Maintenance Area submitted by the Secretary of the Pennsylvania Department of Environmental Protection:

Applicable geographic area	Year	Tons per day NO_X	Tons per day VOCs
Lancaster 1997 8-Hour Ozone Maintenance Area	2009	20.57	35.18
Lancaster 1997 8-Hour Ozone Maintenance Area	2018	10.14	14.29

[FR Doc. 2013–18878 Filed 8–7–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0913; FRL–9843–7]

Partial Disapproval of State Implementation Plan; Arizona; Regional Haze Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a partial disapproval of the Arizona State Implementation Plan (SIP) to implement the regional haze program for the first planning period through 2018. Regional haze is caused by emissions of air pollutants from numerous sources located over a broad geographic area. The Clean Air Act (''CAA'' or the ''Act'') and EPA's regulations require states to adopt and submit to EPA SIPs that assure reasonable progress toward the national goal of achieving natural visibility conditions in 156 national parks and wilderness areas designated as Class I areas.

DATES: *Effective Date:* This rule is effective on September 9, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0913 for this action. Generally, documents in the docket for this action are 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 at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Thomas Webb, U.S. EPA, Region 9, Planning Office, Air Division, Air–2, 75 Hawthorne Street, San Francisco, CA 94105. Thomas Webb can be reached at telephone number (415) 947–4139 and via electronic mail at *webb.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Overview of Proposed Action

We proposed on February 5, 2013, to disapprove Arizona's SIP to implement the regional haze program under 40 CFR 51.309.[1] Specifically, we proposed to disapprove in part a December 24, 2008, submittal by the Arizona Department of Environmental Quality (ADEQ) in which the State resubmitted materials previously submitted on December 23, 2003, and December 30, 2004 (collectively ''Arizona's 309 Regional Haze SIP'').[2] These SIP submittals were intended to address the regional haze requirements of the CAA and EPA's implementing regulations at 40 CFR 51.309 for four of Arizona's mandatory Class I areas. Our proposed rule includes additional information about these requirements and Arizona's SIP submittals.

II. Public Comments and EPA Responses

During the 30-day comment period on our proposal, we received comments from:

- Eric Massey, Director Air Quality, ADEQ; and
- David Nimkin, Gloria Smith, Barbara Warren, Donna House and Dan Randolph, on behalf of National Parks Conservation Association, Sierra Club, Physicians for Social Responsibility (Arizona Chapter), Dine' Citizens Against Ruining Our Environment, and San Juan Citizens Alliance (collectively, the ''Conservation Organizations'').

We carefully considered these comments, which are located in the docket for this action. In the following sections, we provide summaries of and our responses to these comments.

Comment 1: ADEQ commented that its December 24, 2008, ''re-submittal'' letter was not a revision to Arizona's 309 Regional Haze SIP because it did not include new information and was not subject to a formal public comment period. ADEQ further asserted that its 2003 and 2004 SIP submittals were deemed complete by operation of law six months after submission, pursuant to CAA section 110(k)(1)(B), and that EPA should have acted on these submittals within 18 months pursuant to CAA section 110(k)(2).

Response 1: As an initial matter, ADEQ's comment appears to have no relevance to the substance of EPA's proposed action. Regardless of whether ADEQ's December 24, 2008, re-submittal letter was a SIP revision or merely a request that EPA act upon ADEQ's 2003 and 2004 SIP submittals, the fact remains that Arizona's 309 Regional Haze SIP does not satisfy the requirements of 40 CFR 51.309(d)(4) and is therefore not approvable. We also note that ADEQ's comment appears to contradict the statements made in the December 24, 2008, re-submittal letter itself.[3] The re-submittal letter states that:

> Plan submittal is consistent with the provisions of Arizona Revised Statutes (ARS) Title 49, §§ 49– 104, 49– 06, 49–404,49–406, 49–414, and 49–414.0 1 and the Code of Federal Regulations (CFR) Title 40, §§ 51.102–51.104. The plan also complies with the public process requirements in Section 110(a)(l) and (a)(2) of the Clean Air Act; 40 CFR 51.102 regarding preparation, notice, and submission of state implementation plans; and Arizona Revised Statutes 49–425 regarding notice and [public] review of rules.[4]

Consistent with these statements regarding public process, EPA viewed the re-submittal letter as a SIP revision. However, if Arizona did not intend for the letter to be a SIP revision, then we construe it as a withdrawal of those

[1] 78 FR 8083.

[2] As explained in our proposal, this disapproval is ''partial'' rather than ''full'' because EPA previously approved certain burning and smoke management rules that were part of the 2008 SIP submittal.

