III. 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 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 is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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. section 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 June 25, 2004. 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 12, 2004.

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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(324) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(324) Amended regulation for the following AQMD was submitted on April 1, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1132, adopted on January 19, 2001 and amended on March 5, 2004.

[FR Doc. 04–9282 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ 116–0059a; FRL–7651–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the maintenance plan for the Morenci area in Greenlee County, Arizona and granting the request submitted by the State to redesignate this area from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO^2). Elsewhere in this **Federal Register,** we are proposing approval and soliciting written comment on this action; if adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this approval action.

DATES: This rule is effective June 25, 2004, without further notice, unless we receive adverse comments by May 26, 2004. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** and inform the public that this rule will not take effect.

ADDRESSES: Please mail or e-mail your comments to Wienke Tax, Air Planning

Office (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (520) 622–1622. E-mail: *tax.wienke@epa.gov.* Comments may also be submitted through the **Federal Register** Web site at *http://www.regulations.gov.* We prefer electronic comments.

You can inspect copies of EPA's **Federal Register** document and Technical Support Document (TSD) at our Region 9 office during normal business hours (*see* address above). Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you. The **Federal Register** notice and TSD are also available as electronic files on EPA's Region 9 Web page at *http://www.epa.gov/region09/air.*

You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the State Implementation Plan (SIP) materials are also available for inspection at the address listed below: Arizona Department of Environmental Quality, 1110 W. Washington Street, First Floor, Phoenix, AZ 85007, Phone: (602) 771–4335.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, U.S. EPA Region 9, (520) 622–1622, *tax.wienke@epa.gov,* or *www.epa.gov/region09/air.*

SUPPLEMENTARY INFORMATION: Elsewhere in this **Federal Register,** we are proposing approval and soliciting written comment on this action. Throughout this document, ''we,'' ''us,'' and ''our'' mean U.S. EPA.

Table of Contents

I. Summary of Action

We are approving the maintenance plan for the Morenci SO_2 nonattainment area.[1] We are also approving the State of Arizona's request to redesignate the Morenci area from nonattainment to attainment for the primary SO_2 NAAQS.

II. Introduction

A. What National Ambient Air Quality Standards Are Considered in Today's Rulemaking?

Sulfur dioxide is the subject of this action. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public health and welfare. SO_2 is among the ambient air pollutants for which we have established a health-based standard.

SO_2 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_2 has a variety of additional impacts, including acidic deposition, damage to crops and vegetation, and corrosion of natural and man-made materials.

There are both short- and long-term primary NAAQS for SO_2. The short-term (24-hour) standard of 0.14 parts per million (ppm) is not to be exceeded more than once per year. The long-term standard specifies an annual arithmetic mean not to exceed 0.030 ppm.[2] The primary standards were established in 1972. (*See* 40 CFR 50.4.)

B. What Is a State Implementation Plan?

The CAA 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 (or SIP) for that State. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each State currently has a SIP in place, and 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.

The State must make the SIP available for public review and comment through a public hearing, it must be adopted by the State, and submitted to us by the Governor or her/his designee. We take federal 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 Was the Nonattainment Area Established?

The Phelps Dodge Morenci Incorporated (PDMI) operation was the largest SO_2 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. The Phelps Dodge smelter was located in the Gila River airshed, just north of the Gila River at an altitude of about 4500 feet above sea level. PDMI was located close to the community of Morenci, in eastern Greenlee County, near the Arizona/New Mexico State boundary.

The details of the initial designation of the Morenci SO_2 nonattainment area are provided in footnote 1 in this **Federal Register** notice. On the date of enactment of the 1990 CAA Amendments, SO_2 areas meeting the conditions of section 107(d) of the Act, including the pre-existing SO_2 nonattainment areas, were designated nonattainment for the SO_2 NAAQS by operation of law. Thus, the Morenci area remained nonattainment for the primary SO_2 NAAQS following enactment of the 1990 CAA Amendments on November 15, 1990.

[1] For the definition of the Morenci nonattainment area, see 40 CFR 81.303. EPA designated the entire area of Greenlee County as nonattainment for SO_2 on March 3, 1978 for lack of a State recommendation. EPA approved the State's request that the SO_2-affected portion of Greenlee County be limited to the townships surrounding Morenci on April 10, 1979 (44 FR 21261). Townships T3S,R28E; T3S, R29E; T3S, R30E; T4S, R28E; T4S, R29E; T4S, R30E; T5S, R28E; and T5S, R29E comprise the nonattainment area. Township T5S, R30E is designated as ''cannot be classified.'' Morenci is a town in eastern Greenlee County near the border of Arizona and New Mexico.

