

numbers issued under the Paperwork Reduction Act (PRA) for Control of Air Pollution; Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression-Ignition Engines At or Above 37 Kilowatts.

EFFECTIVE DATE: This final rule is effective May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Hormes, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, telephone (313)668-4502.

SUPPLEMENTARY INFORMATION:

A. Legal Authority to Amend Part 9

EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to accurately display those information requirements promulgated under the final rulemaking which appeared in the **Federal Register** on June 17, 1994 (59 FR 31306). This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

B. Burden Statement

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2060-0287.

This collection of information has an estimated reporting burden averaging 5,800 hours for a typical engine manufacturer. However, the hours spent annually on information collection activities by a given manufacturer depends upon manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so forth. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St. SW (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503, marked "Attention: Desk Officer for EPA".

List of Subjects in 40 CFR Part 9

Reporting and recordkeeping requirements.

Dated: April 3, 1995.

Mary D. Nichols,
Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-76711, 7542, 9601-9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

40 CFR citation	OMB control No.
* * * * *	*
Control of Emissions From New and In-Use Nonroad Engines	*
* * * * *	*
89.114-96 through 89.120-96	2060-0287
89.122-96 through 89.127-96	2060-0287
89.129-96	2060-0287
89.203-96 through 89.207-96	2060-0287
89.209-96 through 89.211-96	2060-0287
89.304-96 through 89.331-96	2060-0287
89.404-96 through 89.424-96	2060-0287
* * * * *	*

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BILLING CODE 6560-50-P

40 CFR Part 52

[AZ31-1-6531; FRL-5173-8]

Approval and Promulgation of Implementation Plans; Arizona-Phoenix Nonattainment Area; PM₁₀

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of a revision to the Arizona State Implementation Plan (SIP) proposed in the **Federal Register** on July 28, 1994. The revision was submitted to EPA by Arizona to fulfill the State's obligation to revise its SIP to meet the PM₁₀ (particulate matter less than or equal to 10 microns in aerodynamic diameter) "moderate" area planning requirements of the Clean Air Act (CAA or Act). This approval action will incorporate this revision into the federally approved SIP. The intended effect of approving this revision is to regulate emissions of PM₁₀ in the Phoenix Planning Area (PPA). The revised SIP controls PM₁₀ emissions from sources including, but not limited to, paved roads, construction and demolition activities, unpaved parking areas and roads, nonmetallic mineral mining and processing facilities, open burning activities, uncovered haul trucks and farming operations. Thus, EPA is finalizing the approval of this revision into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on May 10, 1995.

ADDRESSES: Copies of the SIP revision are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted SIP revisions are available for inspection at the following locations:

- Plans Development Section (A-2-2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.
- Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, DC 20460.
- Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

FOR FURTHER INFORMATION CONTACT: Robert Pallarino, (415) 744-1212.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements

On the date of enactment of the 1990 Clean Air Act Amendments, PM₁₀ areas, including the PPA, meeting the conditions of section 107(d) of the Act were designated nonattainment by operation of law. Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM₁₀ nonattainment areas were initially classified as "moderate" by operation of law. See 40 CFR 81.303 (1993). A moderate area may subsequently be reclassified as "serious" if at any time EPA determines that the area cannot practicably attain the PM₁₀ NAAQS by the applicable attainment date for moderate areas, December 31, 1994. Moreover, a moderate area is reclassified by operation of law if the area is not in attainment after the applicable attainment date, which is December 31, 1994 for the PPA. EPA is required to make a determination and provide public notice regarding whether the area has attained within six months following the attainment date. See Section 188(b), 42 U.S.C. 7513(a).

The air quality planning requirements for moderate PM₁₀ nonattainment areas are set out in subparts 1 and 4 of title I of the Act. EPA has issued guidance in its General Preamble describing EPA's views on how the Agency will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate PM₁₀ nonattainment area SIP provisions. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble provides a detailed discussion of the EPA's interpretation of the Title I requirements.

States with initial moderate PM₁₀ nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:¹

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available

control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Pursuant to section 189(c)(1), for plan revisions demonstrating attainment, quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994;² and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM₁₀ also apply to major stationary sources of PM₁₀ precursors, except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the NAAQS in the area.

In today's rulemaking action, EPA is taking final action to approve Arizona's moderate PM₁₀ SIP revision for the PPA, which includes the State's demonstration that attainment of the PM₁₀ NAAQS by December 31, 1994, is impracticable for the PPA. EPA is also announcing its intention to reclassify the PPA as a serious nonattainment area pursuant to section 188(b)(2). However, EPA is not making a finding as to whether the PPA has attained the PM₁₀ NAAQS in today's action, but, as discussed elsewhere in this Notice, will be doing so in a separate action in the coming months. See Section III. Once EPA determines the PPA has not attained the PM₁₀ NAAQS, the area will be reclassified to serious by operation of law.

B. Proposed SIP Approval

EPA proposed approval of the moderate area PM₁₀ SIP revision for the PPA on July 28, 1994 (59 FR 38402). EPA's proposed approval was based on a preliminary finding that the State's submittal meets the requirements of the Act, including: (1) an inventory of all sources of PM₁₀ in the nonattainment area; (2) provisions to implement RACM by December 10, 1993; and (3) a demonstration that attainment of the

PM₁₀ NAAQS by the moderate area attainment date, December 31, 1994, is impracticable.

EPA proposed simultaneously to approve Maricopa County Rule 310—Open Fugitive Dust Sources, 311—Particulate Matter from Process Industries, 314—Open Outdoor Fires, and 316—Nonmetallic Mineral Mining and Processing, as new rules the State adopted as RACM for the PPA. EPA also proposed to reclassify the PPA as a serious area and invited public comment on whether final action should occur under section 188(b)(1) or 188(b)(2) of the CAA.

II. Today's Action

In today's document, EPA is taking final action to approve the moderate area PM₁₀ state implementation plan revision for the PPA. The SIP revision for the PPA was submitted by the State of Arizona on August 11, 1993 and March 3, 1994. Maricopa County Rule 314 was adopted by the State and submitted to EPA on January 4, 1990. The State also submitted a revised version of Maricopa County Rule 310—Open Fugitive Dust Sources on December 19, 1994. The County revised this rule to delete provision 221.9 of the Rule as requested by EPA. See 59 FR 38407, July 28, 1994. Specifically, EPA is approving and incorporating by reference into the SIP the MAG 1991 Particulate Plan for PM₁₀ for the Maricopa County Area and 1993 Revisions, the Revised Chapter 9 and Maricopa County Rule 311—Particulate Matter from Process Industries and Rule 316—Nonmetallic Mineral Mining and Processing, Maricopa County Rule 314—Open Outdoor Fires and Maricopa County Rule 310—Open Fugitive Dust Sources. EPA is also stating its intention, but is not taking final action at this time, to reclassify the PPA under section 188(b)(2) of the Act. EPA is not taking final action on its proposal to reclassify the PPA under section 188(b)(1) of the Act.

III. Reclassification

As stated above, EPA is not reclassifying the PPA in this document. However, EPA intends to propose reclassification of the PPA to a serious area pursuant to section 188(b)(2) of the Act.

