subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in the March 11, 1994 rule, approving the Butte PM–10 plan, the August 13, 2001 rule, approving, for the most part, a recodification and revisions to the Administrative Rules of Montana, the September 21, 2001 rule, approving Montana's conformity, and the November 15, 2001 rule, approving revisions to the Missoula County Air Pollution Control Program.

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of October 23, 2002. 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. These corrections to the identification of plan for Montana is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 27, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

40 CFR part 52 of chapter I, title 40 is amended as follows:

PART 52—[CORRECTED]

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

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

Subpart BB—Montana

2. Section 52.1370 is amended by revising the introductory text of paragraphs (c)(29) and (c)(49) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(29) The Governor of Montana submitted a portion of the requirements for the moderate nonattainment area PM10 State Implementation Plan (SIP) for Butte, Montana with a letter dated July 9, 1992, with technical corrections dated May 17, 1993. The submittals were made to satisfy those moderate PM10 nonattainment area SIP requirements due for Butte on November 15, 1991. The Butte PM10 SIP replaces the prior approved Butte total suspended particulate (TSP) SIP approved in paragraph (c)(21).

* * * * *

(49) On September 19, 1997, December 10, 1997, April 14, 1999, December 6, 1999 and March 3, 2000, the Governor submitted a recodification and revisions to the Administrative Rules of Montana. EPA is replacing in the SIP all of the previously approved Montana air quality regulations except that the Kraft Pulp Mill Rule, ARM 16.8.1413, effective December 31, 1972, and Stack Heights and Dispersion Techniques Rule, ARM 16.8.1204–1206, effective June 13, 1986, with those regulations listed in paragraph (c)(49)(i)(A) of this section. The Kraft Pulp Mill Rule, ARM 16.8.1413, effective December 31, 1972, and Stack Heights and Dispersion Techniques Rule, ARM 16.8.1204–1206, effective June 13, 1986 remain a part of the SIP. In addition, the Governor submitted Yellowstone County's Local Regulation No. 002—Open Burning.

* * * * *

[FR Doc. 02–22975 Filed 9–20–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 078–0036; FRL–7380–9]

Revision to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a full disapproval of a revision to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). This action was proposed in the Federal Register on December 18, 2000 and concerns visible emission sources. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action directs Arizona to correct the deficiencies in Rule R18–2–702.

EFFECTIVE DATE: Today's final rule is effective on October 23, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect a copy of the submitted rule revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415)947–4118.

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

I. Proposed Action

On December 18, 2000 (65 FR 79037), EPA published a notice of proposed rulemaking (NPRM) proposing a full disapproval of the rule that was submitted for incorporation into the Arizona SIP.

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Amended	Submitted
ADEQ	R18–2–702	General Provisions	11/15/93	07/15/98

The NPRM contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. We extended this comment period on March 16, 2001 (66 FR 15212) to receive comments by April 16, 2001 and received comments from the following parties:

Chuck Shipley, Arizona Mining Association (AMA); letter dated February 16, 2001 and received February 16, 2001.

Scott Davis, Pinnacle West Capital Corporation (PWCC); letter dated February 15, 2001 and received February 16, 2001.

Nancy Wrona, ADEQ; letter dated April 16, 2001 and received April 16, 2001.

The comments and our responses are summarized below.

Comment I: AMA disagrees with EPA's position that the Rule R18–2–702 procedure for an alternative opacity standard (AOS) is a SIP relaxation and is unacceptable. AMA states that a less rigorous ADEQ AOS procedure was previously approved into the SIP by EPA in old ADEQ Rule R9–3–501.

AMA also states that 40 CFR 60.11(e)(6)-(8) in the General Provisions of EPA's New Source Performance Standards (NSPS) establishes a similar procedure for sources to receive a new opacity standard. AMA asserts that the ADEQ AOS procedure in Rule R18–2–702 is ''nearly identical'' to the federal NSPS procedure.

