

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R09-OAR-2009-0435; FRL-8976-3]

Approval and Promulgation of Implementation Plans; Corrections to the Arizona and Nevada State Implementation Plans**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is deleting certain statutes and rules that were erroneously approved by EPA under the Clean Air Act as part of the Arizona and Nevada state implementation plans. The statutes that are the subject of this rule are from the Arizona state implementation plan. The rules that are the subject of this rule were adopted by the Pima County Health Department in Arizona and the State Environmental Commission, Clark County District Board of Health, and Washoe County District Board of Health in Nevada. The statutes and rules that EPA is deleting relate to general declarations of policy, advisory committees, variances, and incidental fees and nuisance odors. EPA has determined that the continued presence of these statutory provisions and rules in the applicable state implementation plans is potentially confusing and thus harmful to affected sources, the state, local agencies, the general public and to EPA. The intended effect of this action is to delete these statutes and rules from the Arizona and Nevada state implementation plans. EPA is also correcting certain clerical and typographical errors in the codification of the Pima County portion of the Arizona plan.

DATES: This rule is effective on January 4, 2010 without further notice, unless EPA receives adverse comments by December 3, 2009. 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-2009-0435, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* allen.cynthia@epa.gov.

3. *Mail or deliver:* Cynthia Allen (AIR-4), 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 <http://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 <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> portal 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 <http://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: Cynthia Allen, Rules Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4120, allen.cynthia@epa.gov.

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

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I. Why is EPA correcting the SIPs?

The Clean Air Act (CAA or "Act") was first enacted in 1970. In the 1970s and early 1980s, thousands of state and local agency regulations were submitted to EPA for incorporation into state

implementation plans (SIPs) in order to fulfill the new federal requirements. In many cases, states submitted entire regulatory air pollution programs, including many elements not required by the Act. Due to time and resource constraints, EPA's review of these submittals focused primarily on the new substantive requirements, and we approved many other elements into the SIP with minimal review.

We now recognize that many of these elements were not appropriate for approval into the SIPs because they are not required for SIPs and are not related to the SIPs' purpose under CAA section 110(a) of implementing, maintaining, and enforcing the national ambient air quality standards. Examples of inappropriately-approved SIP elements include statutes and rules that consist of general statements of policy; that govern local advisory boards; that specify incidental fees, method of payment, and refunds; and that regulate nuisance odors. Most of the statutes and rules we are deleting in today's action fall under one of these categories.

In addition, we are deleting certain variance-related provisions that were orphaned by a previous EPA rulemaking deleting most such provisions from the Nevada Division of Environmental Protection (NDEP) portion of the Nevada SIP and the Pima County portion of the Arizona SIP. See EPA's proposed rule at 61 FR 38664 (July 25, 1996) and final rule at 62 FR 34641 (June 27, 1997) for the rationale concerning the inappropriateness of variance provisions in a SIP. As explained in EPA's 1996 rule proposing to remove various variance-related provisions, variance provisions are generally prohibited by, and are not legally enforceable pursuant to, section 110(i) of the Act.

II. What statutory provisions and rules are being deleted?

EPA has determined that the statutes and rules listed in the tables below were inappropriate for inclusion in the SIP, but were previously approved into the SIP in error. Dates that these statutes and rules were submitted by Arizona and Nevada and approved by EPA are provided. We are deleting these statutes and rules from the Arizona and Nevada SIPs under CAA section 110(k)(6)¹ as inconsistent with the requirements of CAA section 110(a).

or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public."

¹ Section 110(k)(6) of the Clean Air Act, as amended in 1990, provides, "Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating

any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval,

ARIZONA REVISED STATUTES

| Statute No. | Title | Submittal date | Approval date/FR cite |
|--------------|---|----------------|------------------------|
| 36-770 | Declaration of Policy | 07/13/81 | 06/18/82; 47 FR 26382. |
| 36-776 | Authorization to Accept Funds or Grants | 07/13/81 | 06/18/82; 47 FR 26382. |
| 36-777 | Advisory Council | 07/13/81 | 06/18/82; 47 FR 26382. |