The Act provides two mechanisms for reclassifying moderate PM₁₀ nonattainment areas as serious PM₁₀ nonattainment areas. Section 188(b)(1) gives EPA the discretion to reclassify any area which EPA determines cannot practicably attain the NAAQS by the applicable attainment date at any time before the attainment date. In the case

¹ There are additional submittals associated with moderate PM₁₀ nonattainment plans, such as a permit program for the construction of new and modified major stationary sources and contingency measures. See sections 189(a) and 172(c)(9). These submittals were required to be submitted in 1992 and 1993, respectively, and are not the subject of today's action which addresses only those plan provisions required to be submitted on November 15, 1991.

² As discussed in the Federal Register notice proposing approval of this plan, the PM₁₀ plan for the PPA does not demonstrate attainment by December 31, 1994, but rather includes the alternative demonstration that attainment by that date is impracticable. Therefore, section 189(c) does not apply. However, as discussed further in this notice, areas demonstrating that attainment is impracticable are required by section 172(c)(2) to demonstrate RFP. See Section IV. of this Notice, "Reasonable Further Progress".

of the PPA, the CAA-mandated attainment date was December 31, 1994. The second mechanism for reclassification, provided by section 188(b)(2), is to make a finding after the attainment date has passed that the area has not attained the NAAQS.

The difference between these two mechanisms involves the timing of submittals of certain plan provisions. Under section 188(b)(1), if EPA were to take final action on its proposal to reclassify the PPA as serious (see 59 FR 38406, July 28, 1994) the State would be required to submit its serious area SIP revision in two parts. Within 18 months of the final action reclassifying the PPA, the State would be required to submit provisions to assure the implementation of best available control measures (BACM) no later than four years after the date of reclassification. The State's demonstration that the plan provides for attainment of the PM₁₀ NAAQS by the serious area attainment date (December 31, 2001) would have to be submitted within four years of the date of reclassification.

Under section 188(b)(2) of the Act, if EPA makes a determination after the moderate area attainment date has passed that the PPA has not attained the NAAQS, then within 18 months after the date of reclassification, the State is required to submit provisions to assure the implementation of BACM no later than four years after the date of reclassification and a demonstration that the plan will provide for attainment of the PM₁₀ NAAQS by December 31, 2001. The practical difference in these two approaches is the timing of the submittal of the attainment demonstration and how it affects the BACM determination.

Under section 188(b)(1), the State would initially develop its BACM determination in the absence of an attainment demonstration with the potential result that the chosen measures would not ultimately attain the PM₁₀ standards by the applicable attainment date. Such a result, however, would not be revealed until several years later, when the air quality modeling analysis is conducted for the attainment demonstration. If, at that point, additional measures were found to be necessary for the area to attain the PM₁₀ NAAQS, new measures would have to be developed, adopted and submitted to EPA. In contrast, under section 188(b)(2), all the required elements of the serious area plan including the attainment demonstration must be submitted to EPA within 18 months of reclassification. Thus, under section 188(b)(2), EPA believes the

process of attaining the PM₁₀ standards is expedited.

In its notice of proposed rulemaking, EPA expressed its intent to reclassify the PPA under section 188(b)(2) of the Act. EPA believed that since the State originally concluded that the PPA could not practicably attain the PM₁₀ NAAQS by December 31, 1994 when it developed its November 1991 plan submission and that, despite procedural delays and plan updates culminating in the 1993 and 1994 SIP submittals, this conclusion has not changed, the State has been on notice for more than three years that reclassification was likely. Under these circumstances, a delay of four years for the submission of a serious area attainment demonstration is unwarranted. Rather, the Agency believed that it is more appropriate to accelerate, to the maximum extent possible, the State's submission of a complete serious area plan to attain the PM₁₀ NAAQS.

Notwithstanding the reasons above, EPA stated in its proposed rulemaking that there could be valid reasons advanced for reclassifying the PPA under section 188(b)(1). Therefore, EPA proposed to reclassify the PPA using its discretionary authority under section 188(b)(1). EPA stated its intent to finalize the reclassification under section 188(b)(1) only if it received compelling arguments from commenters. EPA received comments on the issue of reclassification from the Arizona Department of Environmental Quality (ADEQ), Maricopa Association of Governments (MAG), Maricopa County Environmental Services Department (MCESD), Arizona Department of Transportation (ADOT), and Arizona Center for Law in the Public Interest (ACLPI). The comments from ADEQ, MAG, MCESD, and ADOT all encouraged EPA to reclassify the PPA immediately under section 188(b)(1). These commenters were concerned that the State's ability to complete the required technical elements of the serious area SIP revision, particularly an improved and updated emission inventory and an accurate air quality analysis including air quality modeling, would require the longer submittal time for a demonstration of attainment afforded under section 188(b)(1) of the Act. Many of the commenters also argued that taking final action to reclassify the PPA before the moderate area attainment date would expedite the air quality benefits which would be provided by the serious area plan since the BACM implementation date would occur sooner.

EPA has not been persuaded by these comments to reclassify the PPA under section 188(b)(1). EPA believes that the State has been aware for a number of years that, even taking into consideration the implementation efforts it has now undertaken in complying with the PM₁₀ Moderate area planning requirements, that it was impracticable to demonstrate attainment of the PM₁₀ NAAQS by December 31, 1994. Thus, EPA does not believe the State has provided any valid basis to delay submittal of an attainment demonstration by four years.

Furthermore, the schedule for developing and submitting the technical elements of the serious area SIP revision is no different than the schedule for submitting a complete SIP revision for areas designated nonattainment after the passage of the 1990 CAA amendments. Under section 189(a)(2)(B) these areas are required to submit SIP revisions within 18 months after the date they are redesignated. The requirements for developing the technical elements of a serious area SIP are not substantially different from those for a moderate area.

Regarding the BACM implementation date, the Act simply states that BACM is to be implemented no later than four years after reclassification to serious. Under the overall scheme of the Act, the State is certainly permitted and, in fact, encouraged to implement BACM on as expeditious a schedule as practicable before the four-year deadline.

EPA also notes that ACLPI opposed reclassification of the PPA under 188(b)(1) because it would have the effect of rewarding the State's delay in preparing its PM₁₀ SIP by giving the State four years instead of 18 months to submit its serious area plan revision. However, EPA is not taking final action to reclassify the PPA under section 188(b)(1). For the reasons stated above, EPA believes that reclassification under section 188(b)(2) is the appropriate action to take in this case. EPA will be reviewing the PM₁₀ monitoring data for the PPA and will make an official determination of whether the PPA has attained the PM₁₀ NAAQS by June 30, 1995 or sooner. To demonstrate attainment of the PM₁₀ NAAQS by the applicable attainment date (December 31, 1994), the PPA would need to show that it has had no violations of the PM₁₀ standards, 24 hour and annual, in the past three years (1992, 1993, and 1994). 40 CFR part 50, appendix K. The State recorded violations of both standards in 1992 and 1993.