[3] Letter from Stephen A. Owens, ADEQ, to Wayne Nastri, EPA, December 24, 2008 (''re-submittal letter'').

[4] *Id.* at 1.

portions of the State's 2003 and 2004 SIP submittals addressing the stationary source requirements of 40 CFR 51.309(d)(4), as well as an acknowledgment of the State's failure to submit provisions to address eight of the State's Class I areas under 40 CFR 51.309(g). As the letter explains:

> This plan submittal does not include provisions under § 309(d)(4) or § 309(g). Due to the new requirements for stationary source control strategies based on the decision rendered in *Center for Energy and Economic Development (CEED)* v. *EPA,* 398 F.3d 653 (DC Cir. 2005), Arizona has not been able to complete revisions to § 309(d)(4) or complete § 309(g) by the deadline of December 17, 2007.[5]

Thus, the re-submittal letter clearly acknowledged that Arizona's 309 Regional Haze SIP lacked any provisions to address the critical requirements of 40 CFR 51.309(d)(4) and 51.309(g).

The absence of these provisions cannot be remedied by the fact that Arizona's 2003 and 2004 SIP submittals were deemed ''complete'' by operation of law. Section 110(k)(1)(A) of the CAA requires EPA to ''promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection.'' [6] Pursuant to this requirement, EPA has promulgated ''completeness criteria,'' consisting of administrative materials and technical support elements that must be included with all SIP submittals.[7] These criteria do not include the substantive provisions that a given SIP must include to comply with the minimum requirements of the CAA. Rather, such substantive requirements are set out in the CAA itself and in EPA's implementing regulations. Thus, the fact that the 2003 and 2004 SIP submittals were deemed ''complete'' with respect to the minimum criteria required under CAA section 110(k)(1)(A) does not mean that the submittals were complete in the sense that they contained the provisions necessary to satisfy the requirements of 40 CFR 51.309. On the contrary, ADEQ acknowledged in its re-submittal letter that Arizona's 309 Regional Haze SIP ''does not include provisions under § 309(d)(4) or § 309(g).'' [8]

Finally, ADEQ's assertion that EPA should have acted on the State's 2003 and 2004 SIP submittals within 18 months of December 30, 2004, is not persuasive. The D.C. Circuit's decision in *Center for Energy & Economic Development* v. *EPA,* 398 F.3d 653 (D.C. Cir. 2005) (''CEED''), which invalidated 40 CFR 51.309's stationary source requirements, was issued on February 18, 2005. In response to this decision, EPA proposed revisions to 40 CFR 51.309 on August 1, 2005.[9] Among other things, EPA proposed to allow states to submit or resubmit 309 SIPs at a later date in order to provide time for States to revisit the SO_2 milestones and backstop emission trading program. EPA further explained that:

> With respect to the other strategies contained in § 51.309, although these other provisions of § 51.309 were not affected by the decision in *CEED* v. *EPA* and may remain effective as a matter of State law in each State, the EPA cannot approve implementation plans under § 51.309 as meeting reasonable progress until the plans contain valid provisions for addressing stationary sources.[10]

Thus, EPA clearly indicated that we could not approve previously submitted 309 SIPs until they were resubmitted with valid provisions for addressing stationary sources. EPA ultimately set a deadline of December 17, 2007, for these re-submittals.[11] Regardless of whether ADEQ's December 24, 2008, re-submittal letter is characterized as a SIP revision or merely a prompt for EPA to act upon the State's earlier 2003 and 2004 SIP submittals, the fact remains that Arizona, by its own admission, failed to submit provisions addressing the requirements of 40 CFR 51.309(d)(4) and 51.309(g). Finally, even if it were true that EPA should have acted on Arizona's 2003 and 2004 SIP submittals within 18 months, it is irrelevant to the substance of the action EPA is taking in this final rule. EPA is addressing the approvability of Arizona's 309 Regional Haze SIP now and partially disapproving it because the SIP does not satisfy the requirements of 40 CFR 51.309(d)(4).

Comment 2: ADEQ commented that EPA had no authority to adopt a Federal Implementation Plan (FIP) in its December 5, 2012, final rule that established BART for three power plants in Arizona.[12] ADEQ argued that EPA's January 15, 2009, finding of failure to submit (''Finding''),[13] which provided the basis for EPA's FIP authority, was invalid because Arizona submitted 309 SIPs in 2003 and 2004, both of which were deemed complete by operation of law. Finally, ADEQ asserted that if EPA did have FIP authority, then it would extend only to the requirements of 40 CFR 51.309(d)(4) and 51.309(g), not to the requirement for BART.

