

office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are transmitted, unless otherwise provided in this section. If the company has reason to believe that the address is a street address of a multi-unit building (for example, based on the Zip Code), the address must include the unit number.

9. Section 30d-2 is revised to read as follows:

**§ 270.30d-2 Reports to shareholders of unit investment trusts.**

(a) At least semiannually every registered unit investment trust substantially all the assets of which consist of securities issued by a management company must transmit to each shareholder of record (including record holders of periodic payment plan certificates), a report containing all the applicable information and financial statements or their equivalent, required by § 270.30d-1 to be included in reports of the management company for the same fiscal period. Each such report must be transmitted within the period allowed the management company by § 270.30d-1 for transmitting reports to its stockholders.

(b) Any report required by this section will be considered transmitted to a shareholder of record if the unit investment trust satisfies the conditions set forth in § 270.30d-1(f) with respect to that shareholder.

By the Commission.

Dated: November 13, 1997.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 97-30430 Filed 11-19-97; 8:45 am]

BILLING CODE 8010-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[AZ-MA-002-CGB; FRL-5925-6]

**Approval and Promulgation of State Implementation Plans; Arizona—Maricopa County Ozone and PM<sub>10</sub> Nonattainment Areas**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Arizona on September 15, 1997, establishing Cleaner Burning Gasoline (CBG) fuel requirements for gasoline distributed in the Phoenix (Maricopa County) ozone nonattainment area. Arizona has developed these fuel requirements to reduce emissions of volatile organic compounds (VOC) and particulates (PM<sub>10</sub>) in accordance with the requirements of the Clean Air Act (CAA). EPA is proposing to approve Arizona's fuel requirements into the Arizona SIP because either they are not preempted by federal fuels requirements or to the extent that they are or may be preempted, since EPA is proposing to find that the requirements are necessary for the Maricopa area to attain the national ambient air quality standards (NAAQS) for ozone and particulates.

**DATES:** Comments on this proposed rule must be received in writing by December 22, 1997.

**ADDRESSES:** Written comments should be sent to the Region IX contact listed below. Copies of the SIP revision are available in the docket for this rulemaking, which is open for public inspection at the addresses below. A copy of this notice is also available on EPA Region IX's website at <http://www.epa.gov/region09>.

Air Planning Office (AIR-2), Air Division, Region IX, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105

Arizona Department of Environmental Quality, Office of Outreach and

Information, First Floor, 3033 N. Central Avenue, Phoenix, Arizona 85012.

**FOR FURTHER INFORMATION CONTACT:** Karina O'Connor, Air Planning Office, AIR-2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1247.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Arizona CBG*

The State CBG fuel program for the Maricopa area establishes limits on gasoline properties and gasoline emission standards which will reduce emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO<sub>x</sub>), carbon monoxide (CO) and particulates (PM). Under the program, a variety of different fuels will be able to meet the fuel standards during different implementation periods (see Table 1). Starting June of 1998 through September 30, 1998, gasoline sold in Maricopa County must meet standards similar to EPA's Phase I reformulated gas (RFG) program or California's Phase II RFG program. Under the EPA Phase I RFG standards, the Arizona Department of Environmental Quality (ADEQ) estimates that VOC emissions will be reduced by 8.7 tons per summer day (tpsd), NO<sub>x</sub> emissions by 0.2 tpsd, CO emissions by 118.6 tpsd and PM<sub>10</sub> emissions by 0.27 tpsd. With California RFG, ADEQ estimates that VOC emissions will be reduced by 14.1 tpsd, NO<sub>x</sub> emissions by 8.2 tpd, CO emission by 198 tpsd and PM<sub>10</sub> by 0.76 tpsd.

California Phase II RFG can be used to comply with the Arizona fuel program during all implementation periods since, starting May 1, 1999, gasoline must meet standards similar to EPA's Phase II RFG program or California's RFG program. Under the CBG Type 1 standards, ADEQ estimates that VOC emissions will be reduced by 12.5 tpsd, NO<sub>x</sub> emissions by 2.0 tpsd, CO emissions by 143.3 tpsd and PM<sub>10</sub> by 0.4 tpsd.

TABLE 1.—FUEL TYPES MEETING ARIZONA CBG FUEL STANDARDS

Fuel type	Fuel designation	Implementation period
CBG Type 1 .....	EPA's Phase II RFG .....	June 1999–Future.
CBG Type 2 .....	California Phase II RFG .....	June 1998–Future.
CBG Type 3 .....	EPA's Phase I RFG .....	June–September 30, 1998.

During both implementation periods, gasoline sold in the Maricopa area can

comply with either of the two sets of specified standards included in the

program. Therefore the actual emission reductions benefits during either period

are difficult to estimate without specific knowledge of the market penetration of each of the two acceptable fuels. However, emission reductions should, at a minimum, reach the levels that would result from the specific performance standards associated with CBG Types 1 and 3 during both periods because the corresponding CBG Type 2 standards are, in all instances, more stringent. These emissions reductions will help the Maricopa area attain the NAAQS for both ozone and particulates.