PIMA COUNTY DEPARTMENT OF ENVIRONMENTAL QUALITY

| Rule No. | Title | Submittal date | Approval date/FR cite |
|-----------|---|----------------|------------------------|
| 131 | Establishment | 10/09/79 | 04/16/82; 47 FR 16326. |
| 132 | Composition | 10/09/79 | 04/16/82; 47 FR 16326. |
| 133 | Terms: Nominations | 10/09/79 | 04/16/82; 47 FR 16326. |
| 134 | Function | 10/09/79 | 04/16/82; 47 FR 16326. |
| 135 | Officers; Procedures | 10/09/79 | 04/16/82; 47 FR 16326. |
| 136 | Meetings; Special Studies; Hearings | 10/09/79 | 04/16/82; 47 FR 16326. |
| 137 | Compensation; Absences | 10/09/79 | 04/16/82; 47 FR 16326. |
| 164 | Copies | 10/09/79 | 04/16/82; 47 FR 16326. |
| 181 | Legal Authority | 10/09/79 | 04/16/82; 47 FR 16326. |
| 182 | General Procedures | 10/09/79 | 04/16/82; 47 FR 16326. |
| 205 | Conditional Permits (Variances) | 10/09/79 | 04/16/82; 47 FR 16326. |
| 214 | Permit Fee Payments | 10/09/79 | 04/16/82; 47 FR 16326. |
| 245 | Conditional Permit (Variance) Fees | 10/09/79 | 04/16/82; 47 FR 16326. |
| 246 | Payment of Permit Fees | 10/09/79 | 04/16/82; 47 FR 16326. |
| 247 | Refund of Permit Fees | 10/09/79 | 04/16/82; 47 FR 16326. |
| 248 | Fees for Duplicate Permits | 10/09/79 | 04/16/82; 47 FR 16326. |

NEVADA STATE REGULATIONS

| Rule No. | Title | Submittal date | Approval date/FR cite |
|--------------|---|----------------|------------------------|
| 2.11.7 | Untitled, but related to judicial review of variances | 12/29/78 | 08/27/81; 46 FR 43141. |

CLARK COUNTY DEPARTMENT OF AIR QUALITY AND ENVIRONMENTAL MANAGEMENT

| Rule No. | Title | Submittal date | Approval date/FR cite |
|---------------------------|---------------------------------------|----------------|------------------------|
| Section 3, rule 3.1 | Air Pollution Control Committee | 07/24/79 | 08/27/81; 46 FR 43141. |

WASHOE COUNTY DISTRICT HEALTH DEPARTMENT, AIR QUALITY MANAGEMENT DIVISION

| Rule No. | Title | Submittal date | Approval date/FR cite |
|----------------|--|----------------|------------------------|
| 020.020 | Adoption, Amending Regulations | 06/12/72 | 07/27/72; 37 FR 15080. |
| 020.030 | Hearing Board—Powers and Duties | 06/12/72 | 07/27/72; 37 FR 15080. |
| 020.075 | Technical Reports and Fees | 06/12/72 | 07/27/72; 37 FR 15080. |
| 030.3105 | Hazardous Materials Processes | 07/24/79 | 08/27/81; 46 FR 43141. |
| 030.3107 | Untitled, but related to the cost for permit transfer | 07/24/79 | 08/27/81; 46 FR 43141. |
| 030.3108 | Untitled, but related to the cost for permit replacement | 07/24/79 | 08/27/81; 46 FR 43141. |
| 040.055 | Nuisance—Odorous or Gaseous Contaminants | 06/12/72 | 07/27/72; 37 FR 15080. |

We are also taking this opportunity to correct certain clerical and typographical errors in a certain paragraph from the Arizona subpart of part 52 (“Approval and promulgation of implementation plans”) listing approved rules from the Pima County Health Department as submitted by Arizona on October 9, 1979, and approved by EPA on April 18, 1982 (47 FR 16326). The subject paragraph is 40 CFR 52.120(c)(38)(i)(A). In our 1982 final rule approving certain Pima County rules, we inadvertently identified the rules approved under

“Regulation 21” as “Rules 221–225.” The correct listing for the approved rules under “Regulation 21” is “Rules 211–215.”

In addition, as noted in an EPA final rule published at 69 FR 2509 (January 16, 2004), beginning with the 1993 version of the Code of Federal Regulations (CFR), the Government Printing Office (GPO) inadvertently omitted two lines of codified rules from 40 CFR 52.120(c)(38)(i)(A), the same paragraph listing the Pima County rules approved by us in 1982. Our 2004 correcting amendment replaced most of

the Pima County rules inadvertently omitted by the GPO but inadvertently failed to include “Regulation 21, Rules 221–225,” which, as noted above, should read: “Regulation 21: Rules 211–215.”

In addition, beginning with the 2004 version of the CFR, the paragraph (that omitted certain Pima County rules) that was intended to be replaced in its entirety through our 2004 correcting amendment has been published in addition to the replacement paragraph. In this action, we are correcting all of these errors with a revision to 40 CFR

52.120(c)(38)(i)(A) that correctly lists the rules approved under “Regulation 21” and that deletes the paragraph that we intended to replace in 2004.

