

Dated: November 29, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(65) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(65) The following plan was submitted on May 30, 2007 by the Governor's designee.

(i) Incorporation by reference.

(A) Washoe County District Health Department, Air Quality Management Division.

(1) Maintenance Plan for the Washoe County 8-Hour Ozone Attainment Area (April 2007), Washoe County District Health Department, excluding appendices.

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[FR Doc. E8-743 Filed 1-17-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R09-OAR-2006-0214; FRL-8514-7]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Arizona; San Manuel Sulfur Dioxide State Implementation Plan and Request for Redesignation to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action under the Clean Air Act to approve the *Final State Implementation Plan Revision, San Manuel Sulfur Dioxide Nonattainment Area, March 2007* as a revision to the Arizona state implementation plan. The Arizona Department of Environmental Quality developed this plan to maintain the sulfur dioxide national ambient air quality standards in the San Manuel, Arizona area and to request

redesignation of the area to attainment. The maintenance plan contains various elements, including contingency provisions that will be implemented if measured ambient concentrations of sulfur dioxide are above certain trigger levels. EPA is also approving the State of Arizona's request for redesignation of the San Manuel area from nonattainment to attainment for the sulfur dioxide standards.

EPA is taking these actions consistent with provisions in the Clean Air Act that obligate the Agency to approve or disapprove submittals of revisions to state implementation plans and requests for redesignation. The intended effect is to redesignate the San Manuel, Arizona sulfur dioxide nonattainment area to attainment, and to provide for maintenance of the standard for the ten-year period following redesignation.

DATES: This rule is effective on March 18, 2008 without further notice, unless EPA receives adverse comments by February 19, 2008. 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 comments, identified by docket number EPA-R09-OAR-2006-0214, by one of the following methods:

1. *Federal eRulemaking Portal:*

www.regulations.gov. Follow the on-line instructions.

2. *E-mail:* robin.marty@epa.gov.

3. *Mail or deliver:* Marty Robin (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the www.regulations.gov or e-mail.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at

www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Marty Robin, Air Planning Office, (415) 972-3961 or by e-mail at robin.marty@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 U.S. EPA.

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I. Summary of Today's Direct Final Action

On June 7, 2007, the Arizona Department of Environmental Quality ("ADEQ" or "State") submitted to EPA Region IX its *Final Arizona State Implementation Plan Revision, San*

Manuel Sulfur Dioxide Nonattainment Area, March 2007 and its request for redesignation to attainment (“San Manuel SO₂ Maintenance Plan” or “submittal”). The submittal summarizes the progress the State has made in attaining the 24-hour and annual average sulfur dioxide (SO₂) national ambient air quality standards (NAAQS) in the San Manuel nonattainment area in Pima and Pinal Counties, Arizona (“San Manuel area”) and includes a plan to assure continued attainment of the SO₂ NAAQS for at least the next 10 years. The State’s June 2007 submittal also requested the withdrawal of the June 2002 *Final San Manuel Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan*. The June 2007 submittal updated the SIP to account for the closure of the dominant source of SO₂ emissions, the BHP Billiton copper smelter. The March 2007 SIP revision contains current information and analyses which supersede the obsolete information in the June 2002 SIP.

In today’s direct final action, we are approving ADEQ’s June 7, 2007 submittal as a revision to the Arizona SIP and redesignating the San Manuel area from nonattainment to attainment for the SO₂ NAAQS because we find that the San Manuel SO₂ Maintenance Plan meets the requirements for maintenance plans under section 175A of the Clean Air Act (CAA) and that the San Manuel area qualifies for redesignation under CAA section 107(d)(3)(E).

II. Introduction

The following section discusses the NAAQS for SO₂, CAA requirements for state implementation plans, SO₂ planning in Arizona generally and in the San Manuel area more specifically, and sources of emissions in the San Manuel area.

A. The SO₂ NAAQS

The NAAQS for SO₂ consists of three standards: two primary standards for the protection of public health and a secondary standard for protection of public welfare. The primary SO₂ standards address 24-hour average and annual average ambient SO₂ concentrations. The secondary standard addresses 3-hour average ambient SO₂ concentrations. The level of the annual SO₂ standard is 0.030 parts per million (ppm), which is equivalent to 80 micrograms per cubic meter (µg/m³), not to be exceeded in a calendar year. The level of the 24-hour standard is 0.14 ppm (365 µg/m³), not to be exceeded more than once per calendar year. The level of the secondary SO₂ standard is

a 3-hour standard of 0.5 ppm (1,300 µg/m³), not to be exceeded more than once per calendar year. See 40 CFR 50.2–50.5.

B. State Implementation Plans (SIPs)

The CAA requires states to implement, maintain, and enforce ambient air quality equal to or better than the NAAQS. A state’s strategies for implementing, maintaining, and enforcing the NAAQS are submitted to EPA for approval, and, once approved, become part of the State Implementation Plan (or SIP) for that State. SIPs are compilations of regulatory and non-regulatory elements adopted, submitted, and approved at different times to address various types of changes in circumstances, such as new or revised NAAQS or amendments to the CAA. 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. The state must make proposed changes to the SIP available for public review and comment through a public hearing, and must formally adopt the changes before submitting them to EPA for approval. Upon our approval, a SIP revision becomes federally enforceable.