IV. Reasonable Further Progress

Section 172(c)(2) of the Act states that nonattainment area plans shall require

reasonable further progress (RFP). RFP is defined by section 171(1) as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by [EPA] for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date." However, there is a gap in the statute in that the PM₁₀ specific provisions of the Act do not clearly specify when and in what manner states containing PM₁₀ nonattainment areas that ultimately demonstrate it is impracticable to attain the NAAQS by the Moderate area deadline, such as the PPA, which is the subject of this document, must demonstrate they have met the RFP requirement. While section 189(c)(1) of the Act requires PM₁₀ SIP revisions to contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which must also demonstrate reasonable further progress, that section, by its explicit terms, only applies to areas with "plan revisions demonstrating attainment." However, while it appears that the Act does not provide specifically for a quantitative milestone reporting requirement showing RFP is met for areas that demonstrate it is impracticable to attain the PM₁₀ NAAQS by the applicable deadline, EPA nonetheless believes, based on the general nonattainment area provisions regarding RFP as well as the overall purpose and structure of Title I and Part D of the Act, that such areas are not thereby relieved of the obligation to periodically demonstrate that they are meeting the requirement for RFP. Consequently, for purposes of implementing the RFP requirement for such areas, EPA believes that where the language in section 171(1) indicates that the purpose of the RFP reductions is to ensure "attainment of the applicable [NAAQS] by the applicable [attainment] date," the applicable attainment date for areas demonstrating that it is impracticable to attain would be the date set by section 188(c) when the area is reclassified as serious. Similarly, since the Act does not explicitly provide for states with PM₁₀ nonattainment areas which demonstrate it is impracticable to attain to submit periodic reports demonstrating that RFP is being met, such as is required under section 189(c)(1) for PM₁₀ areas which demonstrate attainment, EPA believes it may invoke the discretionary authority provided the Agency under section 110(p) of the Act to require the submittal of such reports. That section states that "any State shall submit" such

reports as EPA may require, and on such schedules as EPA may prescribe, providing information on specific data but also including "any other information [EPA] may deem necessary to assess the development effectiveness, need for revision, or implementation of any plan or plan revision required under this Act." The initial RFP report for such areas is to be included in the SIP submittal containing the area's demonstration of impracticability, and should show that even though the emissions reductions achieved through the implementation of all RACM may not be enough to enable the area to demonstrate attainment by the Moderate area deadline of December 31, 1994, such implementation has resulted in "incremental reductions" in emissions of PM₁₀ as the RFP definition in section 171(1) specifies. Once the area has been reclassified, subsequent RFP report submittals will be timed to reflect emissions reductions which will be achieved due to the implementation of BACM. In summary then, EPA's policy is that the requirement to submit periodic reports demonstrating that RFP (as defined in section 171(1)) is being met applies equally to PM₁₀ nonattainment areas that demonstrate attainment by the applicable deadline and to such areas that demonstrate it is impracticable to attain by such date; for the former areas the requirement applies pursuant to sections 189(c)(1) and 172(c)(2), for the latter areas the requirement applies pursuant to sections 172(c)(2) and 110(p). As described in greater detail elsewhere in this document, the Phoenix Planning Area, has provided information along with its impracticability demonstration, which proves to EPA's satisfaction that it has met the requirement to demonstrate RFP. Finally, the discussion in this document regarding the demonstration of RFP in PM₁₀ nonattainment areas which demonstrate that attainment by the applicable attainment date is impracticable represents EPA's preliminary guidance on this issue, and is intended to clarify the confusion created by omissions in the Act and in prior EPA guidance. EPA also intends, in the very near future, to issue more comprehensive guidance on this issue.

V. Response to Comments on Proposed SIP Approval

Only ACLPI commented on EPA's proposed approval of the SIP revision; other commenters addressed reclassification. EPA appreciates the comments submitted by ACLPI, which are detailed and thoughtful. Some of the comments raise difficult issues

regarding the State's compliance with complex planning requirements, which often depend on coordination between a number of local governments. ACLPI's most detailed comments concern the State's implementation of RACM, particularly Transportation Control Measures (TCMs). In this document, EPA is providing its general response to ACLPI's comments on the implementation of RACM, and EPA is also providing very detailed responses concerning individual TCMs and other specific measures raised in ACLPI's comments in the Technical Support Document (TSD) accompanying this document.

A. Technical Issues

1. Monitoring

Comment: The PM₁₀ SIP revision for the PPA does not provide for the establishment and operation of a PM₁₀ monitoring network which meets the requirements of EPA guidelines and regulations. According to a 1992 EPA audit, the monitoring network for the Phoenix area "fails to meet many of the minimum CFR requirements".

Response: EPA disagrees with the comment. The PM₁₀ SIP revision provides for establishing and operating a PM₁₀ monitoring network in the PPA which meets the requirements of EPA guidelines and regulations. 40 CFR part 58; "Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR Part 58." The relevant provisions of the PPA's monitoring network are in Appendix B, Exhibit 14 of the SIP revision. Appendix B, Exhibit 14 also discusses proposed modifications to the network and the method by which the Maricopa County Environmental Services Department (MCESD) will address episode occurrences.

Since a 1992 Re-Evaluation of the Maricopa County Air Pollution Control Program that was conducted by EPA, the MCESD has made and documented progress to meet the requirements in 40 CFR parts 50 and 58. The MCESD was required by the Agency to develop a Corrective Action Plan (CAP) to address deficiencies documented in the 1992 Re-Evaluation. The progress on the CAP is being monitored by EPA, Region IX Air Quality Section and Compliance and Oversight Section, through review and verification of progress reports by MCESD and visits with the MCESD Air Monitoring Program personnel. EPA has also withheld federal grant money to encourage the MCESD to address CAP commitments and regulatory requirements in a timely manner. There have been improvements by MCESD,

including revising the Quality Assurance Program Manual (conditionally approved by Region IX pending minor additions), revamping its entire PM₁₀ network with new equipment including four continuous PM₁₀ samplers, quality assurance training for air monitoring staff, and others.

Comment: A 1992 audit by Dames and Moore (DM) found that the monitoring network did not have adequate numbers of neighborhood scale and middle scale monitors, as directed by EPA guidance. Several homogenous subregions in the area have no monitoring station or one station. In addition, little or no monitoring is conducted within 500 meters from several major sources. DM also found that the total number of monitoring stations is far below that required by EPA guidance. Under EPA spatial siting guidelines, there should be approximately 94 monitoring stations in the nonattainment area. Yet the SIP shows only 9 permanent PM₁₀ stations. DM also found that the monitoring program was inadequately staffed.

Response: EPA does not agree with the DM audit's comments on network adequacy, particularly concerning the necessary number of air monitoring sites recommended by DM. EPA criteria, in 40 CFR part 58, requires the Maricopa County network to consist of six (6) to ten (10) National Air Monitoring Stations (NAMS). The district is also required to operate State and Local Air Monitoring Stations (SLAMS). Part 58 does not contain a numerical requirement for SLAMS. Maricopa County's network consists of six (6) NAMS, two (2) SLAMS, and five (5) Special Purpose Monitoring Stations (SPMS), for a total of thirteen (13) SLAMS (NAMS are defined as a subset of SLAMS). The network's only deficiency is that it lacks a category (a) NAMS site with a high concentration monitoring objective. But this deficiency is being corrected and a special purpose monitor has been set up at the proposed location for a Category (a) site. An EPA protocol provides that this sampler will be run for at least one year. The data will then be evaluated to determine if the site meets the objectives and should be proposed as a NAMS. However, even without a category (a) site, the MCESD air monitoring network is measuring PM₁₀ values above the 24 hour standard.