### B. Clean Air Act Requirements

In determining the approvability of a SIP revision, EPA must evaluate the proposed revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

For SIP revisions addressing certain fuel measures, an additional statutory requirement applies. CAA section 211(c)(4)(A) prohibits state regulation of a fuel characteristic or component for which EPA has adopted a control or prohibition under section 211(c)(1), unless the state control is identical to the federal control. Section 211(c)(4)(C) provides an exception to this preemption if EPA approves the state requirements in a SIP. Section 211(c)(4)(C) states that the Administrator may approve preempted state fuel standards in a SIP:

\* \* \* only if [s]he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity even if the plan for the area does not contain an approved demonstration of timely attainment.

EPA's August 1997 "Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPs" gives further guidance on what EPA is likely to consider in making a finding of necessity.

### C. History of Related Actions

Under the Clean Air Act Amendments of 1990, the Phoenix area was classified as a moderate nonattainment area for both ozone and PM<sub>10</sub>. The moderate ozone attainment deadline was November 15, 1996; the moderate PM<sub>10</sub> attainment deadline was December 31, 1994. In 1997, the Phoenix area was

reclassified as serious for ozone with an attainment deadline of no later than November 15, 1999. In 1996, the Phoenix area was reclassified as serious for PM<sub>10</sub> with an attainment deadline of no later than December 31, 2001.<sup>1</sup>

The State, the Maricopa County air pollution control agency, and the local jurisdictions in Maricopa County have adopted and implemented a broad range of ozone control measures including a summertime low Reid Vapor Pressure (RVP) limit of 7.0 psi for gasoline, an enhanced inspection and maintenance (I/M) program, stage II vapor recovery, an employer trip reduction program, many transportation control measures, and numerous stationary and area source VOC controls. On November 12, 1993, in support of one of these measures, the Arizona legislature passed section 13 of Arizona House Bill (HB) 2001 (1993 Special Session), originally codified in Arizona Revised Statutes (ARS) at section 41-2083(E).<sup>2</sup> This provision limited the maximum summer vapor pressure (or RVP) of gasoline fuel sold in the Maricopa area to 7.0 psi beginning May 31, 1995 through September 30, 1995, and applying from May 31 through September 30 of each year thereafter. Gasoline distributed in the Maricopa area by refineries, importers, carriers, retail stations and other end users who sell or dispense gasoline must meet the 7.0 psi limit during those periods.

On January 17, 1997, Governor Symington applied to EPA to include the Maricopa County ozone nonattainment area in the federal RFG program and the State submitted section 13 of HB 2001 to EPA as a SIP revision on April 29, 1997. Because this State fuel requirement established a control on RVP of 7.0 psi, not identical to the federal fuel RVP requirements applicable to the area (i.e., federal conventional gasoline RVP limit of 7.8 psi, federal phase I RFG RVP limit of 7.2 psi or federal phase II volatility limit of 7.8 psi), Arizona's fuel requirement was preempted under section 211(c)(4)(A) of the CAA. Pursuant to the Governor's letter and section 211(k)(6) of the CAA, EPA approved Governor Symington's request to opt in to the federal RFG program on June 3, 1997. 62 FR 30260. EPA also published a direct final approval of Arizona's low RVP SIP revision on June 11, 1997. 62 FR 31734. In approving the RVP SIP revision, EPA

found under section 211(c)(4)(C) that the State's fuel requirement is necessary for the Maricopa area to attain the NAAQS for ozone.

The State also enacted HB 2307 which authorized the establishment of a more stringent State reformulated gasoline program.<sup>3</sup> HB 2307 was passed as an emergency measure, requiring ADEQ and the Arizona Department of Weights and Measures (ADWM) to adopt interim rules reflecting the fuel requirements included in the bill. The two agencies implemented a facilitated rulemaking process over the next three months which resulted in the publication of proposed rules on July 15, 1997 and a public hearing on August 15, 1997. ADEQ adopted these proposed rules as the Arizona CBG Interim Rule on September 12, 1997 following a public comment period.

### C. State Submittal

In a September 12, 1997 letter, Russell Rhoades, Director, ADEQ, requested that EPA approve the CBG Interim Rule as a revision to the Arizona SIP and a CAA section 211(c)(4)(C) waiver. See "Arizona Cleaner Burning Gasoline Interim Rule SIP Revision and Clean Air Act 211(c)(4)(C) Waiver Request," September 1997. The SIP revision package includes: (1) Arizona laws providing the State authority for submittal of SIP revisions; (2) a SIP completeness checklist; (3) the CBG Interim Rule; (4) a request for a waiver from federal preemption pursuant to CAA section 211(c)(4)(C); (5) a letter from the Arizona Attorney General concerning the status of the States authority to enforce the rule out-of-state; and (6) HB 2307.

As additional supporting technical documentation for the section 211(c)(4)(C) waiver request, the States CBG SIP submittal includes: (1) An Assessment of Fuel Formulation Options for Maricopa (see Attachment 3, Exhibit 2, Appendix A); (2) Demonstration of CO impacts of the proposed fuel formulations (see Attachment 3, Exhibit 2, Appendix G and Appendix K); (3) Demonstrations of NO<sub>x</sub>/PM impacts of the proposed fuel regulations (see Attachment 3, Exhibit 2, Appendix M); and (4) the Urban Airshed Model (UAM) modeling demonstration from the draft Voluntary Early Ozone Plan (VEOP) (see Attachment 3, Exhibit 6, Appendix B).