C. History of SO₂ Planning in Arizona

1. Development of the SO₂ SIP

In the early 1970s, soon after the CAA Amendments of 1970 were passed, Arizona began developing air quality regulations that applied to all Arizona primary copper smelters, including the one operating at that time in San Manuel. These regulations focused on establishing an air quality monitoring network in the areas surrounding the smelters and determining the allowable emission rates from the smelters so that the SO₂ NAAQS could be attained and maintained. Arizona submitted various SIP revisions during the 1970s to establish approvable emission limits for the primary copper smelters operating in the state. On September 20, 1979, the State submitted its SIP revision to EPA which contained its multi-point rollback (MPR) technique to establish operating limitations on smelters. After EPA’s proposed conditional approval on November 30, 1981 (46 FR 58098), Arizona made necessary changes which corrected identified deficiencies. EPA

granted full approval of the MPR-based SIP submittal on January 14, 1983 (48 FR 1717), but was not able to grant full approval to the SO₂ SIPs for six smelter areas (including San Manuel) because they lacked a strategy for addressing fugitive sources of SO₂.¹

On November 1, 2004, EPA approved several revisions to the SO₂ SIP, including fugitive emissions standards, site-specific requirements, and compliance and monitoring for existing primary copper smelters. See 69 FR 63321. In that same notice, EPA promulgated a limited approval/limited disapproval of Arizona Administrative Code (AAC) R18–2–Appendix 8, which sets out procedures for calculating sulfur emissions using a sulfur balance method. ADEQ subsequently corrected the identified deficiencies and EPA approved the new version of R18–2–Appendix 8 as a SIP revision on April 12, 2006, effective June 12, 2006. See 71 FR 18624.

2. San Manuel SO₂ Nonattainment Area

Initially, the air quality planning area we refer to as the San Manuel SO₂ nonattainment area comprised all of Pima and Pinal Counties (43 FR 8969; March 3, 1978) but at the request of the State of Arizona, the boundaries were subsequently reduced to eleven townships around the primary copper smelter located near San Manuel (44 FR 21261, April 10, 1979). In addition, four adjacent townships were designated as unclassified.² All but one of the townships that define the nonattainment area are located in southeastern Pinal County, with the remaining southernmost township located in neighboring Pima County. The current boundaries of the nonattainment and unclassified areas are codified at 40 CFR 81.303 and are defined as follows: “Does Not Meet Primary Standards”: T8S, R16E; T8S, R17E; T8S, R18E; T9S, R15E; T9S, R16E; T9S, R17E; T9S, R18E; T10S, R15E; T10S, R16E; T10S, R17E; T11S, R16E, and “Cannot Be Classified”: T10S, R18E; T11S, R17E; T12S, R16E; T12S, R17E.

In June of 2002, ADEQ submitted the *Final San Manuel Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan* and redesignation request. Since then, the San Manuel copper smelter, the

¹ “Fugitive” in this context refers to emissions that could not reasonably pass through a stack, chimney, vent or a functionally equivalent opening.

² Following the enactment of the 1990 CAA Amendments, the San Manuel area was classified by operation of law as nonattainment for the primary SO₂ standards, effective on November 15, 1990.

dominant source of emissions in the area, has permanently ceased operation. In January 2005, BHP Copper Inc. (BHP Billiton) notified ADEQ that the company intended to permanently cease operating the San Manuel smelter. As indicated in Appendix B of the current SIP submittal, in March 2005, ADEQ terminated the permit for the facility. The smelter stacks were dismantled in January 2007. The smelting facility cannot reopen without submitting New Source Review (NSR) and Title V (Part 70) permit applications to ADEQ.

D. Sources of SO₂ Emissions in the San Manuel Area

Emissions inventories for the San Manuel Nonattainment Area demonstrate that, although there were other sources of SO₂ emissions, the primary source of SO₂ emissions in the San Manuel area while it was operating was the San Manuel smelter, which comprised more than 99.5 percent of total SO₂ emissions in the nonattainment area. Data show that no other point, area, or mobile sources have contributed in the past or currently contribute to the same levels of SO₂ emissions in the San Manuel Nonattainment Area as those attributed to the smelter. Figure 4.1 on page 30 of the SIP illustrates sulfur dioxide emissions levels for the San Manuel smelter from 1972 through 2005. Implementation of new emissions control technologies at the smelter in the mid 1970s and again in the late 1980s are clearly reflected in the resulting emissions reductions for these periods. Closure of the smelter reduced emissions by more than 10,000 tons of SO₂ per year.

III. CAA Requirements for Redesignation Requests and Maintenance Plans

Arizona has requested that we redesignate the San Manuel SO₂ nonattainment area to attainment. Any redesignation from nonattainment to attainment requires EPA to determine whether the requirements of CAA section 107(d)(3)(E) have been met. These criteria are: (1) At the time of the redesignation, we must find that the area has attained the relevant NAAQS; (2) the state must have a fully approved SIP for the area; (3) we must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and

applicable federal regulations and other permanent and enforceable reductions; (4) the state must have met all the nonattainment area requirements applicable to the area; and (5) we must have fully approved a maintenance plan for the area under CAA section 175A.

