

would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of

a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (3)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

■ 2. In § 117.1007, remove paragraphs (c)(3) and (c)(4) and revise paragraphs (c)(1) and (c)(2) to read as follows:

#### § 117.1007 Elizabeth River—Eastern Branch.

\* \* \* \* \*

(c) \* \* \*

(1) Shall open on signal at any time, except from 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays.

(2) From 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays, shall open at any time for commercial vessels with a draft of 18 feet or more, provided that at least 6 hours advance notice has been given to the Berkley Bridge Traffic Control room at (757) 494-2490.

Dated: November 2, 2005.

**L.L. Hereth,**

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05-22388 Filed 11-9-05; 8:45 am]

**BILLING CODE 4910-15-P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R09-OAR-2005-AZ-0007, FRL-7994-6]

#### Interim Final Determination to Stay and/or Defer Sanctions, Pinal County Air Quality Control District

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

**ACTION:** Interim final rule.

**SUMMARY:** EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of a revision to the Pinal County Air Quality Control District (PACAQCD) portion of the Arizona State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern PCAQCD Rule 2-8-300.

**DATES:** This interim final determination is effective on November 10, 2005. However, comments will be accepted until December 12, 2005.

**ADDRESSES:** Submit comments, identified by docket number R09-OAR-2005-AZ-0007, by one of the following methods:

- Agency Website: <http://docket.epa.gov/rmepub/>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.

- E-mail: [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
- Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

**Instructions:** All comments will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency website, eRulemaking portal, or e-mail. The agency website and eRulemaking portal are "anonymous access" systems, 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://docket.epa.gov/rmepub/> 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 below.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, EPA Region IX, (415) 947-4118, [petersen.alfred@epa.gov](mailto:petersen.alfred@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, “we,” “us” and “our” refer to EPA.

## I. Background

On April 28, 2004 (69 FR 23103), we published a limited approval and limited disapproval of PCAQCD Rule 2-8-300 as adopted locally on June 29, 1993 and submitted by the State on November 27, 1995. We based our limited disapproval action a deficiency in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after May 28, 2005 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On May 18, 2005, PCAQCD adopted revisions to Rule 2-8-300 that were intended to correct the deficiency identified in our limited disapproval action. On September 12, 2005, the State submitted these revisions to EPA. In the Proposed Rules section of today’s **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiency identified in our April 28, 2004 disapproval action. Based on today’s proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our April 28, 2004 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised PCAQCD Rule 2-8-300, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

## II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with PCAQCD Rule 2-8-300 based on our

concurrent proposal to approve the State’s SIP revision as correcting a deficiency that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiency identified in EPA’s limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA’s determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State’s submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State’s submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State’s submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

## III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

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.

This action 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.

The Administrator certifies that this action 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.*).

This rule 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 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 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 rule 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. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of November 10, 2005. 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2). Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 9, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 19, 2005.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 05-22378 Filed 11-9-05; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[OAR-2005-0150a; FRL-7995-3]

#### Designation of Areas for Air Quality Planning Purposes; Arizona; Correction of Boundary of Phoenix Metropolitan 1-Hour Ozone Nonattainment Area

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to correct the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area to exclude the Gila River Indian Reservation. EPA is taking this action under the authority of section 110(k)(6) of the Clean Air Act and in light of the Federal trust responsibility to the Tribes. This action is intended to facilitate and support the Gila River Indian Community's efforts to develop, adopt and implement a comprehensive Tribal Implementation Plan by removing unnecessary obligations that flow from the erroneous inclusion of a portion of the Reservation in the Phoenix metropolitan 1-hour ozone nonattainment area.

**DATES:** This action will be effective on January 9, 2006, without further notice, unless EPA receives adverse comments by December 12, 2005.

If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect and that we will respond to submitted comments and take subsequent final action.

**ADDRESSES:** Submit comments, identified by docket number OAR-2005-0150, by one of the following methods:

1. Agency Web site: <http://docket.epa.gov/rmepub/>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.
2. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.
3. E-mail: [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).
4. Mail or deliver: Wienke Tax, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency, Region 9, 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://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are "anonymous access" systems, and EPA will not know your identify 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://docket.epa.gov/rmepub/> and in hard copy at EPA Region 9, 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:** Wienke Tax, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (520) 622-1622, e-mail: [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, the terms "we," "us," and "our" refer to EPA.

#### Table of Contents

- I. Regulatory Context
- II. Gila River Indian Community's Request for a Boundary Change
- III. EPA Review of the Gila River Indian Community's Request
  - A. CAA Authority to Correct Area Designations
  - B. General Physical Description of the Phoenix Metropolitan Area and Environs
  - C. Contribution by Emission Sources on the Reservation
  - D. Oxidants/Ozone Air Quality Conditions on the Reservation
  - E. Ozone Planning Issues
  - F. Evaluation and Conclusion
- IV. Final Action
- V. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act (RFA)
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer Advancement Act
  - J. Congressional Review Act

#### I. Regulatory Context

On April 30, 1971 (36 FR 8186), pursuant to section 109 of the Clean Air Act (CAA or Act), as amended in 1970, EPA promulgated national ambient air quality standards (NAAQS) for six criteria pollutants, including photochemical oxidants ("oxidants"). EPA set the NAAQS for oxidants (measured as ozone) at 0.08 parts per million (ppm), 1-hour average. Under section 110 of the Clean Air Act Amendments of 1970, States were required to adopt and submit plans that provide for implementation, maintenance, and enforcement of the NAAQS. These original plans, generally submitted and approved in the early 1970's, are known as State Implementation Plans (SIPs).