<sup>1</sup> See 56 FR 56694 (November 6, 1991), CAA Sections 181(a)(1) and 188(c)(1), 62 FR 60001 (November 6, 1997) and CAA Section 181(a)(1), 61 FR 21372 (May 10, 1996) and CAA Section 188(c)(2).

<sup>2</sup> This section is currently codified in the ARS as section 41-2083(F).

<sup>3</sup> The State reformulated gasoline rules are codified in the ARS as section 41-2124. Section 41-2123 of HB 2307 also contains wintertime oxygenate requirements for fuels. The bill changed the effective dates of the oxygenate requirements from October 15 to November 15 through March 31 of each year.

The modeling used 1996 as the base year and evaluated the effects of existing and future control measures. Arizona's CBG requirements are built into the 1996 base year inventory and modeled out to the 1999, and 2010 projected attainment years.

To allow the Arizona CBG program to substitute for the federal RFG program, on September 15, 1997 the State also submitted a separate letter to Administrator Browner, requesting to opt out of the federal RFG program, effective June 1, 1998, contingent upon EPA approval of the Arizona SIP revision and the associated waiver request. In response, Dick Wilson, Acting Assistant Administrator for Air and Radiation, EPA, sent a letter to Governor Hull on October 3, 1997, which states that upon Region IX publication of a final approval of a SIP revision incorporating the CBG Interim Rule, the Office of Mobile Sources will notify the State and publish a notice in the **Federal Register** approving Arizona's opt-out from the federal RFG program.

Arizona submitted a further addendum to the SIP revision on October 21, 1997, which contained additional technical materials supporting the State's waiver request.

## II. EPA Evaluation of SIP Submittal

### A. General SIP Requirements

As discussed below, EPA has evaluated the SIP revision and has determined that it is consistent with the requirements of the CAA and EPA regulations. On November 13, 1997, EPA found that the September 12, 1997 SIP revision conformed to EPA's completeness criteria in 40 CFR part 51, Appendix V.

Information regarding enforcement and compliance assurance for the SIP revision can be found in the ARS (specifically in Article 6, Chapter 15, Department of Weights and Measures, of Title 41) and the Arizona Administrative Code (AAC). The Arizona Department of Weights and Measures (ADWM) implements the CBG rule and has the necessary authority under ARS 41-2124.C, ARS 41-2124.01.B, ARS 41-2065.A.4, .14, and .16, and ARS 41-2065.D to obtain samples (AAC R20-2-721), test (AAC R20-2-759), and complete surveys (AAC R20-2-760). Any person violating the CBG rule is subject to prosecution pursuant to ARS 41-2113.B.4, civil penalties pursuant to ARS 41-2115 and stop-use, stop-sale, hold and removal orders pursuant to ARS 41-2066.A.2 (AAC R20-2-762). The SIP submittal also contains a letter from the Arizona

Attorney Generals office regarding enforceability of the Arizona CBG rule outside of the Arizona State boundaries and a letter from the ADWM regarding gasoline sampling analysis timeframes. EPA has concluded that these provisions confer on the State the requisite authority to enforce compliance with the CBG Interim Rule.

### B. Section 211(c)(4)

#### 1. Federal Preemption

The CBG Interim Rule establishes state gasoline standards. As discussed above, CAA section 211(c)(4)(A) preempts certain state fuel regulations by prohibiting a state from prescribing or attempting to enforce "any control or prohibition respecting any characteristic or component of a fuel or fuel additive" for the purposes of motor vehicle emission control, if the Administrator has prescribed under section 211(c)(1), "a control or prohibition applicable to such characteristic or component of the fuel or fuel additive," unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

The CBG Interim Rule establishes three types of gasoline standards. For 1998, the requirements for CBG Types 2 and 3 gasoline apply. In addition, all Arizona CBG must meet specified fuel property limits for that year.<sup>4</sup> For 1999 and beyond, the requirements for CBG Types 1 and 2 gasoline would apply. In addition, all Arizona CBG would have to meet the fuel property limits specified for that time period.<sup>5</sup> These proposed types of gasoline include performance standards as well as requirements for specific fuel parameters. EPA's analysis of preemption addresses the following standards in the CBG Interim Rule: performance standards for NO<sub>x</sub> and VOC (under gasoline Types 1 and 3); performance standards for NO<sub>x</sub> and HC (under Type 2); and parameter specifications for oxygen, sulfur, olefins, aromatic HC, T50, and T90 (under gasoline Type 2).