To evaluate the State's redesignation request for the San Manuel area, we relied upon the Clean Air Act, particularly section 110 and part D (of title I), EPA's NAAQS and SIP regulations in 40 CFR parts 50 and 51, and guidance set forth in "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992), and in the following EPA guidance documents: "Procedures for Processing Requests To Redesignate Areas to Attainment," dated September 4, 1992, from John Calcagni, ("Calcagni Memo"), "Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas," dated January 26, 1995, from Sally L. Shaver, ("Shaver Memo"), and "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," dated October 14, 1994, from Mary D. Nichols ("Nichols Memo").

IV. EPA's Evaluation of the Redesignation Request and Maintenance Plan for the San Manuel, Arizona SO₂ Nonattainment Area

A. The Area Must Be Attaining the SO₂ NAAQS

Under CAA section 107(d)(3)(E)(i), in order for an area to be redesignated, we must determine that the area has attained the applicable NAAQS. The air quality data should be representative of the area of highest concentration and should be measured by monitors that remain at the same location for the duration of the monitoring period required for demonstrating attainment. The data should be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System database (AQS) to be available for public review. Under 40 CFR part 58, States certify data that is entered into AQS on an annual basis.

For the purposes of determining whether an area has attained the SO₂ NAAQS, we require no fewer than two consecutive years of clean data (i.e., no violations) as recorded in AQS. In addition, to qualify for attainment determination purposes, the annual average and second-highest 24-hour

average concentrations must be based upon hourly data that are at least 75 percent complete in each calendar quarter. See 40 CFR 50.4.

The State of Arizona began ambient SO₂ monitoring in the San Manuel area as early as 1969.³ Over time, an extensive monitoring network was developed with more than eighteen stationary and mobile monitoring sites. This ambient SO₂ network, comprised of EPA, state, and facility monitors, was developed as the result of extensive efforts to identify maximum ambient impact areas using diffusion modeling, monitored atmospheric dispersion parameters, citizen observations, and ambient SO₂ concentrations.

Further refinement of the monitoring network was required by the adoption of the MPR rules that established stack emissions limits for the smelter in 1979 based on permanent controls. Placement of additional monitors was accomplished with EPA consultation to further evaluate ambient impacts. Following implementation of continuous emissions control technology and compliance with emissions limits as defined in AAC R18-2-715(F) at the San Manuel smelter, the number of permanent monitors was gradually reduced to a network of four: LDS Church, Townsite, Dorm Site, and Hospital. These were all high impact ambient monitor sites found to be representative of air quality for the area. The Dorm Site and Hospital monitors were primarily fugitive impact sites. The Townsite and the LDS Church site were primarily stack impact sites. The Townsite monitor was the "limiting site" for the original MPR analysis.⁴ These monitoring site decisions were made by ADEQ in accordance with EPA guidance.

Following the shutdown of smelting operations in 1999, the facility-operated Townsite, Dorm Site, and Hospital monitors were closed. ADEQ continues to operate a monitor at the LDS Church site. Table 1 summarizes ambient SO₂ air quality monitoring from 1997 to 2005.

³ *Sulfur Dioxide Monitoring Network Study*, Arizona State Department of Health, Environmental Health Services, Division of Air Pollution Control, 1969.

⁴ See *Ultimate Sulfur Dioxide Limits for Arizona Copper Smelters*, Moyers and Peterson, September 14, 1979.

TABLE 1.—SUMMARY OF SAN MANUEL, SULFUR DIOXIDE AMBIENT AIR QUALITY MONITORING DATA, 1997–2005 (IN $\mu\text{g}/\text{m}^3$)[Primary NAAQS: Annual average 80 $\mu\text{g}/\text{m}^3$ [0.030 ppm], 24-hour average 365 $\mu\text{g}/\text{m}^3$ [0.14 ppm]; 3-hour 1300 $\mu\text{g}/\text{m}^3$ [0.5 ppm]]

Site or city	Annual average	Max value 3-hr average	Max value 24-Hour average	Data recovery * (valid hourly samples)
2005: LDS Church	5	16	8	8,716
2004: LDS Church	4	26	9	8,742
2003: LDS Church	4	15	8.5	8,711
2002: LDS Church (opened 3/02)	4	24	8	6,827
1999:				
LDS Church (closed 10/99)	9	204.5	56.5	6,121
Townsite	4	272.5	63	n/a
Dorm Site	4	258.5	53	n/a
Hospital	8	416	111.5	n/a
1998:				
LDS Church	21	487.5	88	8,469
Townsite	8	406.5	93	8,656
Dorm Site	8	258.5	98.5	8,714
Hospital	11	464	184	8,642
1997:				
LDS Church	12	252	63	8,589
Townsite	33	313.5	93	8,725
Dorm Site	11	386	66.5	8,751
Hospital	32	654.5	180	8,742

* **Note:** Does not include Golf Course site for 1997 (site closed August 1997). Townsite, Dorm Site, and Hospital data are as contained in BHP's monthly reports. The facility reported zero concentrations for the period 2000–2001 at the Townsite, Dorm Site, and Hospital locations. LDS Church site data for 2002–2005 were obtained from ADEQ Annual Reports. LDS Church site data for 1997–1999 were calculated from data in EPA's Air Quality System Report (October 3, 2006) by multiplying sulfur dioxide values in parts per million by 2620 to convert to micrograms per cubic meter.

