

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

- 2. Section 52.120 in paragraph (e), table 1 is amended by:
- a. Adding an entry for “‘Arizona State Implementation Plan Revision, Maintenance Plan for the Ajo Sulfur Dioxide Area (1971 NAAQS), (February 2013) excluding Appendix C, ‘Overview of Point Source Emissions Limits and Potential to Emit’ after the heading ‘Part D Elements and Plans (Other than for the Metropolitan Phoenix and Tucson Areas)’”; and
  - b. Adding an entry for “‘Arizona State Implementation Plan Revision, Maintenance Plan for the Morenci Sulfur Dioxide Area (1971 NAAQS), (December 2014)’ after the entry for ‘Final Miami Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan (June 2002)(revised May 26, 2004), excluding appendix A (‘SIP Support Information’), sections A.1 (‘Pertinent



Sections of the Arizona Administrative Code”) and A.2 (“Information Regarding Revisions to AAC R18–2–715 and R18–2–715.01, ‘Standards of Performance for

Primary Copper Smelters: Site Specific Requirements; Compliance and Monitoring”); and appendix D (“SIP Public Hearing Documentation”).

The additions read as follows:

**§ 52.120 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**TABLE 1—EPA-APPROVED NON-REGULATORY AND QUASI-REGULATORY MEASURES**

[Excluding certain resolutions and statutes, which are listed in tables 2 and 3, respectively]<sup>1</sup>

Name of SIP provision	Applicable geographic or nonattainment area or title/subject	State submittal date	EPA approval date	Explanation
<b>The State of Arizona Air Pollution Control Implementation Plan</b>				
*	*	*	*	*
<b>Part D Elements and Plans (Other than for the Metropolitan Phoenix or Tucson Areas)</b>				
Arizona State Implementation Plan Revision, Maintenance Plan for the Ajo Sulfur Dioxide Area (1971 NAAQS), (February 2013), excluding Appendix C, “Overview of Point Source Emissions Limits and Potential to Emit”.	Ajo Sulfur Dioxide Air Quality Planning Area.	February 22, 2013 .....	1/9/2017, [Insert <b>Federal Register</b> citation].	Adopted by the Arizona Department of Environmental Quality on February 22, 2013. Fulfills requirements for second ten-year maintenance plans. The SIP includes a request to correct the maintenance area boundary.
*	*	*	*	*
Arizona State Implementation Plan Revision, Maintenance Plan for the Morenci Sulfur Dioxide Area (1971 NAAQS), (December 2014).	Morenci Sulfur Dioxide Air Quality Planning Area.	December 18, 2014 .....	January 9, 2017, [Insert <b>Federal Register</b> citation].	Adopted by the Arizona Department of Environmental Quality on December 18, 2014. Fulfills requirements for second ten-year maintenance plans.
*	*	*	*	*

<sup>1</sup> Table 1 is divided into three parts: Clean Air Act Section 110(a)(2) State Implementation Plan Elements (excluding Part D Elements and Plans), Part D Elements and Plans (other than for the Metropolitan Phoenix or Tucson Areas), and Part D Elements and Plans for the Metropolitan Phoenix and Tucson Areas.

\* \* \* \* \*

**PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

■ 3. The authority citation for part 81 continues to read as follows:

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

**§ 81.303 Arizona.**

\* \* \* \* \*

■ 4. Section 81.303 is amended in the table for “Arizona—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” by revising the entry for “Ajo” to read as follows:

**ARIZONA—1971 SULFUR DIOXIDE NAAQS**

[Primary and secondary]

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Ajo:	.....	.....	.....	.....
T11S, R5W .....	.....	.....	.....	X
T11S, R6W .....	.....	.....	.....	X
T12S, R5W .....	.....	.....	.....	X
T12S, R6W .....	.....	.....	.....	X
T13S, R6W .....	.....	.....	.....	X
T11S, R7W .....	.....	.....	X	.....
T12S, R7W .....	.....	.....	X	.....
T13S, R5W .....	.....	.....	X	.....
T13S, R7W .....	.....	.....	X	.....
*	*	*	*	*

\* \* \* \* \*

[FR Doc. 2016-31637 Filed 1-6-17; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL MARITIME COMMISSION****46 CFR PART 503**

[Docket No. 16-18]

RIN 3072-AC66

**Amendments to Regulations Governing Access to Commission Information and Records; Freedom of Information Act****AGENCY:** Federal Maritime Commission.**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission amends its regulations for processing requests for information and records under the Freedom of Information Act (FOIA). The regulations are being revised to incorporate changes brought by amendments to the FOIA under the FOIA Improvement Act of 2016. The Act requires agencies to review their FOIA regulations and issue regulations implementing the amendments no later than 180 days after enactment.