Response 2: As an initial matter, this comment is not germane in any way to the present rulemaking, in which EPA is finalizing its partial disapproval of Arizona's 309 Regional Haze SIP for failure to comply with the requirements of 40 CFR 51.309(d)(4). Rather, ADEQ's comment appears to be a collateral challenge to EPA's Finding and other rulemakings EPA has conducted involving regional haze and BART requirements in Arizona. We note that ADEQ's objection to EPA's Finding comes nearly three years after the statutory deadline for challenging that action has passed. Under the CAA, any party seeking judicial review of EPA's Finding was required to file a petition for review within 60 days of publication of the Finding in the **Federal Register**, or by no later than March 16, 2009. No party, including Arizona, filed such a petition. Therefore, ADEQ's claim that EPA's Finding was invalid and that EPA did not have FIP authority to promulgate its December 5, 2012, final rule is time-barred.

We also disagree with the substance of ADEQ's comment. As ADEQ noted in its comment, EPA's authority to issue a FIP arises from one of three triggering events: (1) A finding that a state has failed to make a required SIP submittal; (2) a finding that a SIP submittal does not satisfy the minimum criteria of CAA section 110(k)(1)(A); or (3) the disapproval, in whole or in part, of a SIP submittal.[14] Contrary to ADEQ's assertion, the fact that Arizona's 2003 and 2004 SIP submittals were deemed ''complete'' by operation of law has no bearing on EPA's Finding, which was premised on the fact that Arizona failed to submit SIP provisions to satisfy the requirements of 40 CFR 51.309(d)(4) and 51.309(g). The State's 2003 and 2004 SIP submittals could not have addressed 40 CFR 51.309(d)(4) and 51.309(g) because the former requirement was modified in response to the D.C. Circuit's 2005 decision in CEED, while the latter requirement did not even exist until EPA finalized our revisions to 40 CFR 51.309 in 2006.[15] ADEQ acknowledged this fact in its December 24, 2008, re-submittal letter, which plainly stated that Arizona's 309 Regional Haze SIP addresses neither 40 CFR 51.309(d)(4) nor 51.309(g).[16]

Additionally, we disagree with ADEQ's contention that EPA's FIP

[5] *Id.* at 2.

[6] 42 U.S.C. 7410(k)(1)(A).

[7] 40 CFR part 51, Appendix V.

[8] Re-submittal letter at 2.

[9] 70 FR 44154 (August 1, 2005).

[10] *Id.* at 44165.

[11] *Id.* at 44166.

[12] 77 FR 72512 (December 5, 2012).

[13] 74 FR 2392 (January 15, 2009).

[14] 42 U.S.C. 7410(c)(1).

[15] 71 FR 60633 (October 13, 2006) codified at 40 CFR 51.309.

[16] Re-submittal letter at 2.

authority is somehow limited to the requirements of 40 CFR 51.309(d)(4) and 51.309(g). Section 309 is an alternative route to compliance with the regional haze rule that can only be implemented at the election of the state. The regional haze rule clearly explains that if a state chooses to fulfill its regional haze obligation under 40 CFR 51.309, but fails to submit the SIP provisions necessary to satisfy that obligation, then the state remains subject to the requirements of 40 CFR 51.308.[17] Thus, when Arizona failed to submit SIP provisions addressing the requirements of 40 CFR 51.309(d)(4) and 51.309(g) by the December 17, 2007, deadline, Arizona remained subject to the general requirements of 40 CFR 51.308. In other words, the regulatory gap left by Arizona's failure to submit a comprehensive 309 SIP was a duty to submit a 308 SIP. As a result, EPA's Finding triggered a duty on behalf of EPA to issue a FIP that satisfied the requirements of 40 CFR 51.308, which include the requirement to establish BART for certain stationary sources.