After reviewing the historic ambient SO_2 monitoring data, EPA concludes the data was collected in accordance with EPA guidelines. The monitoring sites were found to be representative of air quality for the area. As required for redesignation, the nonattainment area has recorded more than eight current, consecutive quarters of quality-assured monitoring data that is free of NAAQS violations.

ADEQ had included monitoring data in Chapter 3 of the SIP. ADEQ's review of historic ambient SO_2 monitoring data in the San Manuel area collected by ADHS, BAQC, and ADEQ confirms that the primary SO_2 NAAQS has not been violated since 1979 and the secondary SO_2 NAAQS has not been violated since 1985.

In the San Manuel SIP submittal, ADEQ proposes to close the San Manuel SO_2 monitoring site effective December 31, 2007. Federal regulations at 40 CFR 58.14 allows sites to be closed under specific circumstances. ADEQ believes that the closure of the San Manuel SO_2 site meets these criteria. Specifically, the option under 40 CFR 58.14(c)(3) allows for discontinuation of a monitor within an attainment, nonattainment, or maintenance area, “* * * provided the monitor has not measured violations of the applicable NAAQS in the previous five years, and the approved SIP provides for a specific, reproducible

approach to representing the air quality of the affected county in the absence of actual monitoring data.” This position is supported with the information provided below.

Monitoring data for 2002 through 2006 indicate that maximum ambient concentrations were three percent or less of the NAAQS for the 3-hour standard; five percent or less of the NAAQS for the 24-hour standard; and less than seven percent of the NAAQS for the annual standard. Following the shutdown of the San Manuel ambient SO_2 monitor, ADEQ will continue to demonstrate attainment and maintenance of the SO_2 NAAQS through updates to the emissions inventory as described in the San Manuel SO_2 Maintenance Plan, March 2007. Analyses contained in the SIP demonstrate that, although there were other sources of SO_2 emissions, the San Manuel copper smelter, which permanently closed in 2005, was the primary emissions source in the nonattainment area and comprised more than 99.5 percent of total emissions while it was operating. The more than 99 percent emissions reduction due to the closure of the smelter corresponds to a greater than 92 percent reduction in 3-hour average and 24-hour average ambient SO_2 concentrations.

With the permanent closure of the San Manuel smelter, no major point

sources exist in the nonattainment area. Sulfur dioxide emissions in 2017 are projected to be less than 0.5 percent of 1997 and 1998 total nonattainment area emissions, a period in which the San Manuel smelter was operating full time.

Arizona does not anticipate any substantial increase in existing point source emissions between now and 2017 for the nonattainment area. Should any growth occur due to construction of additional SO_2 point sources, the ADEQ, Pinal County Air Quality Control District (PCAQCD), and Pima County Department of Environmental Quality (PDEQ) permit programs limit all emissions as part of construction of new point sources or upgrading of existing sources. ADEQ commits to re-establish an appropriate network before any major source of SO_2 begins operations in the San Manuel planning area.

Maintenance of the SO_2 NAAQS in San Manuel area will be tracked through updates to the emissions inventory and permit applications received for SO_2 emitting sources.

Therefore, ADEQ has demonstrated, and we concur, that the closure of the San Manuel SO_2 site meets the criteria set forth in 40 CFR 58.14.⁵ We also

⁵ EPA sets out requirements for ambient air quality surveillance in 40 CFR part 58. After the closure of the San Manuel SO_2 monitoring site, ADEQ will continue to monitor SO_2 emissions at

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conclude that the area has attained the SO₂ NAAQS.

B. The Area's Applicable Implementation Plan Must Be Fully Approved Under CAA Section 110(k)

Under CAA section 107(d)(3)(E)(ii), the SIP for the San Manuel area must be fully approved under CAA section 110(k) of the Act. We examined the applicable SIP for Arizona and also looked at the disapprovals listed in 40 CFR 52.125 and have determined that no disapprovals listed remain relevant to the applicable SIP. Arizona has a fully approved SIP with respect to SO₂ in the San Manuel area.

C. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

CAA section 107(d)(3)(E)(iii) requires that EPA determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and/or applicable federal measures. As shown in Table 1, as required for redesignation, the nonattainment area has recorded more than eight current, consecutive quarters of quality-assured, violation-free data. Monitoring data for 1997 through 1999, while the San Manuel smelter was still operating, indicate that maximum ambient concentrations were less than 55 percent of the NAAQS for the 3-hour standard, less than 59 percent of the NAAQS for the 24-hour standard, and less than 33 percent of the NAAQS for the annual standard.

Closure of the smelter in 1999 further reduced emissions and resultant ambient SO₂ concentrations. Monitoring data for 2004 through 2005 indicate that maximum ambient concentrations were two percent of the NAAQS for the 3-hour standard and less than three percent for the 24-hour standard; and less than seven percent of the NAAQS for the annual standard. Monitoring network data for the period 1997 through 2005 are presented in Table 1. Closure of the smelter has resulted in permanent and enforceable emissions reductions, as required by the CAA.

D. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Under CAA section 107(d)(3)(E)(v), we must determine whether the State of

Arizona has met all requirements under section 110 and under part D (of title I) of the CAA applicable to the San Manuel SO₂ nonattainment area.