Part 58 requirements for ambient air monitoring networks intend the SLAMS networks to be representative of the four basic monitoring objectives stipulated in part 58 over the air basin. See 40 CFR part 58, appendix D. Annual network reviews are requested of the districts

and evaluated by the EPA to insure it is representative of the monitoring stations and to insure optimum use of resources. EPA, therefore, disagrees that 94 monitoring stations should be required in the nonattainment area.

Comment: In a May 15, 1992 letter to the State EPA stated that the SIP must include provisions for follow-up monitoring and annual network reviews. The State was to insure that the monitoring network in place as of January 1, 1994, would be appropriate to evaluate attainment. EPA also stated that the SIP revision should include a plan for establishing PM₁₀ episode monitoring stations. None of these requirements have been met in the form of enforceable, funded commitments by the State or local governments.

Response: The State has addressed these requirements in the PM₁₀ SIP revision for the PPA which is enforceable now on the State level, and which will be enforceable federally once this final notice becomes effective. Appendix B, Exhibit 14 contains additional information on the County's air quality surveillance system. Appendix B, Exhibit 15 contains the County's Rule 5₁₀—Air Quality Standards—which provides for the establishment of pollutant monitoring in accordance with EPA guidance and Federal regulations. Appendix B, Exhibit 16 contains the County's Rule 600 which addresses emergency episodes. Appendix B, Exhibit 17 contains further information on the State's procedures for the prevention of emergency episodes.

Comment: The technical support document accompanying EPA's proposed rulemaking asserts that the SIP provides for correction of the monitoring deficiencies by January 1, 1994. We ask EPA to identify precisely where the SIP shows a legally enforceable commitment to this effect, and where the SIP shows a commitment of financial resources to complete the job. Moreover, because the January 1, 1994 date has long since passed, the correction of deficiencies should now be complete. We ask EPA to indicate where the State has documented actual correction of the deficiencies, if this has in fact occurred.

Response: As discussed in the preceding response, Maricopa County has made documented progress in meeting all of the Federal air quality monitoring requirements. The appendices to the PM₁₀ plan, cited above, provide specific information on the County's progress in correcting deficiencies with the monitoring network.

2. Emission Inventory

Comment: The State's emission inventory is not accurate or current as required by the CAA.

Response: EPA disagrees with this comment and believes that the emissions inventory is accurate to within an acceptable degree of uncertainty. The State followed EPA-recommended emissions inventory procedures in use at the time of inventory preparation. A degree of uncertainty is particularly associated with PM₁₀ inventories because PM₁₀ emissions are especially time- and place-specific. Emission factors from a study in one area may differ for another area. PM₁₀ emissions also vary with activity levels and there are many activities, such as residential wood burning, for which there has been little accurate quantification. EPA recognizes that there are some differences between the emissions inventory fractions estimated from usual inventory methods and the source proportions determined from Chemical Mass Balance (CMB) modeling. However, EPA does not consider these differences to invalidate the inventory. The monitored results used in the CMB analysis reflect differences in distance, dispersion, and deposition of the emissions from various PM₁₀ sources. A source's contribution at a particular monitor is not expected to be in the same proportion as its contribution to the area's total emissions. This explains the inventory/CMB discrepancies.

Furthermore, accuracy of the emissions inventory is not critical to demonstrating impracticability of attainment. This is because a demonstration of impracticability may be based on the CMB apportionment results and not specifically on the emissions inventory. The inventory total is used only as a normalization scaling factor. EPA may have reached a different conclusion if, for example, the State sought to rely on a dispersion model, which requires a more accurate emissions inventory, instead of the CMB receptor model. However, based on the selected modeling, EPA believes that the inventory is sufficiently accurate to comply with the requirements of the Act and, more specifically, to serve as the basis for the demonstration of impracticability.

3. Modeling

Comment: The SIP does not meet the requirements of the Act and EPA guidance for an adequate modeling analysis.

Response: EPA disagrees with this comment. The State's modeling

complies with EPA guidelines, which allow for a receptor model such as CMB even though a dispersion model is recommended when possible. See Memorandum from John Calcagni, "PM₁₀ SIP Demonstrations Policy for Initial Moderate Areas" (March 4, 1991).

EPA recognizes that the State attempted to validate a dispersion model but was unsuccessful, in large part because of the degree of spatial and temporal accuracy required in the emissions inventory for use as input to a dispersion model. EPA believes that the State provided a reasonable level of effort to develop its dispersion model. Because it failed, however, the State is justified (and provided its justification in the SIP revision) in using a CMB receptor model. EPA has determined that the State's modeling complies with EPA guidelines.

EPA also anticipates the PPA will be reclassified as a serious area. Reclassification will provide additional time for the State to improve its modeling. When the State ultimately seeks to make an attainment demonstration, EPA will apply more stringent criteria for the spatial and temporal accuracy of the emissions inventory, corroborating models, and treatment of secondary particulates. Nevertheless, EPA believes that the modeling submitted by the State in this PM₁₀ SIP revision complies with the requirements and guidance established by EPA for a moderate area SIP revision and demonstration of impracticability.

Comment: EPA's proposed finding that PM₁₀ precursors do not contribute significantly to PM₁₀ levels that exceed the NAAQS in the PPA was made without any objective standard against which to measure significance. EPA's proposed action on this issue is arbitrary and capricious.

Response: EPA disagrees with this comment. EPA recognizes that on individual sampling days there were detectable contributions of one PM₁₀ precursor, secondary ammonium nitrate. Yet the average overall contribution of secondary ammonium nitrate was less than five percent of the total annual inventory. See 1989-1990 Phoenix PM₁₀ Study, Volume II: Source Apportionment, DRI, April 12, 1991, p. S-2. This magnitude of contribution is not significant for purposes of this action, although EPA acknowledges that such a contribution might warrant further attention if the State were attempting to submit an attainment demonstration for the 24-hour NAAQS. EPA believes that a contribution of less than five percent secondary ammonium nitrate is within the degree of

uncertainty and is near the "noise" level for CMB results.

In general, because of the complexity of the chemistry involved, there is no EPA-recommended method and no scientific consensus for dealing with secondary particulates. A number of PM₁₀ areas have dealt with this problem by assuming that secondary particulates are roughly proportional (or scale) to emissions of primary particulates. EPA believes that in the absence of better scientific or technical information, including better EPA guidance, this approach is reasonable. Consistent with this approach, the PPA scaled down their total PM₁₀ emissions inventory to exclude the contributions from PM₁₀ precursors. Indeed, if the PPA had included the contributions from PM₁₀ precursors, this would have resulted in the recording of proportionately higher concentrations of PM₁₀ in excess of the NAAQS. Therefore, if the PPA had explicitly accounted for the contribution of PM₁₀ precursors, the State's conclusion that attainment is impracticable would be strengthened, not weakened.

4. Mobile Source Budget

Comment: ACLPI states that in order to determine conformity of transportation plans, projects, and programs with this SIP, a mobile source emission budget must be identified.

Response: EPA does not agree that the State was required to identify a mobile source emission budget. The moderate area SIP revision for the PPA demonstrates that attainment of the PM₁₀ NAAQS is impracticable by December 31, 1994. Mobile source emission budgets are only required to be identified in SIP revisions which demonstrate attainment. The preamble to EPA's transportation conformity rule states:

Some moderate PM₁₀ nonattainment areas may have submitted SIPs which demonstrate that the area cannot attain the PM₁₀ standard by the applicable attainment date. These areas have been or will be reclassified as serious areas under section 188(b) of the Clean Air Act. Such SIPs which do not demonstrate attainment do not have budgets and are not considered control strategy SIPs for the purposes of transportation conformity.