To determine whether a state fuel requirement is preempted by a federal requirement, EPA compares the applicable federal fuel requirements in the area with the proposed state fuel requirements. For the purposes of this analysis, the federal fuel requirement in the Phoenix ozone nonattainment area is federal conventional gasoline. While Arizona has opted into the federal RFG program for the 1997 season, the State has requested to opt out of the program

before the State CBG requirements would apply.<sup>6</sup> Once the State has opted out of the federal RFG program, the applicable federal requirements would be those for conventional gasoline. The federal requirements for conventional gasoline include a NO<sub>x</sub> performance standard. CBG Types 1 and 3 also contain a NO<sub>x</sub> performance standard, so the CBG NO<sub>x</sub> performance standard is preempted. The CBG Interim Rule would allow refiners to meet the requirements for Type 2 gasoline in lieu of the requirements for CBG Type 1 or 3 gasoline. Whether the specifications for CBG Type 2 are preempted is less clear. The CBG Type 2 specifications include performance standards for NO<sub>x</sub> and HC and requirements for the fuel parameters sulfur, olefins and aromatic HCs. The federal conventional gasoline standards do not include requirements for these specific parameters. However, refiners are required to use an emissions performance model that determines NO<sub>x</sub> and HC performance based in part on these fuel parameters.

In this rulemaking, EPA does not need to determine whether these types of State fuel requirements are preempted under section 211(c)(4)(A) prior to acting on the proposed revision to the Arizona SIP. If the sulfur, olefins and aromatic HC requirements are not preempted, there is no bar to EPA approving them as a SIP revision. If they are preempted, EPA would be able to approve these requirements as necessary under section 211(c)(4)(C) if EPA could approve the NO<sub>x</sub> performance standard as a SIP revision. Sulfur, olefins and aromatic HC requirements all reduce NO<sub>x</sub> emissions. Under Type 1 or 3 CBG, refiners would obtain NO<sub>x</sub> reductions through a NO<sub>x</sub> performance standard, and under Type 2 CBG, refiners would obtain comparable NO<sub>x</sub> reductions through sulfur, olefins and aromatic HC requirements. If EPA finds the NO<sub>x</sub> reductions produced by the NO<sub>x</sub> performance standard under CBG Types 1 and 3 to be necessary, then the comparable reductions produced by the alternative of CBG Type 2 gasoline would also be necessary. Thus, based on EPA's finding, discussed below, that NO<sub>x</sub> reductions are necessary under section 211(c)(4)(C), EPA is proposing to approve the sulfur, olefins and aromatic HC requirements as well.

The CBG Interim Rule also requires refiners to meet a VOC performance standard (under CBG Types 1 and 3 gasoline); or a HC performance standard or oxygen, T50 and T90 requirements

<sup>4</sup> AAC R20-2-751.01.A.

<sup>5</sup> AAC R20-2-751.A.

<sup>6</sup> The opt-out is contingent on the CBG requirements becoming effective upon EPA's approval of the regulations in the SIP.

(under CBG Type 2 gasoline). Federal conventional gasoline requirements do not include a VOC performance standard or controls on these specific parameters. However, refiners are required to meet summertime volatility limits, and are required to use an emissions performance model that determines NO<sub>x</sub> performance based in part on the same fuel parameters as those used in the CBG Interim Rule. In this rulemaking, EPA does not need to determine whether these types of state fuel requirements are preempted under section 211(c)(4)(A) if EPA finds that these fuel requirements are necessary for the Phoenix nonattainment area to meet the ozone NAAQS. Of course, if these requirements are not preempted, there is no bar to approving them as a SIP revision.

Arizona has already demonstrated that its 7.0 psi RVP requirement is necessary under section 211(c)(4)(C) to meet the ozone NAAQS in the Phoenix area.<sup>7</sup> Compliance with either the VOC performance standard or the HC performance standard or the oxygen, T50 and T90 requirements would produce some additional VOC reductions beyond those produced by the 7.0 psi RVP requirement. As with the NO<sub>x</sub> performance standard and the alternative fuel parameter requirements discussed above, refiners would obtain comparable VOC reductions through either the VOC performance standard or the oxygen, T50 and T90 requirements. Thus, if EPA finds the VOC reductions produced by the NO<sub>x</sub> performance standard under CBG Type 1 and 3 gasoline to be necessary, then the comparable emissions reductions produced by the alternative of CBG Type 2 gasoline would also be necessary. EPA is proposing to approve the VOC performance standard and the oxygen, T50 and T90 requirements because either they are not preempted under section 211(c)(4)(C) or to the extent that they are or may be preempted, EPA is proposing, as discussed below, that they are necessary and hence approvable under section 211(c)(4)(C).

## 2. Finding of Necessity

As discussed below, EPA is proposing to find that the CBG NO<sub>x</sub> performance standards are necessary for the Phoenix PM<sub>10</sub> nonattainment area to meet the PM<sub>10</sub> NAAQS, and that the CBG VOC and HC performance standards, and the oxygen, T50 and T90 requirements are necessary for the Phoenix ozone nonattainment area to meet the ozone NAAQS.