1. Section 110 Requirements

CAA section 110 contains the general requirements for SIPs (enforceable emissions limits, ambient monitoring, permitting of new sources, adequate funding, etc.). EPA's guidance for implementing section 110 of the Act is discussed in the General Preamble to Title I (57 FR 13498, April 16, 1992). Over the years, we have approved Arizona's SIP as meeting these basic requirements. The SIP includes enforceable emission limitations; requires monitoring, compiling, and analyzing of ambient air quality data; requires preconstruction review of new major stationary sources and major modifications to existing ones; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and requires stationary source emission monitoring and reporting.

2. Part D Requirements

Before an area can be redesignated to attainment, it must have fulfilled the applicable requirements under part D (of title I). For this area, the relevant requirements are found in subparts 1 and 5 of part D. Subpart 1 of part D specifies the basic requirements applicable to all nonattainment areas. Subpart 5 sets out additional provisions for areas designated nonattainment for SO₂. As discussed below, EPA finds that Arizona has met the requirements of subpart 1 of part D, specifically sections 172(c) and 176, and subpart 5 as applicable for the San Manuel SO₂ nonattainment area.

a. Section 172

CAA section 172 contains the general requirements for nonattainment SIPs. A thorough discussion of the requirements of 172(c) can be found in the General Preamble for the implementation of title I (57 FR 13498, April 16, 1992). Additional guidance can be found in the Calcagni memo.

EPA has interpreted the requirements of CAA sections 172(c)(2) (reasonable further progress—RFP), 172(c)(6) (other measures), and 172(c)(9) (contingency measures) as not relevant to a redesignation request because they only have meaning for an area that is not attaining the standard (see the General Preamble and the Calcagni Memo), and as discussed above in section IV.A. of this notice, we find that the San Manuel area is attaining the SO₂ standard. Furthermore, the State has not sought to

exercise options that would trigger section 172(c)(4) (identification of certain emissions increases). Thus, this provision is not relevant to this redesignation request. The other provisions under 172(c) are discussed below.

Reasonably available control measures. Under CAA section 172(c)(1), reasonably available control measures (RACM), which include requirements for reasonably available control technology (RACT), are required for existing sources in nonattainment areas. In 1983, we approved the State's submittal of A.A.C. R9–3–315, a predecessor to the State's current smelter rules codified at A.A.C. R18–2–715. See 48 FR 1717 (January 14, 1983). This rule limited stack emissions from primary copper smelters, including the smelter which was located in the San Manuel area. We concluded, however, that the control strategy for SO₂ in Arizona's six SO₂ nonattainment areas was incomplete due to the failure to address fugitive emissions problems. See 48 FR 1717 (January 14, 1983) and 40 CFR 52.125(a)(1).

In 1998, 2003, and 2006, the State submitted amended rules (AAC R18–2–715 (sections F, G, and H), R18–2–715.01, R18–2–715.02, and R18–2–Appendix 8).⁶ These rules address both fugitive and stack emissions from smelters and, in approving the rules, we found that the amended rules met the RACT requirement under CAA sections 172(c)(1) and 191(b). See 69 FR 26789 at 26788 (May 14, 2004), 69 FR 63321 (November 2, 2004), and 71 FR 18624 at 18625 (April 12, 2006). Furthermore, because the area has attained the standard, no further demonstration that RACM has been implemented need be submitted by the State.

Emissions inventory. The emissions inventory requirement of section 172(c)(3) is satisfied by the maintenance plan inventory requirements. The maintenance plan inventory is evaluated below, in section IV.E.1.

NSR permit program. Section 172(c)(5) requires new source review (NSR) permits for the construction and operation of new and modified major stationary sources located in nonattainment areas. ADEQ is the agency responsible for implementing the nonattainment area NSR permit program in the San Manuel area. Under ADEQ's rules, all new major sources and modifications to existing major

several other sites within the state. For more information about the air monitoring system in place in Arizona, the reader may wish to consult the *State of Arizona Air Monitoring Network Plan For the Year 2007* submitted by ADEQ to EPA. This report can be found on Arizona's Web site at <http://www.azdeq.gov/enviro/air/monitoring/download/airmonitoring.pdf>.

⁶ A more extensive summary of the regulatory history of copper smelters in Arizona is included in EPA's proposed action on these rules. See 69 FR 26786 (May 14, 2004).

sources are subject to the NSR requirements of these rules.

We have not yet fully approved the ADEQ NSR rules.⁷ We have, however, determined that an area being redesignated from nonattainment to attainment does not need to have an approved NSR program prior to redesignation, provided that the area demonstrates maintenance of the standard without nonattainment NSR in effect.⁸ We have determined that the maintenance demonstration for San Manuel does not rely on nonattainment NSR.

Prevention of significant deterioration (PSD) is the permitting program that applies in attainment areas. PSD was established to preserve air quality in areas that are meeting the NAAQS. The PSD program requires new or reconstructed major stationary sources or major modifications to existing major stationary sources to undergo preconstruction review and to apply best available control technology. In addition, sources are required to review air quality and other impacts, which includes analysis of PSD increment consumption and undertake preconstruction modeling. ADEQ has an EPA-approved PSD permitting program AAC R18–2–406 for all criteria pollutants except respirable particulate matter (PM₁₀). See 48 FR 19878 (May 3, 1983). The federal PSD program for PM₁₀ was delegated to the State on March 12, 1999. ADEQ's partially-approved, partially-delegated PSD program will apply automatically to new major sources or major modifications to existing sources of SO₂ in the San Manuel area once the area is redesignated to attainment.⁹

⁷ ADEQ's NSR rules are included in the preconstruction review and permitting provisions of AAC, Title 18, Chapter 2, Articles 3 and 4. EPA approved an earlier version of ADEQ's NSR requirements (AAC R9–3–302) on May 5, 1982 (47 FR 19328) and August 10, 1988 (53 FR 30200).