58 FR 62196, November 24, 1993.

Thus, EPA's transportation conformity rule explicitly contemplated and determined that PM₁₀ areas demonstrating impracticability, like the PPA, would not have provided for and would not be required to identify a mobile source emission budget until an approvable attainment demonstration is submitted.

B. Demonstration of Impracticability

Comment: The State's demonstration of the impracticability of 1994 attainment is contrary to both the language and purpose of the Act. The plain thrust of sections 188 and 189, in combination with section 172, is that states should make every effort to attain by 1994. Rather than searching for combinations of control measures that would produce timely attainment, the state merely lists 13 control measures, asserts that they are insufficient to attain by 1994, and then "finds" that impracticability has been demonstrated.

Response: EPA disagrees. As discussed throughout this document, including in relevant responses to comments, EPA has determined that Arizona has implemented all RACM, and that the correct number of implemented measures is 67. EPA has also determined that the PPA has complied with the requirement of section 172(c)(2) that it demonstrate it is meeting RFP, by showing a measurable increment of PM₁₀ reductions between the baseline and the emissions reductions achieved through implementation of all RACM. EPA believes, therefore, that Arizona's SIP submittal does not contain mere assertions, but appropriate and acceptable demonstrations that are consistent, not only with the criteria contained in EPA's guidance, but with the Act's language and purpose as well. Again, as discussed further elsewhere in this Notice, EPA also believes that Congress recognized that many areas initially designated Moderate for PM₁₀ would not be capable of developing SIP revisions which demonstrated attainment by the applicable attainment date. This is evident by the fact that, for PM₁₀, the Act also allows States to demonstrate earlier than the applicable attainment deadline that implementation of RACM will not provide for attainment and, thus, that attainment by the Moderate area deadline is impracticable. Since this provision is unique to PM₁₀ (the Act generally provides fixed attainment dates for other pollutants which, if the area fails to meet, subjects it to a mandatory "bump-up"), it seems clear that the language and intent of the Act are to first provide PM₁₀ areas with an opportunity to attain the NAAQS through the implementation of reasonable, but not necessarily exhaustive, efforts (i.e. RACM), and then to provide those areas that cannot achieve the NAAQS by the applicable attainment date with an alternative—to demonstrate that attainment is impracticable. However, such areas

must then go through a second planning effort which will require the implementation of more stringent measures, i.e. BACM.

Comment: ACLPI commented that the State's demonstration of impracticability is deficient because it fails to address the 24 hour standard.

Response: EPA disagrees that the impracticability of meeting both standards must be demonstrated. The PPA cannot be redesignated to attainment for PM₁₀ until the State can demonstrate that the SIP provides for attainment of both the annual and the 24-hour NAAQS. Conversely, if the SIP demonstrates that even with the implementation of RACM it cannot attain any one of the standards (annual or 24-hour) by December 31, 1994, then it has demonstrated that PM₁₀ attainment is impracticable. As an additional matter, it should be noted that the PPA is proportionately farther above the 24-hour NAAQS than it is above the annual NAAQS. Thus, given that the impracticability of attaining the annual NAAQS has been demonstrated, EPA agrees with the State's conclusion that attaining the more difficult 24-hour NAAQS would likely be shown to be similarly impracticable.

Comment: ACLPI commented that EPA should not evaluate practicability from the present point in time: i.e., whether attainment by December 31, 1994 is now practicable. The issue is whether timely attainment would have been practicable had the state implemented all RACM as expeditiously as practicable, and no later than December 10, 1993. ACLPI also states that, based on the decision in *Delaney v. EPA*, 898 F. 2d 687 (1990), the state would be obligated to provide for attainment as soon as possible if achievable via implementation of RACM as expeditiously as practicable.

Response: EPA is concluding in this action that Arizona has met the Act's requirement to implement all RACM by December 10, 1993. EPA is also concluding that the State has demonstrated that attainment of the PM₁₀ NAAQS by December 31, 1994, is impracticable even with timely implementation of all RACM. EPA therefore believes that the detailed explanations in this notice, including those contained in other relevant responses to comments, and in the accompanying technical support document should adequately address the issue raised by this comment. EPA further believes that the requirements that are relevant to consider are those contained in the CAA, as amended in 1990, and not statements taken from the *Delaney* opinion, which was construing

requirements under the CAA as amended in 1977. As stated previously in this document, sections 172(c) and 189(a)(1)(C) when read together require the implementation of all RACM as expeditiously as practicable but no later than December 10, 1993. Additionally, section 189(a)(1)(B) requires either a demonstration that the plan provides for attainment by December 31, 1994 or a demonstration that attainment by that date is impracticable. Since EPA believes both that the RACM implementation requirement has been met and that an acceptable demonstration of impracticability has been provided by the State, no further response is required.

C. RACM

Comment: ACLPI commented generally that the SIP, EPA Guidance and public comments identified 161 potential measures as RACM, but that the revised PM₁₀ SIP rejected all but 13 of the measures without providing adequate justification. Similarly, the state adopted only one new transportation control measure, while failing to adopt, without explanation, every other potentially available TCM.

Response: The general and detailed comments by ACLPI concerning RACM raise difficult issues concerning the State planning requirements, and EPA appreciates the time and thought that ACLPI has contributed to this process. However, ACLPI has misunderstood the number of measures that the State implemented or rejected as RACM. The revised PM₁₀ SIP did not reject all but 13 measures from the list of possible RACM. As discussed below and in substantial detail in the accompanying TSD, the State has implemented all possible RACM (in some cases, by demonstrating that partial implementation of a measure is all that was reasonable to implement by December 10, 1993) and has provided EPA with a reasoned justification for the rejection of the remaining measures as not constituting RACM.

EPA disagrees with ACLPI regarding its RACM interpretation as it relates to transportation control measures (TCMs). In its comments regarding whether the State should have considered various proposed TCMs to be reasonably available, ACLPI asserts that the Court of Appeals for the Ninth Circuit held in *Delaney v. EPA*, "that TCMs listed in section 108 of the Act are presumed to be reasonably available." ACLPI goes on to argue that "Congress adopted and endorsed this decision in the 1990 Clean Air Act amendments," and cites S16971 (daily ed. Oct. 27, 1990). In

reliance on these claims, ACLPI concludes that Arizona "has failed to rebut the [presumption regarding the] availability of the section 108 measures in the instant SIP, and therefore the SIP must be rejected." EPA disagrees with both assertions and with the conclusion ACLPI derives from them as well. In the General Preamble (57 FR 13560-13561) EPA presents a detailed discussion of its interpretation of the RACM requirement, including implementation of TCMs. EPA continues to stand by that interpretation and the General Preamble discussion is explicitly referenced herein as forming part of the justification for the action being taken in this document.

The portion of that discussion that relates to TCMs acknowledges that in pre-amended Act guidance EPA created a presumption that all of the TCMs listed in section 108(f) were RACM for all areas, and required areas to specifically justify a determination that any measure was not RACM based on local circumstances. However, EPA then explicitly repudiated that earlier guidance, explaining that, based on its experience in implementing TCMs in subsequent years, local circumstances varied to such a degree that it was inappropriate to presume that all of the measures listed in section 108(f) were per se reasonably available for all nonattainment areas. See 44 FR 20372-20375 (April 4, 1979). Under EPA's revised guidance, all states are required, at a minimum, to address the section 108(f) measures, and where such a measure is determined to be reasonably available to implement it in accordance with section 172(c)(1).