To make this determination, EPA must consider whether there are other reasonable and practicable measures available that would produce sufficient emissions reductions to attain the ozone and PM<sub>10</sub> standards without implementation of the CBG requirements. In considering other measures for the purpose of demonstrating necessity under section 211(c)(4)(C), EPA agrees that Arizona need not submit an evaluation of alternative fuels measures. As discussed above, the State conducted an extensive public process to evaluate emissions control options, including fuels options. Arizona not only considered other fuels options, including opt-in to federal RFG, it has actually implemented this measure for a limited time. However, Arizona did not address retention of RFG or other fuels measures in its section 211(c)(4)(C) submission, and EPA concurs with this approach. EPA interprets the reference to "other measures" that must be evaluated as generally not encompassing other state fuels measures, including state opt-in to federal RFG. The Agency believes that the Act does not call for a comparison between state fuels measures to determine which measures are unreasonable or impracticable, but rather section 211(c)(4) is intended to ensure that a state resorts to a fuel measure only if there are no available practicable and reasonable nonfuels measures. Thus, in demonstrating that measures other than requiring CBG gasoline are unreasonable or impracticable, a state need not address the reasonableness or practicability of other state fuel measures.

To determine whether the State gasoline VOC performance standards are necessary to meet the ozone NAAQS, EPA must consider whether there are other reasonable and practicable measures available to produce the needed emission reductions for ozone control. As mentioned previously, the State and local governments have adopted and implemented a broad range of ozone control measures. In addition, the ADEQ has developed a Voluntary Early Ozone Plan (VEOP) including air quality modeling and additional control measures.

EPA examined Urban Airshed Modeling (UAM) completed for the VEOP, which evaluated the effects of existing and future VOC control measures, to support the necessity finding for this rulemaking.<sup>8</sup> The fifteen

<sup>8</sup>The control measure analysis submitted for the VEOP should be considered a preliminary draft analysis. The Phoenix nonattainment area was originally classified as moderate but was

control measures that were evaluated for 1999<sup>9</sup> are: (1) purge test in I/M (evaluated for 2010); (2) final I/M cutpoints; (3) I/M testing of constant 4-by-4 vehicles; (4) federal RFG (both Phase I and Phase II RFG at 7.2 psi RVP); (5) adoption of California standards for off-road mobile sources; (6) voluntary catalyst replacement program; (7) voluntary vehicle retirement program; (8) voluntary commercial lawn mower replacement; (9) new standards for the use of industrial cleaning solvents; (10) alternative fuels tax incentives; (11) Motor Vehicle Division registration enforcement and mandatory insurance; (12) pollution prevention; (13) temporary power at construction sites; (14) alternative-fuelled buses; and (15) traffic light synchronization. (See Appendix H, Exhibit 2, Attachment 3 of the SIP submittal.)

Results from the modeling demonstration showed that, using Arizona CBG gasoline (modeled as federal RFG or California RFP with an RVP of 7.0 psi) plus all other measures identified, the Maricopa area would still fail to attain the 0.12 ppm ozone NAAQS in 1999. The VEOP indicates that ozone control measures need to show a 13 percent reduction of ambient ozone to attain the standard in 1999. The percent reduction from Federal Phase II RFG and California Phase II RFG is 3.9 percent and 2.6 percent respectively. The total percent reduction available from the measures examined in the VEOP is less than 6 percent.

If the State's CBG VOC emissions performance standards were not implemented, the projected shortfall in emissions reductions would be larger. EPA recognizes that these estimates for reductions needed, reductions produced by various measures, and the scope of the measures available are all based on analysis that will be further refined and updated as the State's serious area plan is developed. Nevertheless, EPA is basing today's action on the information available to the Agency at this time, which does not indicate that there are other reasonable and practicable measures available to the State that would fill the projected emissions reduction shortfall. Hence, EPA proposes to find that the CBG VOC emissions performance standards are necessary for attainment of the ozone

reclassified to serious after the VEOP was completed. Arizona is currently developing a serious area plan. However, the plan has not been completed in time for inclusion in this SIP revision and therefore could not be examined to support the necessity finding.

<sup>9</sup>1999 was chosen as the modeling year because it is the next ozone attainment date in the Clean Air Act after 1996. See CAA 181(a)(1).

<sup>7</sup>See 62 FR 31734 (June 11, 1997).

NAAQS, and EPA proposes to approve them as a revision to the Arizona SIP for the Phoenix ozone nonattainment area.

The State, the Maricopa County air pollution control agency, and the local jurisdictions in Maricopa County have adopted and implemented a broad range of particulate control measures and are currently considering additional controls in the course of developing the serious area PM<sub>10</sub> plan for the Maricopa County nonattainment area. The State's submission in support of the necessity demonstration includes both measures that are currently being implemented or for which commitments are in place, and various additional measures being considered for implementation in the serious area plan.

The air quality modeling submitted by ADEQ shows that implementation of all of the PM<sub>10</sub> control measures identified by the State would still result in an emissions shortfall and the area would need an additional 2.4 percent reduction in the ambient concentrations of PM<sub>10</sub> to demonstrate attainment of the PM<sub>10</sub> NAAQS. The State's analysis projects that two additional measures, paving 100% of unpaved roads and controlling 100% of shoulders and access points, would produce sufficient emissions reductions to eliminate this shortfall. However, Arizona has characterized these measures as unreasonable for purposes of section 211(c)(4)(C) and hence inappropriate to consider as available control measures in the necessity demonstration.