⁸ See memorandum from Mary Nichols dated October 14, 1994 ("Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.")

⁹ PSD also applies to new major sources or major modifications in Pima County. One township of the nonattainment area is in the Pima County. The federal PSD program applies with Pima County. See 40 CFR 52.144; 48 FR 19878 (May 3, 1983). PDEQ was delegated authority for the federal PDS program in 1994.

Compliance with section 110(a)(2). Under section 172(c)(7), plan provisions submitted to satisfy part D must meet the applicable provisions of section 110(a)(2) of the CAA. As noted in section IV.B. above, the San Manuel portion of the Arizona SIP meets these requirements.

b. Section 176

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Laws ("transportation conformity") as well as to all other federally supported or funded projects ("general conformity"). Because EPA does not consider SO₂ a transportation-related pollutant, only the requirements related to general conformity apply to the San Manuel SO₂ area. The State of Arizona adopted general conformity criteria and procedures as a revision to the Arizona SIP. EPA approved Arizona's general conformity SIP on April 23, 1999 (64 FR 19916). Thus, the requirements of CAA section 176 have been satisfied.

c. Subpart 5

Subpart 5 of part D contains additional provisions for areas designated nonattainment for SO₂. Under CAA section 191(b), States with existing nonattainment areas for the primary SO₂ NAAQS where those areas lack fully approved SIPs, including part D plans, must submit implementation plans meeting the requirements of subpart 1 of part D. As discussed in section IV.D.2.a of this notice, the State of Arizona has met the requirements of subpart 1 of part D for the San Manuel area. Under CAA section 192(b), such areas were required to meet the primary SO₂ NAAQS as expeditiously as possible but no later than November 15, 1995. As discussed in section IV.A of this notice, the San Manuel SO₂ nonattainment area met the primary SO₂ standards well before the applicable attainment date of November 15, 1995 and has continued to attain since then.

E. The Area Must Have a Fully Approved Maintenance Plan

Section 107(d)(3)(E)(iv) of the Act makes EPA approval of a maintenance plan meeting the requirements of section 175A another prerequisite to redesignation. Under section 175A, a maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, and include any additional control measures as may be necessary to ensure such maintenance. The Calcagni Memo contains EPA guidance on the contents of maintenance plans submitted for the purposes of meeting section 175A. Generally, such plans should address the following five topics: The attainment emissions inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Maintenance plans are to contain such contingency provisions as EPA deems 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.

Lastly, under CAA Section 175A(b), states are required to submit a subsequent maintenance plan eight years after redesignation providing for maintenance of the NAAQS for an additional 10-year period beyond the initial 10-year maintenance period. ADEQ has made a commitment to submit a subsequent maintenance plan to EPA eight years into the initial 10-year maintenance period (see page 15 of the submitted plan) and thereby satisfies the requirements of Section 175A(b).

1. Attainment Emissions Inventory

As required in the Calcagni memo as one of the core provisions necessary to ensure maintenance of the relevant NAAQS in an area seeking redesignation from nonattainment to attainment, the San Manuel Maintenance Plan includes an emissions inventory for point sources, area sources, and mobile sources for 1997 through 2005 as well as a projection of emissions to 2017.

TABLE 2.—SAN MANUEL NONATTAINMENT AREA SO₂ EMISSIONS AND EMISSIONS PROJECTIONS, ALL SOURCES (TONS): 1997–2017

	Area and mobile	Point	Annual totals
1997	30	11482	11512
1998	30	10409	10439
1999	38	3625	3663
2000	36	0.7	36.7
2001	33	0.9	33.9
2002	26	0.3	26.3
2003	n/a	0.2	≥0.2
2004	n/a	0.7	≥0.7
2005	27	0.6	27.6
2010	29	4.3	33.3
2015	30	4.3	34.3
2017	31	4.3	35.3

Note: Sulfur dioxide emissions in 2017 are projected to be less than 0.5 percent of 1997 and 1998 total nonattainment area emissions, a period in which the San Manuel smelter was operating full time.

Based on our review of the submitted plan, we conclude that the current and projected emissions inventories are based on reasonable methods and assumptions and are comprehensive and accurate.

2. Maintenance Demonstration

EPA allows states to demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.¹⁰ When ADEQ first submitted a maintenance plan for the San Manuel area in 2002, the plan contained a modeling exercise. In January 2005, BHP Copper Inc. (BHP Billiton) notified ADEQ of the company's intent to permanently cease operations and remove all equipment and buildings at their San Manuel smelting facility. In March 2005, ADEQ terminated the permit for the facility. Closure of the smelter reduced SO₂ emissions in the San Manuel area by more than 10,000 tons per year. Based on monitored data, the area had already attained the SO₂ ambient air quality standards. Annual ambient concentrations measured from 1997 through 1999 were less than 42 percent of the NAAQS and maximum 24-hour concentrations were less than 59 percent of the NAAQS.¹¹ ADEQ subsequently withdrew the 2002 maintenance plan, but included the modeling exercise in Appendix A of the current submittal. Since the modeling exercise demonstrated that the area could maintain the standard while the smelter was operating, we concur with the state that maintenance of the

standard will continue since the smelter is no longer operating.