**DATES:** This rule is effective January 30, 2017.

**FOR FURTHER INFORMATION CONTACT:**

*Mail:* Rachel E. Dickon, Assistant Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573-0001. *Phone:* (202) 523-5725. *Email:* [secretary@fmc.gov](mailto:secretary@fmc.gov).

**SUPPLEMENTARY INFORMATION:** On June 30, 2016, the President signed into law the FOIA Improvement Act of 2016. The Act prescribes a range of procedural requirements that affect the Commission's FOIA regulations, and which this final rule implements, including requirements that the Commission:

- Provide publically available documents and its FOIA Annual Reports in an electronic format;
- provide FOIA requesters the right to seek dispute resolution services from the Commission's FOIA Public Liaison and/or the Office of Government Information Services during the FOIA process;
- provide a minimum of 90 days for FOIA requesters to file an administrative appeal; and
- not apply the deliberative process privilege to records created 25 years or more before the date on which the records were requested.

**Regulatory Analysis and Notices***Regulatory Flexibility Act (RFA)*

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities and prepare an initial regulatory flexibility analysis, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule will affect only persons who file FOIA requests, and therefore, the Commission certifies that this final rule will not have a significant or negative economic impacts on a substantial number of small entities.

*Paperwork Reduction Act (PRA)*

The Paperwork Reduction Act of 1995 requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before making most requests for information if the agency is requesting information from more than ten persons. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the proposed rulemaking. 5 CFR 1320.11. This final rule does not impose any collections of information, as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

*National Environmental Policy Act (NEPA)*

This final rule will have no physical impact upon the environment, and therefore, will not require any further review under NEPA.

*Regulation Identifier Number*

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to find this action in the Unified Agenda, available at <http://www.reginfo.gov/public/do/eAgendaMain>.

**List of Subjects in 46 CFR Part 503**

Administrative practices and procedures, Archives and records, Classified information, Confidential business information, Freedom of information, Information, Privacy, Records, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set forth in the preamble, the Federal Maritime Commission amends 46 CFR part 503 as follows:

**PART 503—PUBLIC INFORMATION**

■ 1. The authority citation for part 503 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 13526, 75 FR 707, 3 CFR, 2010 Comp., p. 298.

**Subpart C—Records, Information and Materials Generally Available to the Public Without Resort to Freedom of Information Act Procedures**

■ 2. Amend § 503.21 by revising paragraphs (a) introductory text and (c) introductory text to read as follows:

**§ 503.21 Mandatory public records.**

(a) The Commission, as required by the Freedom of Information Act, 5 U.S.C. 552, is responsible for determining which of its records must be made publicly available, for identifying additional records of interest to the public that are appropriate for public disclosure, for posting and indexing such records, and for reviewing and updating posted records and indices on an ongoing basis. The Commission makes the following materials available for public inspection in electronic format on its Web site at [www.fmc.gov](http://www.fmc.gov):

\* \* \* \* \*

(c) The Commission maintains and makes available for public inspection in an electronic format, a current log or index providing identifying information for the public as to any matter which is issued, adopted, or promulgated, and which is required by paragraph (a) of this section to be made available or published.

\* \* \* \* \*

**Subpart D—Requests for Records Under the Freedom of Information Act**

■ 3. Amend § 503.32 by revising paragraphs (a)(1) and (2), (a)(3)(i)(B), and (b)(3) to read as follows:

**§ 503.32 Procedures for responding to requests made under the Freedom of Information Act.**

(a) \* \* \*

(1) Such determination shall be made by the Secretary within twenty (20) business days after receipt of such request, except as provided in paragraphs (b) and (e)(4) of this section, and the Secretary shall immediately notify the requester of:

(i) Such determination and the reasons therefor;

(ii) The right of such person to seek assistance from the agency's FOIA Public Liaison; and

(iii) In the case of an adverse determination, the right of such