EPA agrees that, for purposes of section 211(c)(4)(C), both paving 100% of unpaved roads and controlling 100% of shoulders and access points would be unreasonable measures to implement in the Phoenix area in comparison to the CBG NO<sub>x</sub> performance standard. In determining whether a control measure is unreasonable or impracticable for purposes of section 211(c)(4)(C), reasonableness and practicability should be determined taking into account a comparison with the fuel measure that the state is petitioning to adopt. EPA must assess whether it would be reasonable and practicable to require the other control measure in light of the potential availability of the preempted state fuel control. Finding another measure unreasonable or impracticable under this criterion does not necessarily imply that the measure would be unreasonable or impracticable for other areas, for the same area under different circumstances, or for the same area under an analysis outside of the section 211(c)(4)(C) context.<sup>10</sup> For

<sup>10</sup> For example, given the different criterion for EPA's section 211(c)(4)(C) evaluation, today's

further discussion of this criterion see "Guidance on Use of Opt-In to RFG and Low RVP Requirements in Ozone SIPs," U.S. EPA, Office of Mobile Sources, August 1997.

Controlling PM<sub>10</sub> through paving 100% of unpaved roads and controlling 100% of shoulders and access points raises concerns regarding costs, feasibility, timing, administrative burdens, and burdens on individual citizens. ADEQ estimates the capital cost of paving 100% of unpaved roads to be \$59.4 million, which is \$54 million more than ADEQ's identified alternative of chemically controlling 100% of unpaved roads and would only reduce emissions by an additional 1.9%. To control 100% of shoulders and access points through installing curbs on 100% of paved road shoulders and paving 100% of access points to paved roads, ADEQ estimates a capital cost of \$733.3 million, which is \$366.65 million more than the estimated cost of its identified alternative measure which would be to control 50% of shoulders and access points. In addition, ADEQ has serious concerns about the feasibility of successfully paving all unpaved roads in the area with greater than 120 Average Daily Travel (ADT) miles and controlling all shoulders and access points before the attainment date of December 31, 2001. Besides the significant capital expenditure associated with these measures, implementation of these measures would impose a substantial administrative burden on local and state agencies and would require significant coordination of local and state agencies. In addition, motorists throughout the area would experience the inconveniences and delays associated with extensive road construction projects.

In comparison to the measures discussed above, the infrastructure for implementation of the fuel measure is already in place. This significantly reduces the burden on the implementing refineries, and would allow implementation of the measure to begin as early as the summer of 1998. Most of the compliance burden associated with the measures will be felt by a limited number of fuel suppliers. In addition, most of the compliance and implementation burdens associated with CBG have already been shown to be necessary for compliance with the ozone NAAQS. Therefore any additional

proposed finding does not in any way prejudice the question of whether these same measures might be reasonable in the context of the requirements in section 189 (a) and (b) for reasonably available control (RACM) and best available control measures (BACM) for PM<sub>10</sub> control.

burden for compliance with NO<sub>x</sub> performance standards will be minimal. Finally, implementation of the measure would require only limited new coordination efforts between ADEQ and ADWM. Thus, in comparison to the CBG NO<sub>x</sub> performance standard, for the purposes of section 211(c)(4)(C), it would be unreasonable to require paving 100% of unpaved roads and controlling 100% of shoulders and access points in the Phoenix area in the timeframe considered here.<sup>11</sup>

Because the State is currently working on the underlying analysis for the serious area PM<sub>10</sub> plan for the Maricopa County nonattainment area, due December 10, 1997, EPA notes that the information relied on here is preliminary. The State may further refine its estimates of the emissions reductions needed, the emissions reductions produced by various control measures, and the scope of control measures available. Nevertheless, the information submitted by the State indicates that even with the implementation of all reasonable and practicable control measures known to be available at this time, including CBG,<sup>12</sup> additional emissions reductions will be needed for timely attainment of the PM<sub>10</sub> standard. Therefore, EPA proposes to find that the NO<sub>x</sub> performance standard in the CBG requirements is necessary for attainment of the PM<sub>10</sub> standard, and EPA proposes to approve this requirement as a revision to the Arizona SIP for the Phoenix PM<sub>10</sub> nonattainment area.<sup>13</sup>

### C. Enforceability

The ADWM has developed requirements for every entity in the gasoline distribution system to ensure that Maricopa County will receive gasoline that meets the state CBG standards.<sup>14</sup> The requirements, which include registration of gasoline suppliers, testing and sampling, compliance surveys, and record keeping and reporting, apply to (1) service stations, (2) fleet owners, (3) third party terminals, (4) pipelines and fuel transporters, (4) oxygenate blenders, and

<sup>11</sup> See footnote 10 and related discussion above for explanation of limited applicability of this proposed finding.

<sup>12</sup> Arizona CBG was included in the modeling analysis as Federal RFG, Phase II at 100% market share.