III. Public Comment and Final Action

EPA has reviewed the statutes and rules listed in the tables above and determined that they were previously approved into the respective SIPs in error. Deletion of these rules will not relax the applicable SIP and is consistent with the Act. Therefore, EPA is deleting these statutes and rules under section 110(k)(6) of the Act, which provides EPA authority to remove these statutes and rules without additional State submission. EPA is also correcting certain clerical and typographical errors in the codification of the Pima County portion of the Arizona SIP.

We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same action. If we receive adverse comments by December 3, 2009, 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 January 4, 2010.

IV. Administrative Requirements

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 4, 2010. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel

notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. 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, Reporting and recordkeeping requirements.

Dated: October 19, 2009.

Nancy Lindsay,

Acting 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 D—Arizona

- 2. Section 52.120 is amended by:
 - a. Revising paragraph (c)(38)(i)(A);
 - b. Adding paragraph (c)(38)(i)(A)(1); and
 - c. Adding paragraph (c)(50)(ii)(A)(1).
- The revision and additions read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *
(38) * * *
(i) * * *

(A) New or amended Regulation 10: Rules 101–103; Regulation 11: Rules 111–113; Regulation 12: Rules 121–123; Regulation 13: Rules 131–137; Regulation 14: Rules 141 and 143–147; Regulation 15: Rule 151; Regulation 16: Rules 161–165; Regulation 17: Rules 172–174; Regulation 18: Rules 181 and 182; Regulation 20: Rules 201–205; Regulation 21: Rules 211–215; Regulation 22: Rules 221–226; Regulation 23: Rules 231–232; Regulation 24: Rules 241 and 243–248; Regulation 25: Rules 251 and 252; Regulation 30: Rules 301 and 302;

Regulation 31: Rules 312–316 and 318; Regulation 32: Rule 321; Regulation 33: Rules 331 and 332; Regulation 34: Rules 341–344; Regulation 40: Rules 402 and 403; Regulation 41: 411–413; Regulation 50: Rules 501–503 and 505–507; Regulation 51: Rules 511 and 512; Regulation 60: Rule 601; Regulation 61: Rule 611 (Paragraph A.1 to A.3) and Rule 612; Regulation 62: Rules 621–624; Regulation 63: Rule 631; Regulation 64: Rule 641; Regulation 70: Rules 701–705 and 706 (Paragraphs A to C, D.3, D.4, and E); Regulation 71: Rules 711–714; Regulation 72: Rules 721 and 722; Regulation 80: Rules 801–804; Regulation 81: Rule 811; Regulation 82: Rules 821–823; Regulation 90: Rules 901–904; Regulation 91: Rule 911 (except Methods 13–A, 13–B, 14, and 15), and Rules 912 and 913; Regulation 92: Rules 921–924; and Regulation 93: Rules 931 and 932.
(1) Previously approved on April 16, 1982 in paragraph (c)(38)(i)(A) of this section and now deleted from the SIP without replacement Pima County Health Department Regulations: Regulation 13: Rules 131–137; Regulation 16: Rule 164; Regulation 18: Rules 181 and 182; Regulation 20: Rule

205; Regulation 21: Rule 214; and Regulation 24: Rules 245–248.
* * * * *
(50) * * *
(ii) * * *
(A) * * *
(1) Previously approved on June 18, 1982 in paragraph (c)(50)(ii)(A) of this section and now deleted from the SIP without replacement Arizona Revised Statutes: sections 36–770, 36–776, and 36–777.
* * * * *
Subpart DD—Nevada
■ 3. Section 52.1470 is amended by:
■ a. Adding paragraphs (c)(2)(i), (c)(14)(vii)(A), (c)(16)(viii)(D), and (c)(16)(ix)(A) to read as follows:
§ 52.1470 Identification of plan.
* * * * *
(c) * * *
(2) * * *
(i) Previously approved on July 27, 1972 in paragraph (c)(2) of this section and now deleted from the SIP without replacement Washoe County Air Quality

Regulations: Rules 020.020, 020.030, 020.075, and 040.055.
* * * * *
(14) * * *
(vii) * * *
(A) Previously approved on August 27, 1981 in paragraph (c)(14)(vii) of this section and now deleted from the SIP without replacement Nevada Air Quality Regulations: Rule 2.11.7.
* * * * *
(16) * * *
(viii) * * *
(D) Previously approved on August 27, 1981 in paragraph (c)(16)(viii) of this section and now deleted from the SIP without replacement Nevada Air Quality Regulations: Clark County District Board of Health Air Pollution Control Regulations: Section 3, Rule 3.1.
(ix) * * *
(A) Previously approved on August 27, 1981 in paragraph (c)(16)(ix) of this section and now deleted from the SIP without replacement Washoe County Air Quality Regulations: Rules 030.3105, 030.3107, and 030.3108.
* * * * *
[FR Doc. E9–26325 Filed 11–2–09; 8:45 am]
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