With respect to *Delaney*, the General Preamble states EPA's belief that the court did not hold, as ACLPI claims, that the statute required the Agency to interpret the RACM requirement to create a presumption that all TCMs are reasonably available. Instead, the court held that EPA itself had created such a presumption and, therefore, was bound to apply its own then-applicable 1979 RACM guidance. An administrative agency is permitted to revise or alter prior guidance so long as that guidance continues to represent a reasonable interpretation of the statutory requirement. Nothing in the court's decision precluded EPA from revising its own guidance based on later experience in implementing TCMs. EPA also believes that the Senate managers' statement endorsing the Agency's 1979 RACM guidance as construed by the *Delaney* court reflected the view of several legislators who had wanted the Senate Committee bill to require that all section 108(f) measures be implemented

in severe nonattainment areas. However, the final version of the Senate bill did not adopt this position. Consequently, any subsequent statements by any legislators that appear to consider the interpretation relating to TCMs in EPA's 1979 RACM guidance as still being applicable post-1990 could not be said to reflect the views of the Congress as a whole, and thus should not be accorded weight.

Sections 172(c) and 189(a)(1)(C), along with relevant EPA guidance, require the State to implement all RACM provisions in its moderate area plan to reduce PM₁₀ emissions. EPA's proposed approval of the revised PM₁₀ SIP concluded that there was an initial list of 161 potential RACM. See 59 FR 38404. EPA has determined that the State implemented 67 of those measures as RACM. Of the remaining 94 potential RACM, 62 measures were duplicates of other measures. Finally, EPA believes that the State acted in accordance with Agency guidance in determining that the remaining 32 measures were not in fact, reasonably available because either: (1) The source made a de minimis contribution of PM₁₀ or (2) the measure was rejected on the basis of economic or technological infeasibility. Thus, EPA has determined that the State has satisfied its moderate area RACM requirements under sections 172(c) and 189(a)(1)(C).

In some cases, RACM has been met through partial implementation of a measure, such as doubling rather than tripling bus service or implementing measures only in populous municipalities. The State provided more detailed justification explaining why partial implementation of many measures constitutes RACM in "Summary of Local Government Commitments to Implement Measures and Reasoned Justification for Non-Implementation for the MAG 1991 Particulate Plan for PM₁₀ and Select Measures from the Clean Air Act Section 108(f)" ("MAG Supplementary Document"). The Mag Supplementary Document was submitted at EPA's request after EPA proposed to approve the revised PM₁₀ SIP in an effort to respond to comments received by EPA claiming that the SIP submittal did not contain sufficient detail regarding the State's justification for rejecting potential RACM. The MAG Supplementary Document has been included in the Administrative Record for this rulemaking and, to the extent that it provides additional detail and elaborates on the State's reasoning regarding its RACM determination, forms, in part, a complementary basis for EPA's final approval of the State's

revised PM₁₀ SIP, including EPA's finding that the State complied with its obligation under Sections 172(c) and 189(a)(1)(C) to implement all RACM.

The list of 67 RACM the State has implemented includes 41 measures that were adopted in the State's 1993 Carbon Monoxide and Ozone Plans ("1993 CO Plan"). EPA believes that adoption and inclusion of the measures in the 1993 CO Plan is a sufficiently meaningful and legally binding action by the State which, moreover, constitutes compliance with the Act's requirement to submit a plan which includes provisions to assure that RACM is implemented no later than December 10, 1993. ACLPI's comments on individual measures addressed in the accompanying TSD state that certain measures have not been adopted "in committed form." For the measures in the 1993 CO Plan, EPA believes that the State has provided adequate evidence that the plan is being implemented and is enforceable. The State's 1993 CO plan builds upon the control strategy developed and adopted for the MAG 1987 CO plan. Many of the measures in the 1993 CO plan continue implementation of transportation control measures included in the 1987 CO plan. The 1993 CO plan also contains new control measures that were not in the 1987 CO plan. EPA is aware that, for the most part, the State is not claiming PM₁₀ emission reduction credits for the measures developed for their CO and ozone plans. The PM₁₀ SIP does take emission reduction credit for Maricopa County's Trip Reduction Ordinance and the operation of two alternative fueled buses. The State explained instead that reductions from RACM in the 1987 CO Plan were calculated in the 1989 baseline PM₁₀ emission inventory. These CO measures may qualify as RACM regardless of whether emissions reduction credit can be assigned, as noted by EPA's proposed approval, stating: "These CO measures are included in the PM₁₀ SIP revision because they could also reduce particulate matter emissions." 59 FR 38404. EPA has not received direct adverse comment on the proposal to include the CO measures in the State's revised PM₁₀ SIP as RACM, and is therefore taking final action on that proposal. The 41 measures from the CO and Ozone Plans that are treated as RACM in the revised PM₁₀ SIP are listed in the TSD, Attachment #2, for this NFRM.

In addition to RACM from the 1993 CO Plan, the State is implementing measures required by national rulemakings. These measures are also RACM for the moderate area PM₁₀ SIP.

For example, the State must ensure that cleaner commercial aircraft land in the PPA based on the federal Airport Noise Control Act, 49 U.S.C. App. 2151 (1990) (ANCA). Municipalities in the PPA are required to comply with ANCA. Thus, even though the clean aircraft requirement is established by ANCA, it also satisfies the State's obligation to assure implementation of RACM. EPA believes the State may satisfy the RACM obligation pursuant to compliance with ANCA rather than through adoption in the revised PM₁₀ SIP of measure No. 45, "Replacement of High Emitting Aircraft," offered in the public comments. The accompanying TSD lists RACM which are based on national rulemakings or emissions standards.

For diesel fuel controls, EPA believes that the State has adequately demonstrated that partial implementation of this measure through compliance with national diesel fuel standards is RACM, and that the State has also justified rejecting implementing the California diesel fuel standards as RACM. Likewise, the State's partial implementation of a measure requiring conversion of its diesel fleet to clean fuels constitutes RACM. The State has also partially implemented measures regulating nonroad utility heavy duty engines and utility engines through compliance with national standards. EPA believes that partial implementation of this measure is all that was reasonable for the state to implement by December 10, 1993. The implementation of controls associated with diesel fuels and engines is discussed more fully in the accompanying TSD. The TSD also discusses the State's justification for rejecting as RACM an inspection and maintenance testing program for diesel vehicles.

Comprehensive rules are another source of RACM. The State submitted several comprehensive rules, such as Rules 310, 311, 314 and 316, that encompass RACM that are separate from the initial list of 161 possible measures. For example, Rule 310 addresses 13 of the 15 measures that EPA considered to be reasonably available for the control of fugitive dust. See 59 FR 38404. The accompanying TSD provides a more detailed discussion of RACM for fugitive dust based on implementation of Rule 310. To control residential wood combustion, Maricopa County has adopted a new rule, Residential Woodburning Restriction Ordinance (RWRO), and the State has included a provision in HB 2001 that provides a personal income tax deduction for people that purchase EPA-certified wood heaters. The County also has a

public education and awareness program in place to inform residents of the impacts of residential wood combustion on air quality and public health and the requirements of the County's woodburning restriction ordinance. These measures cover all of the four RACM listed by EPA in its General Preamble to address particulate matter emissions from residential wood combustion. The State's adoption of the County's RWRO satisfies the obligation to adopt measures to reduce emissions from residential wood combustion. As with measures in the 1993 CO Plan, EPA believes that the State has adopted the RWRO in sufficiently meaningful legal form to ensure that RACM is being implemented in compliance with the Act. The TSD also discusses this measure.