[2] The secondary SO_2 NAAQS (3-hour) of 0.50 ppm is not to be exceeded more than once per year. Secondary NAAQS are promulgated to protect welfare. The Morenci area is not classified nonattainment for the secondary standard, and this action relates only to the primary NAAQS.

2. How Has the SIP Addressed CAA Provisions?

As required by the CAA, Arizona submitted a State implementation plan (SIP) for all major sources in the State in January 1972. EPA disapproved the portion of the 1972 Arizona SIP related to smelters (37 FR 10849 and 37 FR 15081) on May 31 and July 27, 1972. On November 30, 1981, EPA proposed conditional approval of Arizona's Multipoint Rollback (MPR) SIP revision (46 FR 58098). On June 3, 1982, Arizona submitted SIP revisions to correct the conditional approval. EPA formally approved Arizona's revised MPR rule as a final rulemaking on January 14, 1983 (48 FR 1717). To complete the Arizona SO_2 SIPS, EPA required that Arizona submit the necessary fugitive emissions control strategies and regulations for existing smelters by August 1, 1984.

3. What Is the Current Status of the Area?

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. The area remains sparsely settled, and there are minor industrial or commercial activities such as cotton gins, a construction company, and a Federal correctional institute in or near the nonattainment area that produce small quantities of SO_2 emissions.

Currently, there are no operating ambient SO_2 monitors in the Morenci area. 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 obvious cause of past violations. These are two additional reasons why our action today is appropriate.

Ambient air quality monitoring data from 1980 to 1984 indicate there were numerous exceedances of the SO_2 NAAQS during the last three years of the smelter operation, primarily in 1983. The following table summarizes the ambient monitoring data from 1980 through 1985.

Year	No. of 24 hour exceedances	1st High (ppm)	2nd High (ppm)	Annual average (ppm)
1980	13	0.211	0.210	0.038
1981	18	0.211	0.203	0.053
1982 [1]	1	0.175	0.091	0.009
1983	15	0.263	0.204	0.046
1984	3	0.196	0.163	0.037
1985 [1]	0	0.006	0.005	0.002

[1] Years that did not have complete data.
Source: EPA AIRS/AQS Database.

Since by far the largest source of SO_2 in the area was the smelter, it was not necessary to continue monitoring for this pollutant once the source was permanently shut down. Currently, there are no operating ambient SO_2 monitors in the Morenci area.

D. What Are the Applicable Clean Air Act (CAA) Provisions for SO_2 Nonattainment Area Plans?

The air quality planning requirements for SO_2 nonattainment areas are set out in subparts 1 and 5 of Part D of title I of the Act. We have issued guidance in a General Preamble describing our views on how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing SO_2 nonattainment area and maintenance area SIP provisions. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble discusses our interpretation of the title I requirements, and lists SO_2 policy and guidance documents.

1. What Statutory Provisions Apply?

CAA Sections 191 and 192 address requirements for SO_2 nonattainment areas designated subsequent to enactment of the 1990 CAA Amendments and areas lacking fully approved SIPs immediately before enactment of the 1990 Clean Air Act Amendments. Morenci falls into neither of these categories and is therefore subject to the requirements of subpart 1 of part D of title I of the CAA (sections 171–179B). Section 172 of this subpart contains provisions for nonattainment plans in general; these provisions were not significantly changed by the 1990 CAA Amendments. Among other requirements, CAA Section 172 provides that SIPs must assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented as expeditiously as practicable and shall provide for attainment.

E. What Are the Applicable Provisions for SO_2 Maintenance Plans and Redesignation Requests?

1. What are the Statutory Provisions?

a. CAA Section 107(d)(3)(E).

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment:

(1) The area must have attained the applicable NAAQS;

(2) The area has met all relevant requirements under section 110 and part D of the Act;

(3) The area has a fully approved SIP under section 110(k) of the Act;

(4) the air quality improvement must be permanent and enforceable; and,

(5) the area must have a fully approved maintenance plan pursuant to section 175A of the Act.

b. CAA Section 175A

CAA section 175A provides the general framework for maintenance plans. The 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. Beyond these provisions, however, CAA section 175A does not define the content of a maintenance plan.

2. What General EPA Guidance Applies to Maintenance Plans?

Our primary general guidance on maintenance plans and redesignation requests is a September 4, 1992 memo from John Calcagni, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (''Calcagni Memo''). Specific guidance on SO_2 redesignations also appears in a January 26, 1995 memo from Sally L. Shaver, entitled ''Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas'' (''Shaver Memo'').