<sup>13</sup> In its September 12, 1997 letter, ADEQ submitted the CBG Interim Rule as a revision to the Arizona ozone SIP. In order for EPA to take final action approving the CBG rule into the Arizona PM<sub>10</sub> SIP, the State will need to formally submit the rule as a revision to that SIP. ADEQ has informed EPA that it intends to do so in the near future.

<sup>14</sup> AAC R20-2-751. Area A Arizona CBG Requirements—1999 and AAC R20-2-751.01 Area A Arizona CBG Requirements—1998.

(5) producers and importers of CBG. The requirements imposed by the CBG rule apply to activity occurring both within and outside of the State of Arizona. The State Attorney General's office has provided an analysis concluding that the State has full authority to enforce the rules and the associated requirements beyond the State borders.

Before any CBG suppliers may produce or import CBG, it must register with the ADWM.<sup>15</sup> These suppliers include any refiner, importer, oxygenate blender, pipeline or third party terminal who will produce, supply or have custody of Arizona CBG after June 1, 1998. These registered suppliers must certify that each batch of gas meets the CBG standards as described in the Interim Rule. They must retain records of the sampling for five years; supply these records to ADWM, if requested, within 20 days; and notify ADWM of transport methods other than pipelines. They must also maintain a quality assurance/quality control (QA/QC) program to verify the accuracy and effectiveness of fuel testing or use an independent laboratory to complete testing (unless computer-controlled in-line blending equipment is in operation which is supplying audit reports to EPA and ADWM under 40 CFR 80.65(f)(4)).<sup>16</sup>

Registered oxygenate blenders must follow the blending requirements submitted by the registered supplier and comply with additional blending requirements. For all terminal blending facilities, registered blenders must determine the oxygen content and volume of final blends before such blends leave the oxygen blending facility. Oxygenate blenders completing operations in gasoline delivery trucks must implement a quality assurance sampling and testing program. In-line blending operators using computer controlled blending must sample the fuel after the addition of oxygenate and prior to combining the batch with other gasoline, and they must notify the pipeline and ADWM of any batch which does not contain the specified type and amount of oxygenate. Oxygenate blenders must keep records of sampling and shipments for five years and make those records available within 20 days of a request.<sup>17</sup>

Registered pipelines and third party terminals may not accept Arizona CBG from a supplier that is not registered with ADWM and that cannot submit

<sup>15</sup> AAC R20-2-750. Registration Pertaining to Arizona CBG or AZRBOB.

<sup>16</sup> AAC R20-2-752. General Requirements for Registered Suppliers.

<sup>17</sup> AAC R20-2-755. Additional Requirements Pertaining to AZRBOB and Downstream Oxygenate Blending.

written verification that the gasoline meets CBG standards. These gasoline transporters must also complete sampling of all CBG batches, report non-compliance of any batches with CBG standards within 24-hours of sampling to ADWM, and develop a QA/QC program to demonstrate the accuracy and effectiveness of the laboratory testing. Pipelines must also submit a monthly report to ADWM summarizing the results of laboratory testing of all Arizona CBG that has entered a pipeline (including the present location of the fuel sample).<sup>18</sup>

Fleet owners and service stations do not have to sample gasoline. However, they must retain on-site records for their most recent four deliveries, which verify the quantity and identify of each grade of motor fuel delivered. Service stations and fleet owners may maintain these records for the remainder of the previous 12 months off-site if the records are made available within two working days from the time of a request. These records shall contain: the name and address of the transferor and transferee; the volume, minimum octane rating, VOC and NO<sub>x</sub> reduction percentage standards, and origination point of the CBG; the date of transfer, proper identification of the gasoline as Arizona CBG or AZRBOB;<sup>19</sup> and the type and quantity of oxygenate contained in the Arizona CBG or identification of the product as AZRBOB, a statement that it does not comply with CBG standards without the addition of oxygenate, and the oxygenate types and amount needed to meet the properties claimed by the registered supplier.<sup>20</sup>

To maintain compliance with Arizona CBG standards, in addition to the ongoing registration, testing,<sup>21</sup> quality assurance and recordkeeping activities described above, ADWM will conduct compliance surveys throughout the year.<sup>22</sup> Each producer and importer of CBG must contribute to the costs of two surveys of CBG quality in Phoenix in the summer of 1998, followed by two surveys during the summer and winter

<sup>18</sup> AAC R20-2-753. General Requirements for Pipelines and Third Party Terminals.

<sup>19</sup> AZBOB, as defined in the CBG Interim Rule (AAC R20-2-701.3) is "a petroleum-derived liquid which is intended to be or is represented as a product that will constitute Arizona CBG upon the addition of a specified type and percentage (or range of percentages) of oxygenate to the product after the product has been supplied from the production or import facility at which it was produced or imported."

<sup>20</sup> AAC R20-2-709. Records Retention Requirements for Service Stations and Fleet Owners.

<sup>21</sup> AAC R20-2-759. Testing Methodologies.