Response: AMA appears to argue that the AOS procedure is not a relaxation because it is at least as stringent as the AOS procedure already approved in the SIP in Rule R9–3-501. This, however, is not relevant to the basis for EPA's disapproval. As explained in the NPRM, Rule R18–2–702 is deficient because it allows for a potential relaxation of the opacity standard to an AOS less than the ''RACM/RACT'' that should be prescribed by the Rule. *See* CAA §§ 172(c)(1) and 189(a)(1)(C) (requiring reasonably available control measures (RACM), including reasonably available control technology (RACT), in moderate PM–10 nonattainment areas). The fact that EPA previously approved in error the ADEQ AOS procedure in Rule R9–3–501 is not a legal justification to reinforce this error in our action on Rule R18–2–702.

EPA also cited as a deficiency the effect on federal enforceablility of the ADEQ Director's discretion to establish an AOS. The procedure does not ensure that the AOS will be adequately enforceable by EPA because it fails to require approval by EPA. EPA notes, however, that ADEQ may be able to revise the AOS procedure to include an opportunity for public comment and to require any AOS to be submitted to EPA for approval. This could reasonably ensure that RACM/RACT requirements were fulfilled for the AOS and that the AOS is adequately enforceable by EPA.

AMA's reference to the NSPS is not persuasive. The two rules are significantly different for the simple reason that the federal NSPS regulations require EPA review of any petition to adjust the opacity standards. EPA also notes that the NSPS procedure differs from the ADEQ AOS procedure in that the NSPS procedure allows for public review and comment. The ADEQ AOS procedure requires publication of the AOS, but does not allow for public comment. Thus, under Rule R18–2–702, EPA has no reasonable means to assure that the AOS will comply with RACM/RACT and be adequately enforceable by EPA.

EPA concludes that Rule R18–2–702 is deficient because it allows for the potential relaxation of opacity standards below levels that are considered RACM/RACT and does not provide an opportunity for EPA to review such changes and ensure enforceability.

Comment II: AMA disagrees with EPA's position that the revision limiting the applicability of the opacity standard to ''existing sources'' is a SIP relaxation. AMA notes that the term ''existing sources'' in Rule R18–2–101(41) includes any source (including a new source) that is not subject to an applicable NSPS. As a result, AMA asserts, all sources are covered by an opacity standard contained in at least one of the following citations:

- ADEQ new source performance standards in ADEQ article 9 [R18–2–9xx series rules].
- ADEQ article 7 for existing specific sources [R18–2–7xx series rules].
- ADEQ 40% opacity standard for existing general sources [submitted Rule R18–2–702].

Response: Not all NSPSs contain opacity standards. Thus, the following new sources of PM–10 would be subject to an applicable NSPS but would not be covered by an opacity standard in any of the above citations:

- Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced after August 17, 1971. Rule R18–2–901, subpart D.
- Electric Utility Steam Generating Units for Which Construction Is Commenced after September 18, 1978. Rule R18–2–901, subpart Da.
- Industrial-Commercial-Institutional Steam Generating Units. Rule R18–2–901, subpart Db.
- Small Industrial-Commercial-Institutional Steam Generating Units. Rule R18–2–901, subpart Dc.
- Incinerators. Rule R18–2–904.
- Nitric Acid Plants. Rule R18–2–901, subpart G.
- Primary Copper Smelters. Rule R18–2–901, subpart P.

Therefore, by limiting Rule R18–2–702 to only ''existing sources,'' the

revisions to the rule amount to a relaxation compared to SIP Rule R9–3–501, which applies to all sources.

Because this revision would amount to a relaxation of a rule approved into the SIP before the 1990 Clean Air Act Amendments and applicable in nonattainment areas, the revision is precluded under section 193 of the Act.

Comment III: AMA and PWCC assert that EPA is not determining a RACM/RACT 20% opacity standard consistent with EPA's *PM–10 Guideline Document,* EPA–452/R093–008. Specifically, they argue that RACM/RACT must not be a blanket, nationwide determination, and EPA or ADEQ must evaluate available control measures for reasonableness, considering the technological feasibility and the cost of control in the applicable area. AMA and PWCC point to an EPA statement in the Fort Hall PM–10 federal implementation plan (FIP) (64 FR 7308, 7335 (Feb. 12, 1999)) for the proposition that while the ''general trend'' in State opacity limits is to a 20% standard and higher limits ''are rare,'' less stringent State limits theoretically could be considered RACT in certain circumstances. AMA and PWCC thus argue that ADEQ should be given the opportunity to do a RACM/RACT evaluation and that until ADEQ has performed that evaluation EPA has no basis to disapprove the 40% opacity standard of Rule R18–2–702.