Guidance on SO_2 maintenance plan requirements for an area lacking ambient monitoring data, if the area's historic violations were caused by a major point source that is no longer in operation, is found in an October 18, 2000 memo from John S. Seitz entitled ''Redesignation of Sulfur Dioxide Nonattainment Areas in the Absence of Monitored Data'' (''Seitz Memo''). The Seitz memo exempts eligible areas from the maintenance plan requirements of continued monitoring.

3. What Are the Requirements for Redesignation of Single-Source SO_2 Nonattainment Areas in the Absence of Monitored Data?

Our historic redesignation policy for SO_2 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_2 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. In order 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;

(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 provisions of the CAA; and

(4) A commitment to resume monitoring before any major SO_X source commences operation.

III. Review of the Arizona State Submittals Addressing These Provisions

A. Is the Maintenance Plan Approvable?

1. Did the State Meet the CAA Procedural Provisions?

On June 21, 2002, ADEQ submitted to EPA the ''Morenci Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan'' and request to redesignate the area to attainment. The State verified that it had adhered to its SIP adoption procedures. On October 30, 2002, we found that the submittal met the completeness criteria in 40 CFR part 51, Appendix V, which must be satisfied before EPA formal review.

2. Does the Area Qualify for Review under the Seitz Memo?

a. Were the Area's Violations Caused by a Major Point Source of SO_X Emissions That Is No Longer in Operation?

As discussed above, the only major source of SO_X emissions within the Morenci nonattainment area was the Phelps Dodge Morenci Incorporated (PDMI) copper smelter, which ceased operation in 1984. The last recorded 24-hour or annual average exceedances of the primary NAAQS at PDMI occurred in 1984. All monitors owned and operated by Phelps Dodge and by ADEQ in the vicinity of the PDMI smelter were removed by early 1985, 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_2 of the magnitude of PDMI have been located in the area. Thus, Morenci meets this criterion for review under the Seitz Memo.

b. Has the State Met the Requirements of the Seitz Memo?

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 the area. Therefore, the State has met the special criteria in the Seitz Memo for approval of maintenance plans and redesignation requests.

(1) Emissions Inventory. 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 SO_X emissions from smelting operations were 82,432 tons per year (tpy). ADEQ identified 186.5 tpy SO_X emissions in, or within 50 kilometers of, the nonattainment area in 1999 based on potential to emit (PTE), and ADEQ projected 208 tpy SO_X emissions based on PTE in, or within 50 kilometers of, Morenci in the 10th year after redesignation (2015). However, actual emissions in 1998 and 1999 were 4.1 and 1.2 tpy, respectively. We conclude that the inventories are complete, accurate, and consistent with applicable CAA provisions and the Seitz Memo.

(2) Modeling. Past EPA policy memoranda on SO_2 redesignations all ask for dispersion modeling. The Seitz memo asks for dispersion modeling of all point sources within 50 km of the nonattainment area boundary. The submittal identifies only a single point source in the nonattainment area, the Phelps Dodge Morenci Mine (PDMM), with year 2000 SO_2 emissions of 3.3 tpy, and year 2015 projected emissions of 3.6 tpy. The submittal also identifies five sources in the 50 km boundary area, each of which emitted less than one ton SO_2 per year in 1999. Screening dispersion modeling was performed with ISCST3 using conservative assumptions about the source parameters and the meteorology. According to the screening modeling, the maximum ambient air concentration due to the largest of the remaining sources is less than five percent of any of the SO_2 NAAQS.

The October 18, 2000 Seitz memo requires a modeling analysis that shows point sources were the dominant sources contributing to high SO_2 concentrations in the airshed. While MPR has been accepted by EPA for modeling of smelters, as a rollback method it assumes that the monitored SO_2 violations are completely due to the smelter being modeled. Thus, it cannot be relied upon for this analysis. Instead, screening modeling can be used to show that non-smelter sources have only an insignificant contribution. Since their emissions have changed relatively little since the time that the smelter shut down and was dismantled, this same screening modeling shows that the non-smelter sources were insignificant in the past, and hence the smelter was the dominant source contributing to past high SO_2 concentrations. EPA therefore finds that the ambient SO_2 modeling requirement for redesignations and maintenance plans is met.

(3) Permitting of New Sources. For the Morenci SO_2 nonattainment area, the nonattainment area new source review (NSR) permit program responsibilities are held by ADEQ. ADEQ administers the preconstruction review and permitting provisions of Arizona

Administrative Code (AAC), Title 18, Chapter 2, Articles 3 and 4. All new major sources and modifications to existing major sources are subject to the NSR requirements of these rules. We have not yet fully approved the ADEQ NSR rules. ADEQ's SIP-approved NSR rules are at AAC R9–3–302.