<sup>22</sup> AAC R20-2-760. Compliance Surveys.

seasons<sup>23</sup> for each following year, based on gasoline samples collected at retail outlets. Each compliance survey will be conducted by an independent surveyor who will develop a survey plan with committed funding for the season, to be submitted to ADWM by April 1 of each year. These surveys will cover compliance with VOC and NO<sub>x</sub> reduction levels and average levels of RVP, T50, T90, aromatic hydrocarbons, olefins, sulfur and oxygen. The results of each survey will be submitted to ADWM within thirty days following completion of the survey. If the survey or other testing indicates that the gasoline does not meet CBG VOC or NO<sub>x</sub> reduction averaging<sup>24</sup> percentage standards, the registered supplier must pay penalties and comply with more stringent applicable flat per gallon standards during a probationary period. For example, on each occasion that a sample fails a VOC emission reductions survey on or after May 1, 1999, the VOC emissions performance reduction and the minimum per gallon percentage reduction shall be increased by an absolute 1.0%, not to exceed the VOC percent emission reduction per gallon standard.<sup>25</sup>

#### D. Proposed Action

EPA has evaluated the submitted SIP revision and has determined that it is consistent with the CAA and EPA regulations. EPA has also found that the various CBG requirements are either not preempted by federal fuel requirements or are necessary for the Phoenix nonattainment area to attain the ozone and PM<sub>10</sub> NAAQS, pursuant to CAA. Therefore, EPA is proposing to approve the Arizona CBG Interim Rule into the Arizona SIP for the Phoenix ozone and PM<sub>10</sub> nonattainment areas under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic,

<sup>23</sup> The summer season will last from May 1 through September 15 and the winter season will last from November 1 through March 15 of each year.

<sup>24</sup> Under the CBG rule, if they submit to compliance surveys, registered suppliers can initially elect to comply with an average VOC reduction standards of 29 percent with a minimum per gallon reduction of 25 percent instead of a flat per gallon percent reduction standard of 27.5 percent. See AAC R20-2-751.01.

<sup>25</sup> AAC R20-2-751.01(F) Area A Arizona CGB Requirements—1999 and Later. Consequences of failure to comply with averages.

and environmental factors and in relation to relevant statutory and regulatory requirements.

## V. Administrative Requirements

### A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because this federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Therefore, because this proposed action does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

### C. 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 expenditures to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. Under section 205, EPA must select the

most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed approval action does not include a Federal mandate that may result in expenditures of \$100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector in any one year. This proposed Federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this proposed action.

Dated: November 14, 1997.

**Felicia Marcus,**

*Regional Administrator.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region 2 Docket No. NJ29-1-175; FRL-5925-5]

### Approval and Promulgation of Implementation Plans; State of New Jersey; Clean Fuel Fleet Opt Out

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

**ACTION:** Proposed rule.

**SUMMARY:** In this action, the Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan revision submitted by the State of New Jersey for the purpose of meeting the requirement to submit the Clean Fuel Fleet program (CFFP) or a substitute program that meets the requirements of the Clean Air Act (Act). EPA is proposing to approve the State's plan for implementing a substitute program to opt out of the CFFP.

**DATES:** Comments must be received on or before December 22, 1997.

**ADDRESSES:** All comments should be addressed to Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007-1866.

Copies of the State submittals are available at the following addresses for

inspection during normal business hours:

Environmental Protection Agency,  
Region 2 Office, Air Programs Branch,  
290 Broadway, 25th Floor, New York,  
New York 10007-1866

New Jersey Department of  
Environmental Protection, Bureau of  
Air Quality Planning, 401 East State  
Street, CN027, Trenton, New Jersey  
08625

**FOR FURTHER INFORMATION CONTACT:**  
Michael P. Moltzen, Air Programs  
Branch, Environmental Protection  
Agency, 290 Broadway, 25th Floor, New  
York, New York 10007-1866, (212) 637-  
4249.

### SUPPLEMENTARY INFORMATION:

#### I. Background

Section 182(c)(4)(A) of the Clean Air Act requires states containing areas designated as severe ozone nonattainment areas, including New Jersey, to submit for EPA approval a state implementation plan (SIP) revision that includes measures to implement the Clean Fuel Fleet program (CFFP). Under this program, a certain specified percentage of vehicles purchased by fleet operators for covered fleets must meet emission standards that are more stringent than those that apply to conventional vehicles. Covered fleets are defined as fleets of 10 or more vehicles that are centrally fueled or capable of being centrally fueled. A CFFP meeting federal requirements would be a state-enforced program which requires covered fleets to assure that an annually increasing percentage of new vehicle purchases are certified clean vehicles and that those vehicles operate on clean fuel. In New Jersey, the program would apply in the State's portion of the New York-Northern New Jersey-Long Island ozone nonattainment area and in New Jersey's portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area.

The federal CFFP is divided into two components. The first component is a light duty (LD) CFFP which applies to covered fleets of passenger cars and trucks of gross vehicle weight rating (GVWR) of 6,000 pounds and less, and trucks between 6,000 and 8,500 pounds GVWR. Covered fleets which fall under the LD CFFP are required to assure that 30 percent of new purchases are clean vehicles in the first year of the program, 50 percent in the second year and 70 percent in the third and subsequent years.

The second component is a heavy duty (HD) CFFP which applies to covered fleets of trucks over 8,500 pounds GVWR and below 26,000