From the initial list of 161 possible RACM, EPA determined that 62 measures are duplicates of others and consequently did not require any further consideration. These duplicate measures are also listed in the TSD, Attachment #1.

Finally, EPA has determined that the State was justified in rejecting 32 of the remaining measures from the list of 161 possible RACM. These measures, which are listed in the TSD, Attachment #3, were discussed in EPA's proposed approval, 59 FR 38404, and are not reasonably available because they are either de minimis or economically or technologically infeasible. Certain measures are not reasonably available because the contribution from the source is de minimis in the PPA, such as Public Comment No. 37 which provides for reducing emissions from ship berthing. There are no ship berthing facilities in the PPA. Alternatively, the State has provided reasoned justifications to reject certain measures as RACM based on economic or technological infeasibility, such as railroad electrification. Those measures rejected from the initial list of 161 possible RACM, and the justifications for such rejections, are provided in the accompanying TSD.

For the reasons stated above, EPA has determined that the State has satisfied its obligation under the Act to submit a plan containing provisions to assure that RACM has been implemented by December 10, 1993, and, consistent with Agency guidance, has provided a reasoned justification for rejecting other potential measures on grounds that they are not RACM. The accompanying TSD provides a detailed response to each specific measure or type of measure that was raised in ACLPI's comments on the RACM portion of EPA's proposed approval of the State's revised PM₁₀ SIP.

Many other measures were duplicates of measures that were either adopted or rejected. For the remaining measures which the State rejected, EPA has given careful consideration to ACLPI's thorough comments. On balance, however, the State has complied with its obligation to provide EPA with a reasoned justification for the rejection of the remaining potential RACM.

D. RFP

Comment: The SIP fails to show RFP as required by section 172(c)(2) of the Act. According to the SIP, emissions of PM₁₀ increase in 1994 compared to the base year.

Response: EPA disagrees with the commenter's assertion that the SIP does not demonstrate reasonable further progress in reducing PM₁₀ emissions. While the State's demonstration showed a small reduction in PM₁₀ emissions from the implementation of Maricopa County's Rule 310—Fugitive Dust, EPA believes that the emission reduction that the State associated with this rule was overly conservative. When the State calculated the emission reduction potential for Rule 310, they only applied the control effectiveness to the urban portions of the PPA. EPA believes the control effectiveness should have been applied to the entire nonattainment area since the rule applies throughout Maricopa County which includes the entire nonattainment area. When EPA recalculated the emission reduction benefits of the SIP's control strategy the reduction potential equals 8,677 tons per year. The 1989 base year inventory is 40,975 tons per year and was projected to grow to 45,981 tons per year in 1994. Therefore, the total 1994 projected inventory after application of RACM would equal 37,304 tons per year which shows, consistent with EPA's guidance on demonstrating RFP, which is described in greater detail earlier in this notice, that the area has indeed made progress in reducing emissions from the base year total, and thus has demonstrated it has met the requirements of section 172(c)(2) for the period 1990–1994.

E. Rules

Comment: Rule 310 is not approvable because the rule does not meet the Act's or EPA's criteria for enforceability. The rule must make clear to whom it applies and be sufficiently specific that a source is fairly on notice as to the standard it must meet. No threshold level of dust generation is specified, leaving sources to guess as to when the ordinance will be triggered.

Response: Rule 310 does specify the sources that are subject to control. Rule

310 applies to any activity, equipment, operation and/or man-made or man-caused condition or practice capable of generating fugitive dust. Section 300 of the Rule further specifies the types of activities and sources of fugitive dust that are subject to the rule's requirements (e.g., vehicle use in open areas and vacant parcels; unpaved parking areas/staging areas; unpaved haul/access roads; disturbed surface areas; vacant areas; material handling operations; material transport; haul trucks; roadways, streets and alleys; and cattle feedlots and livestock areas). Further, as discussed in more detail in response to the next comment, the requirements of Rule 310 are triggered if a source of fugitive dust violates either the 20% opacity standard in Section 301 or the requirement to implement RACM in Sections 301 through 314. Thus, any activity that causes visible emissions in excess of 20 percent opacity or any activity that is carried out contrary to the implementation of RACM is a violation of Rule 310. For new sources of fugitive dust, Rule 310 requires compliance with an approved dust control plan as implementation of RACM, subject to approval by the control officer; existing sources of fugitive dust are required to comply with the RACM defined in the Rule.

Comment: The standards of performance [in Rule 310] are equally vague. The rule merely states that reasonably available control measures must be applied. That term is in turn defined merely by listing examples of vaguely described control steps without requiring use of any specific measure or a specific level of effort in any specific context. Thus, any specific level of control that the County seeks to impose will be subject to challenge.

Response: ACLPI's comments tend to oversimplify the requirements of Rule 310. Because of the very many different circumstances under which fugitive dust can be generated, it would be nearly impossible for the County to predict every situation and prescribe a specific control measure for it. As noted above, Rule 310 contains two standards to enforce. One standard with which all sources are required to comply is the 20% opacity limit. The second standard is the RACM requirement. New sources of fugitive dust are required to comply with approved dust control plans, which become enforceable as permit conditions. For existing sources of fugitive dust, Rule 310 addresses the variability of sources and activities by either prescribing RACM (see, e.g., Section 311.2) or listing potential reasonably available fugitive dust control measures (see, e.g., Sections 306

& 221). Yet Rule 310 allows a source to tailor its own control strategy to fit its particular situation and EPA believes that such flexibility is necessary. When the activity or situation does not involve a high degree of variability, the measures that apply to that source are typically more prescriptive. For example, Section 311.2, which applies to all haul trucks operating in the PPA, sets forth specific requirements as RACM. If haul trucks fail to implement these measures, there is a violation of Rule 310. Even if the haul trucks comply with Section 311.2, but still violate the 20% opacity standard, there is a violation of Rule 310. Other sections of the rule are equally enforceable through permit conditions. Section 303 of Rule 310 requires that a permit application for any new source subject to Section 302 of Rule 310 shall include a Control Plan to prevent or minimize fugitive dust, and the Control Plan must be approved by the County Control Officer. If the County determines through a violation of the separate 20% opacity standard that a Control Plan is not sufficient to control fugitive dust, the responsible party is required to revise the control plan accordingly. Thus, the County will be able to enforce the provisions of this Rule 310 through two standards: the 20% opacity standard and the requirement to implement RACM through a Control Plan or as defined in the Rule.

The original version of Rule 310 that was submitted to EPA contained a provision that EPA believed threatened the enforceability of the rule. The original rule contained a provision (221.9) that allowed the Control Officer to approve the use of alternative control methods not listed in the rule. This provision has since been deleted from Rule 310.