Section 172(c)(5) requires NSR permits for the construction and operation of new and modified major stationary sources anywhere in nonattainment areas. We have determined that areas being redesignated from nonattainment to attainment do not need to comply with the requirement that an NSR program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D nonattainment NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 14, 1994 (''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment''). We have determined that the maintenance demonstration for Morenci does not rely on nonattainment NSR. Prevention of Significant Deterioration (PSD) is the replacement for NSR, and part of the obligation under PSD is for a new source to review increment consumption and maintenance of the air quality standards. PSD also requires preconstruction monitoring. Therefore, the State need not have a fully approved nonattainment NSR program prior to approval of the redesignation request.

ADEQ has a PSD permitting program (A.A.C. R9–3–304 is the SIP-approved rule) that was established to preserve the air quality in areas where ambient standards have been met. The State's PSD program for all criteria pollutants except PM–10 was approved into the SIP effective May 3, 1983 (48 FR 19878). The federal PSD program for PM–10 was delegated to the State on March 12, 1999. The PSD program requires stationary sources to undergo preconstruction review before facilities are constructed, modified, or reconstructed and to apply Best Available Control Technology (BACT). These programs will apply to any major source wishing to locate in the Morenci area once the area is redesignated to attainment. The ADEQ commitment to treat any major source in or near Morenci as ''new'' under the PSD program satisfies the preconstruction permit provision of the Seitz memo as one of the prerequisites to redesignation.

(4) Monitoring. ADEQ has confirmed that the State commits to resume monitoring before any major source of SO_2 commences to operate. Moreover, the PSD permit program requires that permit applicants conduct preconstruction monitoring to identify baseline concentrations. Together, these commitments address the monitoring provision of the Seitz Memo.

c. Has the State Met the Remaining Maintenance Plan Provisions?

As discussed above, CAA Section 175A sets forth the statutory requirements for maintenance plans, and the Calcagni and Shaver memos cited above contain specific EPA guidance. The only maintenance plan element not covered by the Seitz Memo is the contingency provision. CAA Section 175A provides that maintenance plans ''contain such contingency provisions as the Administrator deems necessary 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.''

The Morenci Maintenance Plan includes the State's commitment to continue to implement and enforce measures necessary to maintain the SO_2 NAAQS. ADEQ's current operating permit program places limits on SO_2 emissions from existing sources. Should an existing facility want to upgrade or increase SO_2 emissions, the facility would be subject to the PSD program. Should a new facility be constructed in the Morenci area, the facility would also be subject to PSD as required in the Calcagni memo.

If these measures prove insufficient to protect against exceedances of the NAAQS, the State has also committed to adopt, submit as a SIP revision, and implement expeditiously any and all measures needed to ensure maintenance of the NAAQS.

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_2 emissions of the magnitude of the Phelps Dodge smelter and there is no SO_2 monitoring in the Morenci area, we agree with the State that this level of specificity is not appropriate, and we conclude that the State's commitment satisfactorily addresses the CAA provisions. Since there are neither significant SO_2 sources nor SO_2 monitoring in the Morenci area, we agree with the State that the State's PSD permitting program is sufficient to track future air quality trends and to assure that the Morenci area will not violate the NAAQS. If the State identifies the potential for a NAAQS violation through the permitting process, the State would ascertain what measures would be needed to avoid the violation.

B. Has the State Met the Redesignation Provisions of CAA Section 107(d)(3)(E)?

1. Has the Area Attained the 24-hour and Annual SO_2 NAAQS?

As discussed above, the normal prerequisite for redesignation is submittal of quality-assured ambient data with no violations of the SO_2 NAAQS for the last eight consecutive quarters. However, the Seitz Memo recognizes that states should be provided an opportunity to request redesignation where there is no longer monitoring but where there is no reasonable basis for assuming that SO_2 violations persist after closure of the sources that were the primary or sole cause of these violations. Morenci is such an area, and the State has submitted convincing evidence that no major stationary sources of SO_X emissions remain in operation in or within 50 kilometers of the area that might cause a violation of the SO_2 NAAQS.