Finally, even if EPA's FIP authority were somehow limited to the requirements of 40 CFR 51.309(d)(4) and 51.309(g), those provisions are far more expansive than ADEQ suggests. Section 51.309(d)(4) governs emissions of nitrogen oxides (NO_X), particulate matter (PM), and sulfur dioxide (SO_2) from stationary sources that cause or contribute to visibility impairment in the Class I areas on the Colorado Plateau. In particular, 40 CFR 51.309(d)(4)(i) requires the establishment of quantitative SO_2 emission ''milestones'' that provide for emissions reductions, which ''must be shown to provide for greater reasonable progress than would be achieved by application of BART pursuant to § 51.308(e)(2).'' In addition, 40 CFR 51.309(d)(4)(vi) requires 309 SIPs to ''contain any necessary long term strategies and BART requirements for stationary source PM and NO_X emissions.'' Finally, 40 CFR 51.309(g) includes the requirements for Arizona's eight other Class I Areas and mandates, among other things, the establishment of reasonable progress goals and implementation of ''any additional measures necessary to demonstrate reasonable progress,'' consistent with the requirements of 40 CFR 51.308(d)(1)–(4). In short, the requirements of 40 CFR 51.309(d)(4) and 51.309(g) encompass three critical elements of the regional haze program: Reasonable progress, long-term strategies, and BART (or ''better-than-BART'' alternatives) for NO_X, PM, and SO_2. Therefore, even if EPA's FIP authority were somehow limited to fulfilling the requirements of 40 CFR 51.309(d)(4) and 51.309(g), that authority nevertheless extends to each of these critical elements, which include BART.

Comment 3: ADEQ commented that EPA's delay in acting on Arizona's 309 Regional Haze SIP and the Agency's promulgation of a FIP in a separate rulemaking did not give Arizona an adequate chance to revise its SIP to address the identified deficiencies.

Response 3: Arizona has been on notice since August 1, 2005, when EPA proposed to amend 40 CFR 51.309 in response to the D.C. Circuit's decision in CEED, of the deficiencies associated with the State's 2003 and 2004 SIP submittals. There, EPA publicly stated that ''EPA cannot approve implementation plans under section 51.309 as meeting reasonable progress until the plans contain valid provisions for addressing stationary sources.'' [18] We also explained that ''[s]tates opting for § 51.309 will be required to resubmit SIPs some time after [the invalidated portions of the 309 regulations] have been rectified . . . .'' [19] EPA's October 2006 final rule amending 40 CFR 51.309 also made clear that Arizona would have to revise and resubmit its 309 SIP to address 40 CFR 51.309(d)(4) and 51.309(g) by December 17, 2007.[20] Arizona's December 24, 2008, re-submittal letter, which stated ''[t]his plan submittal does not include provisions under § 309(d)(4) or § 309(g),'' [21] illustrates that Arizona was well aware of these requirements and the deficiencies in its 309 SIP.

EPA found on January 15, 2009, that Arizona failed to re-submit the required provisions, again stating explicitly and on public record:

> Arizona, New Mexico, and Wyoming have opted to develop SIPs based on the recommendations of the Grand Canyon Visibility Transport Commission under 40 CFR 51.309. All three States have failed to submit the plan elements required by 40 CFR 51.309(g), the reasonable progress requirements for areas other than the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report. Arizona and New Mexico have also failed to submit the plan element required by 40 CFR 51.309(d)(4), the alternate stationary source program for control of sulfur dioxide (SO_2).[22]

Around the same time, EPA sent a letter to ADEQ notifying the State of the implications of its failure to submit the required SIP provisions, explaining that:

> Upon the effective date of the **Federal Register** notice, EPA must within two years either fully approve Arizona's regional haze SIP or promulgate a Federal implementation plan (FIP) as required by CAA section 110(c). Please be aware that EPA needs about 12 months after receipt of a SIP to take final action. If we do not have sufficient time to review and approve a submitted SIP revision, the CAA requires that EPA impose a FIP. In order to avoid having EPA issue a FIP, we strongly recommend that you submit your SIP revision within a year of this finding, or sooner if possible.[23]

Thus, over the last eight years, EPA has repeatedly and publicly specified the deficiencies in Arizona's 309 Regional Haze SIP and allowed ample time for Arizona to address these deficiencies.

Comment 4: The Conservation Organizations expressed their support for EPA's determination that Arizona's 309 Regional Haze SIP fails to comply with the requirements of the regional haze rule. They provided a summary of the requirements of 40 CFR 51.309(d)(4) and a history of Arizona's regional haze SIP submissions since EPA's 2006 revisions to the section 309 requirements, concluding that ''EPA's final rule should disapprove Arizona's 309 SIP for failure to comply with the requirements of Section 309(d)(4).'' They further asserted that ''EPA's final rule should find that Arizona declined to participate in the alternative Section 309 [Western Backstop Trading Program] and instead has chosen to address SO_2, NO_X, and PM reductions through the BART process and long-term strategy requirements found in Section 308.''

Response 4: We agree with this comment and acknowledge the Conservation Organizations' support for this rulemaking.