In addition, the projected inventory from the San Manuel SO₂ Maintenance Plan shows that emissions in the area are estimated to remain well below attainment period levels in 2017, the 10th year after redesignation. Although there is slight growth in total emissions from 2005 to 2017, projected 2017 emissions are 0.3 percent of 1998 emissions levels, due largely to the cessation of smelter operations. Therefore, we conclude that the San Manuel SO₂ maintenance plan contains an adequate maintenance demonstration.

3. Monitoring Network

Once an area has been redesignated, in accordance with 40 CFR Part 58, the State is required to continue operation of an appropriate air quality monitoring network to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification.

EPA allows a state to discontinue a monitor within a nonattainment or maintenance area provided the monitor has not measured violations of the applicable NAAQS in the previous five years, and the approved SIP provides for a specific, reproducible approach to representing the air quality of the affected area in the absence of actual monitoring data. Because the primary source of SO₂ emissions in the nonattainment area permanently closed and recorded air quality data for 2002 through 2005 indicate that maximum ambient concentrations are less than seven percent of the primary and secondary NAAQS, ADEQ intends to discontinue monitoring at this site.

EPA concurs with ADEQ's decision to discontinue SO₂ monitoring in the San

Manuel area. Since the main source of SO₂ emissions has been permanently shut down and dismantled there is no longer any reason to monitor for this pollutant at this time. Section 7.2 of the SIP states that ADEQ commits to reestablishing an appropriate SO₂ monitoring network in the San Manuel area before any future major source of SO₂ begins operations in the San Manuel planning area.

4. Verification of Continued Attainment

ADEQ intends to track the progress of the San Manuel SO₂ Maintenance Plan through implementation and enforcement of the monitoring, reporting, and certification procedures to which permitted sources are subject under AAC R18–2–306 and R18–2–309. ADEQ anticipates no relaxation of any implemented control measures used to attain and maintain the ambient air quality standards.

Maintenance of the SO₂ NAAQS in San Manuel area will be tracked through updates to the emissions inventory and permit applications received from SO₂ emitting sources. The projected inventory from the San Manuel SO₂ Maintenance Plan shows that emissions in the area are estimated to remain well below attainment period levels in 2017, the 10th year after redesignation. Although there is slight growth in total emissions from 2005 to 2017, projected 2017 emissions are 0.3 percent of 1998 emissions levels, due largely to the cessation of smelter operations. The PCAQCD and PDEQ have authority for sources under their jurisdiction.

Considered together, the submitted plan and relevant state and local EPA-approved regulations adequately provide for verification of continued attainment of the SO₂ NAAQS in the San Manuel area.

¹⁰ See Calcagni Memo., at p. 9.

¹¹ See page 8 of Appendix A of ADEQ's submittal.

5. Contingency Plan

Section 175A(d) of the CAA requires that maintenance plans include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area. The Calcagni memo provides additional guidance, noting that although a State is not required to have fully-adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved, the maintenance plan should ensure that the contingency measures are adopted expediently once they are triggered. Specifically, the maintenance plan should clearly identify the measures to be adopted, include a schedule and procedure for adoption and implementation of the measures, and contain a specific time limit for action by the State. In addition, the State should identify specific indicators, or triggers, that will be used to determine when the contingency measures need to be implemented.

The only threat to the SO₂ NAAQS in this planning area is from new sources. Because the primary source of SO₂ emissions in the San Manuel area is permanently closed, measures to ensure continued attainment of the SO₂ NAAQS are PSD permitting requirements. Any new source proposing to operate in the San Manuel area is subject to the provisions of A.A.C. R18–2–403, “Permits for Sources Located in Nonattainment Areas,” and those in A.A.C. R18–2–406, “Permit Requirements for Sources Located in Attainment and Unclassified Areas.” With our redesignation of San Manuel, they will only be subject to A.A.C. R18–2–406. These programs address NSR and PSD requirements applicable to SO₂ sources. Under the PSD program, new major stationary or major modifications to existing major sources are required to undergo preconstruction review before the facility is constructed, modified, or reconstructed, and to apply Best Available Control Technology (BACT). If a new source is not a major source, it may still be required to obtain a permit under minor source permitting rules at AAC R18–2–Article 3.¹²

Upon review of the contingency plan summarized above, we find that ADEQ has established a workable contingency plan for the San Manuel area. Since

ADEQ anticipates no relaxation of any implemented control measures, and commits to submit to us any changes to rules or emission limits applicable to SO₂ sources, as well as committing to maintain the necessary resources to promptly correct any violations of the SO₂ NAAQS that occur after the redesignation of the San Manuel area to attainment, the State thereby satisfies the requirements of CAA section 175A(d).

6. Subsequent Maintenance Plan Revisions

As noted previously, CAA section 175A(b) requires states to submit a subsequent maintenance plan revision eight years after the redesignation request is approved by EPA. The subsequent maintenance plan is to provide for maintenance of the NAAQS for an additional 10 years following the first 10-year maintenance period. ADEQ has made a commitment to submit a subsequent maintenance plan to EPA eight years into the initial 10-year maintenance period (see page 15 of the submitted plan) and thereby satisfies CAA section 175A(b).