2. Has the Area Met All Relevant Requirements Under Section 110 and Part D of the Act?

CAA Section 110(a)(2) contains the general requirements for SIPs (enforceable emission limits, ambient monitoring, permitting of new sources, adequate funding, etc.) and part D contains the general provisions applicable to SIPs for nonattainment areas (emissions inventories, reasonably available control measures, demonstrations of attainment, etc.). Over the years, we have approved Arizona's SIP as meeting the basic requirements of CAA Section 110(a)(2), and the CAA Part D requirements for Morenci addressed primarily by the regulations applicable to the Phelps Dodge facility during the period of its operation. The State has thus met the basic SIP requirements of the CAA.

3. Does the Area Have a Fully Approved SIP Under Section 110(k) of the Act?

We examined the applicable SIP, and also looked at the disapprovals listed in 40 CFR 52.125 and no disapprovals remain relevant to the applicable SIP. Arizona has a fully-approved SIP with respect to the Morenci area.

4. Has the State Shown That the Air Quality Improvement in the Area Is Permanent and Enforceable?

Yes. The Maintenance Plan shows that the exclusive cause of past SO_2 NAAQS violations (the Phelps Dodge copper smelter in Morenci) no longer

exists. As a result, there is no reason to expect that SO_2 ambient concentrations will exceed background levels.

5. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175a of the Act?

Yes. As discussed above, we are approving the Morenci Maintenance Plan in this action.

IV. Final Action

We are approving the Maintenance Plan for the Morenci area under CAA Sections 110 and 175A. We are also approving the State's request to redesignate the Morenci area to attainment of the primary SO_2 NAAQS.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan and redesignate the area if relevant adverse comments are filed. This rule will be effective June 25, 2004 without further notice unless relevant adverse comments are received by May 26, 2004. If we receive such comments, this action will be withdrawn before the effective date. All public comments received will then be addressed in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 25, 2004.

V. 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 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 is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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 June 25, 2004. 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* CAA 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, National parks, Wilderness areas.

Dated: March 30, 2004.

Laura Yoshii,

Acting 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)(114) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(114) The following plan was submitted on June 21, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) Morenci Sulfur Dioxide Nonattainment Area State

Implementation and Maintenance Plan, adopted by the Arizona Department of Environmental Quality on June 21, 2002.

PART 81—[AMENDED]

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

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

■ 2. In § 81.303 the SO_2 table is amended by revising the entry for the Morenci area to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA–SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
Morenci:				
T3S, R28E [2]				x
T3S, R29E				x
T3S, R30E				x
T4S, R28E [2]				x
T4S, R29E				x
T4S, R30E				x
T5S, R28E [2]				x
T5S, R29E [2]				x
T5S, R30E			x	
* * * * * * *				

* * * * * * *

[2] That portion in Greenlee County.

* * * * *

[FR Doc. 04–9277 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7652–9]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the West Virginia Ordnance Works Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces the partial deletion of portions of the West Virginia Ordnance Works (WVOW) site from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the State of West Virginia have determined that all appropriate responses under CERCLA have been implemented at the portions of the site being deleted from the NPL and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of West Virginia have determined that response actions conducted at the site to date remain protective of public health, welfare, and the environment.

DATES: *Effective Date:* April 26, 2004.

ADDRESSES: Comprehensive information on this release is available for viewing at the site information repositories at the following locations:

Mason County Public Library, 508 Viand Street, Point Pleasant, WV 25550, (304) 675–0894. Hours of Operation: Monday through Thursday, 10 a.m.–8 p.m., and Friday through Saturday, 10 a.m.–5 p.m.

U.S. EPA Region III Library, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5254. Hours of Operation: Monday through Friday, 8 a.m.–5 p.m.

U.S. Army Corps of Engineers, Huntington District, 502 8th Street, Huntington, WV 25701, (800) 822–8413 or (304) 399–5388. Hours of Operation: Monday through Friday, 8 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Potosnak, PE, Remedial Project Manager, U.S. EPA Region III (3HS13), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3362.

SUPPLEMENTARY INFORMATION: The portions of the site to be deleted from the NPL are the Operable Unit 10 (OU–10) South Acids Area, Cooling Tower Area, and Toluene Storage Areas; the Expanded Site Investigation 1 (ESI–1) Magazine Area; the ESI–4 Red Water Outfall Sewer; the ESI–6 Motorpool/Maintenance Area; and the ESI–7 Former Sewage Treatment Plant.

A Notice of Intent to Delete for this site was published March 3, 2004 (69 FR 9988). The closing date for comments on the Notice of Intent to Delete was April 2, 2004. EPA received no comments.

EPA identifies releases which appear to present a significant risk to public health, welfare, or the environment, and it maintains the NPL as the list of those releases. Releases on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund. Any release deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: April 15, 2004.

Richard J. Kampf,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 04–9286 Filed 4–23–04; 8:45 am]

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