Response: EPA disagrees with the assertion that we have no basis to disapprove the 40% opacity standard pending a RACM/RACT evaluation by the State. To the contrary, it would be difficult to provide a rational basis for approving the proposed changes without a demonstration by the State that the rule meets the requirements of the Clean Air Act.

The ADEQ opacity rule applies to major sources located in PM–10 nonattainment areas of the State. Clean Air Act sections 172(c)(1) and 189(a)(1)(C) together require SIPs for PM–10 moderate nonattainment areas to provide for RACM as expeditiously as practicable. In our April 16, 1992, General Preamble for the Implementation of title I (''General Preamble''), we outlined our expectations for how States would comply with the requirement for RACM/RACT in PM–10 nonattainment area SIPs. 57 FR 13498, 13540–41. We explained, sbull I11''The EPA believes it is reasonable for all available control measures that are technologically and economically feasible to be adopted for areas that do not demonstrate attainment.'' *Id.* at 13544. We added, ''EPA expects States to prepare a reasoned justification for rejection of any available control measure.'' *Id.* at 13540.

One way a State can reject a control measure is to demonstrate that emissions from the sources affected by the measure are insignificant and, therefore, controls on these sources would not be reasonable. *Id.* In general, however, unless the State has made this demonstration, EPA believes it is appropriate to disapprove control measures, including substantive revisions to such measures, that do not ensure the application of RACM/RACT. *See Ober* v. *EPA,* 243 F.3d 1190, 1195 (9th Cir. 2001) (noting that Agency has authority to exempt *de minimis* sources from RACM requirements but only where Agency ''cite[s] information to explain why it exempted certain sources as de minimis * * *''). Without an explanation from ADEQ as to why this control measure represents RACT or why the sources subject to this rule are not significant, we believe it is reasonable to disapprove the SIP revision before us.

Commenters do not try to argue that the 40% opacity standard is in fact RACM/RACT. Commenters acknowledge that 20% opacity standards are in place in many parts of the country, and do not dispute that the technology to achieve these standards is generally available. Table 2 lists some of the states and local agencies with a 20% opacity standard, or its equivalent of No. 1 Ringlemann, in their SIP rules.

TABLE 2.—STATE OR DISTRICT OPACITY EMISSION STANDARDS

State	Local agency	Per cent opacity	Ringlemann No. opacity	SIP rule No.
Michigan		20		R336.1301
New Mexico		20		20–2–61
Texas		20		111.111
Washington		20		173–400–040
California	Bay Area AQMD	20	1	Reg 6
California	Imperial County APCD		1	401
California	Mojave Desert AQMD		1	401
California	Sacramento Metropolitan AQMD		1	401
California	San Diego APCD		1	50
California	San Joaquin Valley Unified APCD		1	4101
California	South Coast AQMD		1	401

Commenters' reference to the Fort Hall FIP only supports EPA's general expectation that an opacity standard should require 20% in order to be considered RACM/RACT. Commenters try to make an argument out of EPA's acknowledgment that higher limits, though ''rare,'' might be approved as RACM/RACT. Commenters, however, do not attempt to argue that this particular control measure fits within that ''rare'' exception. Without a demonstration by ADEQ, no such finding can reasonably be supported.

At bottom, commenters appear to misconstrue EPA's finding in the NPRM. EPA is not promulgating a national RACM/RACT opacity standard by today's action. However, we believe that the widespread application of the 20% opacity standard, or its equivalent No. 1 Ringlemann, across the country is generally achievable and reasonably available unless the State demonstrates otherwise given particular local circumstances. Based on the significant information before the Agency showing that a more stringent opacity standard is generally considered RACM/RACT and lacking a demonstration from the State to rebut this significant information, it is reasonable for EPA to conclude the 40% opacity limit of Rule R18–2–702 fails to fulfill RACM/RACT. *See National Steel Corp.* v. *Gorsuch,* 700 F.2d 314, 323 (6th Cir. 1983) (''Where a state fails to supply the information necessary for a proper [RACT] evaluation by the EPA, the EPA must be free to use its own acquired knowledge.''). After this final disapproval action, the ADEQ will have

the opportunity to perform any appropriate RACM/RACT demonstration in a revised submittal of Rule R18–2–702.