Comment: The State and County have not committed the necessary resources and personnel to ensure enforcement of rules 310, 311, 314, and 316, as required under section 110(a)(2)(E) and EPA guidance. Nor does the SIP contain a program to provide for enforcement of any of the SIP control strategies, as required by section 110(a)(2)(C) of the Act.

Response: The County has committed the necessary resources and personnel to implement rules 310, 311, 314, and 316. Details on the level of personnel and funding, as required by section 110(a)(2)(E) of the Act, as well as enforcement strategies as required by section 110(a)(2)(C) of the Act are provided in the document "MAG 1991 Particulate Plan for PM₁₀ for the Maricopa County Area and 1993 Revisions, Commitments for

Implementation, Volume Three", section entitled "Maricopa County".

F. Other

1. Public Comment

Comment: In the process of developing and submitting the PM₁₀ SIP revision for Phoenix, MAG and the State have on several occasions failed in their responsibility to seriously consider public comment prior to adopting plans.

Response: The State has provided a section in all of its PM₁₀ SIP submittals which includes all public comments received and the State's responses to those comments.

2. State Assurances

Comment: The PM₁₀ SIP does not contain, as required by section 110(a)(2)(E)(iii) of the CAA, the necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision." While the State contends that this requirement is met by A.R.S. § 49-406.J, the process laid out by this State statute does not meet the plain requirements of section 110(a)(2)(E)(iii) and is completely inconsistent with the Act's requirements for SIP enforceability, timely implementation of control measures, and expeditious attainment.

Response: EPA has historically adopted a rule of reasonableness in construing the language of section 110(a)(2)(E)(iii) of the Act with respect to the extent to which the State must show that its plan evinces a showing of responsibility sufficient to ensure adequate implementation of the plan's provisions by local or regional governments. EPA, for example, does not require the State to adopt into its own plan the local government's implementing provisions, but has considered it sufficient for the State to describe and reference those provisions and the accompanying descriptions of the local municipalities intended implementation actions. The State has included in its plan submission a copy of the Arizona Laws Relating to Environmental Quality, § 49-406. J. of which contains the assurances required by section 110(a)(2)(E). If any person fails to implement an emission limitation or control measure, the relevant State official is required to issue a written finding to that effect, which may also necessitate the holding of a conference regarding the failure with the offending person. If a determination is made that the failure

has not been corrected, the attorney general, at the responsible official's request, must file an action, seeking either "a preliminary injunction, a permanent injunction, or any other relief provided by law." Section 49-407 of the Arizona Revised Statutes provides that citizens may sue the director to perform his or her duty. While some opportunity is provided to rectify problems short of taking legal action, EPA does not believe this is unreasonable, nor that the affected State officials ultimately have discretion to ignore the law's requirements. The comment engages in some speculation, describing several possible scenarios under which implementation by the local authorities may not occur. Despite these concerns—which are admittedly speculative—EPA believes, based on its experience in administering this provision of the Act, that the relevant sections of the State's law provides an adequate degree of assurance that the control measures in the plan are enforceable and will be fully implemented.

VI. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

VII. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify 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 government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory 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. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 28, 1995.

Felicia Marcus,

Regional Administrator.

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. 7401–7671q.

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c) (67)(i)(B), (73), (74), and (77) and by adding and reserving paragraphs (c) (72), (75), and (76) to read as follows:

§ 52.120 Identification of plan.

* * * * *

- (c) * * *
- (67) * * *
- (i) * * *

(B) Amended Maricopa County Division of Air Pollution Control Rule 314, adopted July 13, 1988.

* * * * *

(72) [Reserved]

(73) Plan revisions were submitted on August 11, 1993 by the Governor's designee.

(i) Incorporation by reference.

(A) The Maricopa Association of Governments 1991 Particulate Plan for PM₁₀ for the Maricopa County Area and 1993 Revisions, Chapters 1, 2, 3, 4, 5, 6, 7, 8, 10 and Appendices A through D, adopted August 11, 1993.

(74) Plan revisions were submitted by the Governor's designee on March 3, 1994.

(i) Incorporation by reference.

(A) Maricopa County Division of Air Pollution Control new Rule 316, adopted July 6, 1993, and revised Rule 311, adopted August 2, 1993.

(B) The Maricopa Association of Governments 1991 Particulate Plan for PM₁₀ for the Maricopa County Area and 1993 Revisions, Revised Chapter 9 adopted on March 3, 1994.

(75) [Reserved]

(76) [Reserved]

(77) Amended regulations for the Maricopa County Division of Air Pollution Control submitted by the

Governor's designee on December 19, 1994.

(i) Incorporation by reference.

(A) Maricopa County Division of Air Pollution Control Rule 310, adopted on September 20, 1994.

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40 CFR Part 63

[AD–FRL–5183–3]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On October 24 and 28, 1994, EPA proposed amendments to certain aspects of the “National Emission Standards for Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks” 59 FR 19402 (April 22, 1994) and 59 FR 29196 (June 6, 1994) (collectively known as the “hazardous organic NESHAP” or the “HON”). This action announces the EPA's final decisions on those proposed amendments.

The rule is being revised to provide a deferral of HON requirements for source owners or operators who wish to make an area source certification and to establish minimum documentation requirements. This action is being taken because EPA believes that in view of current circumstances the requirements of the rule should not be imposed on sources that are likely to be designated as area sources in the near future. The rule is also being revised to extend the compliance date for certain compressors and for surge control vessels and bottoms receivers to allow the time necessary for installation of controls. The applicability of control requirements for surge control vessels and bottoms receivers is also being revised to reduce confusion over the rule.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Janet S. Meyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality

Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

SUPPLEMENTARY INFORMATION:

I. Background

A. Federal Register Actions

On October 24, 1994 (59 FR 53359) EPA announced that, pursuant to Clean Air Act section 307(d)(7)(B), it was reconsidering certain portions of the HON rule and issuing a 3 month administrative stay. The October 24, 1994 administrative stay applied only to those source owners or operators who make a representation in writing that resolution of the area source definition issues could affect whether the facility is subject to the HON. As part of that action, EPA also proposed amendments to the HON to establish procedures for a source to obtain a deferral of HON requirements for such sources and to establish minimum documentation requirements.

In addition, on October 28, 1994 (59 FR 54131), EPA announced an administrative stay of the effectiveness of the provisions of the HON for compressors and for surge control vessels and bottoms receivers for sources subject to the October 24, 1994 compliance date. As part of that action, EPA also proposed amendments to the HON to revise compliance dates for compressors and for surge control vessels and bottoms receivers to provide sufficient time to make the equipment changes necessary for compliance with the rule. Provisions to document the use of the compliance extensions for compressors were also proposed. Changes were also proposed to the applicability of control requirements for surge control vessels and bottoms receivers.

Along with both notices of partial stay and reconsideration, EPA also proposed to extend the compliance dates beyond the 3 months provided, as necessary to complete reconsideration and revision of the rule in question. On January 27, 1995 (60 FR 5320), EPA amended the HON to extend the compliance dates until April 24, 1995 to allow time to complete the two sets of revisions to the rule.

B. Public Participation

Ten comment letters were received on each of the two notices of proposed amendments. All comment letters received were from industry representatives or trade associations. No comments objecting to the EPA's basic approach were received on either the October 24 or the October 28, 1994 proposed amendments. The significant