III. Summary of Final Action

For the reasons set out in our proposed rule and in this final rulemaking, we are finalizing our partial disapproval of Arizona's 309 Regional Haze SIP. In particular, we are disapproving all portions of Arizona's 2003 and 2004 SIP submittals, except those portions that have already been

[17] See 40 CFR 51.309(a) (''Any Transport Region State electing not to submit an implementation plan under this section is subject to the requirements of § 51.308 in the same manner and to the same extent as any State not included within the Transport Region.''). See also 64 FR 35754, July 1, 1999 (explaining that ''the requirements of Section 51.309 . . . are not severable. States that wish to take advantage of the GCVTC's efforts and EPA's acceptance thereof are obligated to meet all of the requirements of section 51.309'' (emphasis added)).

[18] 70 FR 44165 (August 1, 2005).

[19] *Id.* at 44165, 44166.

[20] 71 FR 60633 (October 13, 2006) codified at 40 CFR 51.309.

[21] Re-submittal letter at 2.

[22] 74 FR 2393 (January 15, 2009).

[23] Letter from Deborah Jordan, EPA, to Stephen Owens, ADEQ (January 14, 2009).

approved and those portions pertaining to Reasonably Attributable Visibility Impairment (RAVI).

Under section 179(a) of the CAA, EPA's final disapproval of a submittal that addresses a requirement of CAA sections 171–193 or a revision that is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) starts a sanctions clock. Arizona's 309 Regional Haze SIP was not submitted to meet either of these requirements. Therefore, today's action will not trigger mandatory sanctions under CAA section 179(a).

In addition, CAA section 110(c)(1) requires EPA to promulgate a FIP at any time within two years after disapproving a SIP in whole or in part, unless EPA first approves a SIP correcting the deficiencies. As explained above, due to our previous Finding that Arizona failed to submit a complete regional haze SIP, EPA is already subject to a FIP duty under section 110(c)(1) with respect to the regional haze requirements for Arizona. Moreover, we are also subject to a set of court-ordered deadlines by which we must approve a SIP and/or promulgate a FIP that collectively meet the regional haze requirements for Arizona.[24] Thus, we do not construe today's partial disapproval of Arizona's 309 Regional Haze SIP as creating any new FIP obligation. However, as noted in our proposed rulemaking, Arizona is appealing the district court's entry and modification of the consent decree that set the deadlines for EPA action on regional haze plans for Arizona.[25] If Arizona's challenge ultimately results in any changes to the scope of EPA's existing FIP duty with respect to regional haze in Arizona, then today's action will trigger a two-year FIP clock for any additional regional haze requirements that are not subject to the previous FIP clock.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the E.O.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Reduction Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or SIP disapprovals under section 110 of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the disapproval of SIP revisions does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action disapproves certain SIP elements and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will 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, because it merely disapproves certain SIP revisions implementing and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. It will not have

[24] *National Parks Conservation Association* v. *Jackson* (D.D.C. Case 1:11–cv–01548).

[25] *National Parks Conservation Association* v. *EPA* (D.C. Cir., USCA Case #12–5211).

substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it disapproves certain SIP revisions.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely disapproves certain SIP revisions under section 110 of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. Congressional Review Act

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).

L. Petitions for Judicial Review

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 October 7, 2013. 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, Nitrogen dioxide, Particulate matter, Sulfur oxides, Visibility.

Dated: July 26, 2013.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

■ 2. Section 52.145 is amended by adding paragraph (h) to read as follows:

§ 52.145 Visibility protection.

* * * * *

(h) *Disapproval.* The following portions of the Arizona SIP are disapproved because they do not meet the applicable requirements of Clean Air Act sections 169A and 169B and the Regional Haze Rule at 40 CFR 51.309:

(1) Regional Haze State Implementation Plan for the State of Arizona (''Arizona 309 Regional Haze SIP'') submitted by the Arizona Department of Environmental Quality on December 23, 2003, with the exception of Chapter 5 (Strategy to Address Reasonably Attributable Visibility Impairment (RAVI)) and Appendix A–5 (Attributable Impairment).

(2) The Arizona Regional Haze State Implementation Plan Revision submitted by the Arizona Department of Environmental Quality on December 31, 2004, with the exception of the provisions already approved at 40 CFR 52.120(c)(131).

(3) Letter from Stephen A. Owens, Director, Arizona Department of Environmental Quality, dated December 24, 2008 re: Submittal of Arizona Regional Haze State Implementation Plan.

[FR Doc. 2013–18881 Filed 8–7–13; 8:45 am]

BILLING CODE 6560–50–P