Comment IV: AMA and PWCC disagree with the EPA statement that ''the area regulated by the rule contains five counties that are PM–10 moderate nonattainment areas'' and asserts that the nonattainment areas are small parts of these counties. PWCC argues that, at a minimum, EPA should approve this rule for all areas of the State except the small PM–10 nonattainment areas.

Response: EPA agrees that only portions of the counties mentioned in the proposal are nonattainment for PM–10. In addition, some portions of these counties have been redesignated from nonattainment to maintenance and some portions of other Arizona counties are also nonattainment for PM–10 and subject to this rule. None of this, however, changes the nature of our review. Because the rule applies to sources in PM–10 nonattainment areas, we review the SIP revision against the requirements of CAA section 110 and part D, subparts 1 and 4. For the reasons discussed above, Rule R18–2–702 does not meet these requirements for PM–10 nonattainment area SIPs.

EPA's disapproval of the rule means that it will not be incorporated into the SIP for any portion of the State. EPA declines to follow PWCC's recommendation to approve the rule for the attainment areas of the State. First, the rule was not presented to EPA in a form that would allow EPA to approve a separable portion of the rule that applies only in the attainment areas. Thus, EPA has no mechanism to approve the rule in one part of a state and to disapprove it in another. Moreover, limited approval/disapproval of the rule would not be reasonable because the rule does not, as a whole, strengthen the SIP and is deficient not only with respect to the nonattainment requirements for RACT but also with respect to the more general requirements regarding enforceability. Finally, EPA notes that full disapproval should not create a problem for protecting air quality in attainment areas because the current SIP-approved version contains the same 40% opacity standard as provided in the disapproved rule.

Comment V: AMA notes that it is not clear whether EPA's reference to ''PCAQCD Rule R18–2–702'' is referring to ADEQ, Pima County, or Pinal County Rule R18–2–702.

Response: EPA acknowledges the typographical error where ''PCAQCD Rule R18–2–702'' should have been ''ADEQ Rule R18–2–702.'' However, we believe our intention was clear from the context.

Comment VI: ADEQ comments that the State does not necessarily agree, as a matter of State policy, that the rule is contrary to federal requirements, but believes that the rule should be reexamined and commits to do so.

Response: No response is required.

III. EPA Action

No comments were submitted that would cause us to change from our proposed action on the rule. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a full disapproval of the submitted rule. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the CAA as described in 59 FR 39832 (August 4, 1994). In addition, EPA must promulgate a FIP under section 110(c) unless we approve a subsequent SIP revision that corrects the rule deficiencies within 24 months of the effective date of today's final rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13211

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.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks and is not economically significant.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. 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 ldquo;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 acts on a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility 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.

EPA's disapproval of the state request under section 110 and title I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, 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 CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA 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).

G. Unfunded Mandates

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 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 the approval action promulgated 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 acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. 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 today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

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 rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

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 November 22, 2002. 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 25, 2002.

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 D—Arizona

2. Section 52.133 is amended by adding paragraph (e) to read as follows:

§ 52.133 Rules and regulations.

* * * * *

(e) Rule R18–2–702 of the Arizona Department of Environmental Quality Rules and Regulations sets an opacity standard for emissions from stationary sources of PM–10. The standard does not fulfill the RACM/RACT requirements of section 189(a) of the CAA. The rule also does not comply with enforceability requirements of section 110(a) and SIP relaxation requirements of sections 110(l) and 193. Therefore, Rule R18–2–702 submitted on July 15, 1998 is disapproved.

[FR Doc. 02–23986 Filed 9–20–02; 8:45 am]

BILLING CODE 6560–50–P