7. Conclusion

ADEQ's *Final State Implementation Plan Revision, San Manuel Sulfur Dioxide Nonattainment Area*, March 2007 adequately addresses the five basic topics that maintenance plans should address, including attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan, and also provides for submittal of a subsequent maintenance plan. Therefore, we approve the San Manuel SO₂ Maintenance Plan as a revision to the Arizona SIP and thereby satisfy the related redesignation criteria of CAA section 107(d)(3)(E)(iv).

V. Public Comment and EPA's Final Action

As authorized under section 110(k)(3) of the Act, EPA is approving the Final State Implementation Plan Revision, San Manuel Sulfur Dioxide Nonattainment Area, March, 2007 as submitted by ADEQ on June 7, 2007, as a revision to the Arizona SIP. In so doing, we find that the maintenance plan meets the requirements for such plans under CAA section 175A.

EPA is also approving the State of Arizona's request for redesignation of the San Manuel area from nonattainment to attainment for the SO₂ NAAQS based on our conclusion that all of the redesignation criteria in CAA section 107(d)(3)(E) have been satisfied. Specifically, we find that (1) the San

Manuel area has attained the SO₂ NAAQS; (2) Arizona has a fully approved SIP for the San Manuel area; (3) the improvements in air quality in the San Manuel area are due to permanent and enforceable reductions in emissions resulting from the permanent closure of the smelter and from implementation of EPA's Title V permit conditions; (4) Arizona has met all of the nonattainment area requirements applicable to the San Manuel area; and (5) the State's submitted maintenance plan meets all relevant CAA requirements and is being approved in this notice.

EPA is finalizing this action without proposing it in advance because the Agency views this action as noncontroversial and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same maintenance plan and request for redesignation of the San Manuel, AZ SO₂ area. If we receive adverse comments by February 19, 2008, 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 March 18, 2008. This will approve the redesignation request and maintenance plan submitted by Arizona on June 7, 2007.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic

¹² Pima and Pinal counties have their own air pollution control agencies and have jurisdiction over stationary sources of air pollutants within their counties, except for refineries, copper smelters, coal-fired power plants, Portland cement plants, or portable sources that will operate in multiple counties. These sources must obtain permits from ADEQ. Facilities located on most Indian lands in Arizona are under the jurisdiction of U.S. EPA.

impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission;

to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 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 18, 2008*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 20, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(140) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(140) The following plan was submitted on June 7, 2007 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality. (1) *Final Arizona State Implementation Plan Revision, San Manuel Sulfur Dioxide Nonattainment Area*, March 2007, Arizona Department of Environmental Quality.

PART 81—[AMENDED]

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

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

■ 4. In § 81.303 the table entitled "Arizona—SO₂" is amended by revising the entry for the "San Manuel" area to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—SO₂

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * *				
San Manuel:				
T8S, R16E				X
T8S, R17E				X
T8S, R18E				X
T9S, R15E				X
T9S, R16E				X
T9S, R17E				X

ARIZONA—SO₂—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
T9S, R18E				X
T10S, R15E				X
T10S, R16E				X
T10S, R17E				X
T11S, R16E				X
T10S, R18E				X
T11S, R17E				X
T12S, R16E				X
T12S, R17E				X
* * * * *				

[FR Doc. E8-803 Filed 1-17-08; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Centers for Medicare & Medicaid
Services****42 CFR Part 488****[CMS-2278-IFC3]****RIN 0938-AP22****Revisit User Fee Program for Medicare
Survey and Certification Activities****AGENCY:** Centers for Medicare &
Medicaid Services (CMS), HHS.**ACTION:** Interim final rule with comment
period.

SUMMARY: This interim final rule with comment period implements the continuation of the revisit user fee program for Medicare Survey and Certification activities, in accordance with the statutory authority in the Continuing Appropriations Resolution entitled, "Making further continuing appropriations for the fiscal year 2008, and for all other purposes," Public Law 110-137 ("Continuing Resolution") passed by the Congress and signed by the President on December 14, 2007. On September 19, 2007, we published a final rule that established a system of revisit user fees applicable to health care facilities that have been cited for deficiencies during initial certification, recertification or substantiated complaint surveys and require a revisit to confirm that previously-identified deficiencies have been corrected.

DATES: *Effective date:* These regulations are effective January 18, 2008, and applicable beginning December 14, 2007.

Comment date: To be assured consideration, comments must be

received at one of the addresses provided below, no later than 5 p.m. on March 18, 2008.

ADDRESSES: In commenting, please refer to file code CMS-2278-IFC3. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2278-IFC3, P.O. Box 8010, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2278-IFC3, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members. Room 445-G, Hubert H. Humphrey

Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kelley Tinsley, (410) 786-6664.

SUPPLEMENTARY INFORMATION:

Submitting Comments: As the public was provided an opportunity to comment on the substance of the rule during the comment period prior to the publication of the September 19, 2007 final rule, and as the substance of the rule is not changed by this interim final rule with comment period, we are accepting comments only to the extent that they pertain to the applicability of the new authority for the rule. You can assist us by referencing the file code CMS-2278-IFC3.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS