

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant 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.

The EPA's disapproval action of the State request under section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this final disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's final disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this final disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that this final disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal final disapproval action imposes no new requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the small business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and the other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Courts of Appeals for the appropriate circuit by April 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 26, 1998.

Jerry Clifford,

Acting Regional Administrator, Region VI.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

2. Section 52.2311 is added to read as follows:

§ 52.2311 Motor vehicle antitampering.

The State of Texas submitted revisions to the State Implementation Plan for 30 TAC Chapter 114, sections 114.1 "Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from

Motor Vehicles" and 114.5 "Exclusions and Exceptions" on February 24, 1989, and September 6, 1990, and July 13, 1993. The EPA disapproved these revisions that relate to Statewide antitampering provisions and exemptions to antitampering provisions for motor vehicles or motor vehicle engine emission control systems because the State's antitampering rules are not consistent with the Act, section 203(a)(3) and EPA's tampering prohibition as outlined in EPA's antitampering enforcement policy, Mobile Source Enforcement Memorandum No. 1A.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 071-009; FRL-5957-4]

Approval and Promulgation of State Implementation Plans; Arizona—Maricopa County Ozone and PM₁₀ Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action approving 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 (PM₁₀) in accordance with the requirements of the Clean Air Act (CAA). EPA is approving 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, EPA finds that the requirements are necessary for the Maricopa area to attain the national ambient air quality standards (NAAQS) for ozone and particulates. EPA intends to publish a separate document in the **Federal Register** approving Arizona's opt-out from the federal reformulated gasoline (RFG) program to be effective 90 days from the effective date of this EPA final action.

DATES: This final rule is effective on March 12, 1998.

ADDRESSES: Copies of the SIP revision and EPA's proposed and final

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

Planning Office (AIR-2), Air Division, U.S. Environmental Protection Agency, Region IX, 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.

A copy of this notice is also available on EPA Region IX's website at <http://www.epa.gov/region09>.

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. Clean Air Act Requirements

In determining the approvability of a SIP revision, EPA must evaluate the SIP 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 respecting 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.

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.

Detailed discussions of the issues relating to federal preemption and the necessity finding are discussed more fully in the proposal for this final rule (62 FR 61942 (November 20, 1997)) and in section III below.

II. Background

Under the Clean Air Act Amendments of 1990, the Phoenix area was classified as a moderate nonattainment area for both ozone and PM₁₀. The moderate ozone attainment deadline was November 15, 1996; the moderate PM₁₀ 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 PM₁₀ with an attainment deadline of no later than December 31, 2001.¹

On January 17, 1997, Governor Symington applied to EPA to include the Maricopa County ozone nonattainment area in the federal reformulated gasoline (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 Reid Vapor Pressure (RVP) of 7.0 psi, not identical to the federal fuel RVP requirements adopted under section 211(c)(1) authority 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. 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.²

In a September 12, 1997, letter, Russell Rhoades, Director, ADEQ,

¹ 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).

² 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.

requested that EPA approve the CBG Interim Rule as a revision to the Arizona SIP based in part on a waiver of preemption under CAA section 211(c)(4)(C). 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. Upon publication of this final approval of CBG Interim Rule, EPA will publish a notice in the **Federal Register** approving Arizona's opt-out from the federal RFG program.

For a more detailed discussion of the CBG program and EPA's evaluation of it, and the history of fuels regulation in Arizona, see EPA's proposed approval at 62 FR 61942.

III. Summary of Proposal

A. Arizona CBG Fuel Program

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_x), 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. These emissions reductions will help the Maricopa area attain the NAAQS for both ozone and particulates.

On November 22, 1997, EPA proposed to approve the CBG SIP revision submitted by the State of Arizona for the Phoenix ozone and PM₁₀ nonattainment areas under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. The proposed approval was based upon the finding that the CBG SIP revision was consistent with the CAA and EPA regulations and 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 PM₁₀ NAAQS. Issues relating to federal preemption and the necessity finding are discussed further below. See also 62 FR 61942.

B. Section 211(c)(4)

1. Federal Preemption

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 gasoline³ apply. In addition, all Arizona CBG must meet specified fuel property limits for that year.⁴ 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.⁵ These proposed types of gasoline include performance standards as well as requirements for specific fuel parameters. EPA's analysis in the proposal of preemption addressed the following standards in the CBG Interim Rule: performance standard for NO_x (under gasoline Types 1, 2, and 3); parameter specifications for sulfur, olefins, and aromatic HC (under gasoline Type 2); performance standard for VOC (under gasoline Types 1 and 3); parameter specification for oxygen content (under gasoline Types 1 and 3); performance standard for HC (under Type 2); and parameter specifications for oxygen, aromatic HC, T50, and T90 (under gasoline Type 2).⁶

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. 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_x performance standard. CBG Types 1 and 3 also

contain a NO_x performance standard, so the CBG NO_x 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_x 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_x performance based in part on these fuel parameters.

As stated in the proposal, 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, section 211(c)(4)(C) would allow EPA to approve each requirement in a SIP if EPA determines that such controls are necessary to achieve the NAAQS that the SIP implements. EPA can approve such a State SIP provision as necessary if it finds that no other measures that would bring about timely attainment exist, or that other measures exist but are unreasonable or impracticable. Thus, if a State shows that the reductions that would be produced by the State's NO_x performance standard are necessary under section 211(c)(4)(C) to achieve a NAAQS, EPA could approve the NO_x performance standard as a SIP revision. Under Type 1 or 3 CBG, refiners would obtain NO_x reductions through a NO_x performance standard, and under Type 2 CBG, refiners would obtain comparable NO_x reductions through sulfur, olefins and aromatic HC requirements. If EPA finds the NO_x reductions produced by the NO_x 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 and in the proposal, that NO_x reductions are necessary under section 211(c)(4)(C), EPA proposed to approve the sulfur, olefins and aromatic HC requirements as well.

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

content standard; or oxygen, T50, T90, and aromatic HC requirements (under CBG Type 2 gasoline)⁷. Federal conventional gasoline requirements do not include a VOC or HC 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 VOC 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. If they are preempted, section 211(c)(4)(C) would allow EPA to approve each requirement in a SIP if EPA determines that such controls are necessary to achieve the NAAQS that the SIP implements.

Each type of CBG gasoline would reduce VOC emissions. Under Type 1 or 3 CBG, refiners would obtain VOC reductions through a VOC performance standard and oxygen content standard, and under Type 2 CBG, refiners would obtain comparable VOC reductions through either a HC performance standard and oxygen content standard; or through oxygen, T50, T90, and aromatic HC requirements. If EPA finds the VOC reductions produced by the VOC performance standard and oxygen content standard under CBG Types 1 and 3 to be necessary, then the comparable reductions produced by either of the alternatives of CBG Type 2 gasoline would also be necessary. Thus, based on EPA's finding, discussed in the proposal and below, that VOC reductions are necessary under section 211(c)(4)(C), EPA proposed to approve the HC performance standard; and the oxygen, T50, T90, and aromatic HC requirements as well.

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.⁸ Compliance with either the VOC performance standard and oxygen content standard; or the HC performance standard and the oxygen content standard; or the oxygen, T50, T90, and aromatic HC requirements would produce some additional VOC

⁷ Under gasoline Type 2 using the Predictive model, refiners are required to meet the oxygen content standard only during the winter months.

⁸ See 62 FR 31734 (June 11, 1997).

³ Under the CBG program, a variety of different fuels will be able to meet the fuel standards during different implementation periods. The fuel types, designations and implementation schedule are described in the proposal at 62 FR 61942-64923.

⁴ AAC R20-2-751.01.A.

⁵ AAC R20-2-751.A.

⁶ The CBG Type 2 gasoline allows refiners to comply with a group of fuel parameter specifications or to meet performance standards using the Predictive Model and set individual alternative fuel parameter specifications.

reductions beyond those produced by the 7.0 psi RVP requirement. As with the NO_x performance standard and the alternative fuel parameter requirements discussed above, refiners would obtain comparable VOC reductions through either the VOC performance standard and oxygen content standard; the HC performance standard and the oxygen content standard, or the oxygen, T50, T90, and aromatic HC requirements. Thus, if EPA finds the VOC reductions produced by the VOC performance standard and oxygen content 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 proposed to approve the VOC performance standard; the HC performance standard and the oxygen content standard; and the oxygen, T50, T90, and aromatic HC 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 proposed, as discussed below, that they are necessary and hence approvable under section 211(c)(4)(C).

2. Finding of Necessity

EPA proposed to find that the CBG NO_x performance standards and the sulfur, olefins and aromatic HC requirements are necessary for the Phoenix PM₁₀ nonattainment area to meet the PM₁₀ NAAQS; and that the CBG VOC performance standard and oxygen content standard; the HC performance standard and the oxygen content standard; and the oxygen, T50, T90, and aromatic HC requirements are necessary for the Phoenix ozone nonattainment area to meet the ozone NAAQS.

In the proposal, EPA explained its reasoning that to make a determination that the CBG requirements are necessary, it must consider whether there are other reasonable and practicable measures available that would produce sufficient emissions reductions to attain the ozone and PM₁₀ standards without implementation of the CBG requirements. In considering other measures for the purpose of demonstrating necessity under section 211(c)(4)(C), EPA agreed in the proposal that Arizona need not submit an evaluation of alternative fuels measures. See the proposed approval of the CBG SIP revision at 62 FR 61942 and the response to comments below for a more detailed discussion of this issue. Thus, to determine whether the State gasoline VOC performance standards (and the HC performance standards; and the oxygen, T50 and T90 requirements) are

necessary to meet the ozone NAAQS, EPA must consider whether there are other reasonable and practicable non-fuel measures available to produce the needed emission reductions for ozone control.

IV. Response to Public Comments on the Proposal

EPA received four comment letters in response to its November 22, 1997 proposal. Comments were received from the Arizona Department of Environmental Quality and three gasoline marketers in Maricopa County: Chevron Products Company, Mobil Oil Corporation, and Stancil & Co. representing Navajo Refining Company. EPA wishes to express its appreciation to each of these individuals and organizations for taking the time to comment on the proposal. All of the commenters supported approval of the CBG SIP revision, however two of the commenters also raised technical concerns to which EPA responds below.

Comment: One commenter, while urging EPA to approve the SIP revision, indicated that they disagreed with the CBG rule being portrayed as an important control measure for PM₁₀ in the proposed rulemaking. The commenter noted that the emission reductions associated with the NO_x performance standard are small in comparison to the total amount of the PM₁₀ inventory.

Response: EPA agrees with the commenter that the associated particulate emission reductions are only a small part of the entire inventory. However, for the purposes of finding necessity under section 211(c)(4)(C), the CAA does not impose a legal criterion for approval of a measure that depends on the magnitude of reductions that the measure would achieve, and it is not critical whether the emission reductions associated with the measure are large or small. Rather, section 211(c)(4)(C) focuses on whether there are other measures available that would achieve attainment of a NAAQS. As described in the proposal for this final rule (62 FR 61942, 61946), the information submitted by ADEQ indicates that even with implementation of all measures that are reasonable and practicable in light of the availability of the fuel control, the state cannot fill the projected shortfall in emission reductions needed for attainment of the PM₁₀ NAAQS. Also, while the effect of the NO_x performance standard on PM₁₀ levels is small, the NO_x performance standard will reduce PM₁₀. Hence, EPA is today finding that the NO_x performance standards in the CBG requirements are necessary for

attainment of the PM₁₀ standard, and EPA is approving them as a revision to the Arizona SIP for the Phoenix PM₁₀ nonattainment area.⁹

Comment: One commenter argued that the April 1—October 31 ("summertime") minimum oxygen requirement for the RFG-type fuel (CBG types 1 and 3 gasoline) should not be approved as part of the CBG regulations. The commenter stated that the federal conventional gasoline requirements do not include a summertime oxygen requirement, so the State of Arizona is preempted from a summertime oxygen content standard. The commenter added that if the State were preempted, the State must make the necessity showing for a waiver under section 211(c)(4)(C).

Response: As stated above, EPA believes it does not need to address in today's action whether a State requirement for oxygen is preempted under section 211(c)(4)(A). If the standard is not preempted, there is no bar to EPA approving it in the SIP revision. If the State meets the requirement under section 211(c)(4)(C) by showing that the requirement is necessary to meet the ozone NAAQS, EPA does not need to address whether a summertime oxygen requirement is preempted. If the State demonstrates that it needs a quantity of VOC reductions during the ozone season to reach attainment, that there are no other reasonable and practicable measures available to produce all of those reductions, and that the fuel (Type 1 and Type 3 CBG gasoline requirements for VOC performance standard and oxygen content standard) will produce additional VOC reductions during the ozone season, the State has shown necessity for the fuel requirement. EPA finds that Arizona has made this showing, as discussed elsewhere in this notice and the proposal at 62 FR 61942.

In addition, EPA notes that the commenter is not accurate in stating that because the federal conventional gasoline requirements do not include a summertime oxygen content requirement the State is preempted from adopting such a requirement. A state is preempted from adopting a control or prohibition respecting a fuel characteristic or component where EPA has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component, unless the state control or prohibition is identical to the federal control or prohibition. Thus, where there is no federal control

⁹In its September 12, 1997 letter, ADEQ submitted the CBG Interim Rule as a revision to the Arizona ozone SIP only. However, on January 21, 1998 the State also submitted the rule as a revision to the Arizona PM₁₀ SIP.

or prohibition on a fuel characteristic or component, a state is not preempted from adopting regulations respecting that characteristic or component. As noted above, EPA has not determined whether the Arizona fuel requirement is preempted under this provision.

Comment: This commenter further argued that the CBG summertime oxygen requirement is both unreasonable and impracticable and therefore not necessary to meet the ozone NAAQS. The commenter argued that the intent of the Clean Air Act is that all non-fuel measures with similar or lesser cost effectiveness must be implemented prior to fuel control measures. The commenter asserted that the State had failed to address the cost-effectiveness or justification of this measure versus other non-fuel control measures not implemented, such as controls on stationary sources and full implementation of an inspection and maintenance program for vehicles.

Response: Section 211(c)(4)(C) provides that EPA can approve an otherwise preempted state fuel control only if there are no other reasonable and practicable measures available to achieve the NAAQS. Thus, EPA is directed to consider not whether the state fuel control at issue is reasonable and practicable, but whether *other* control measures are reasonable and practicable. If the state fuel control did not reduce emissions, EPA could not find it necessary to achieve a NAAQS, but the CAA does not otherwise direct EPA to assess the reasonableness and practicability of the state's chosen control measure. EPA believes that in determining whether other ozone control measures are unreasonable or impracticable, reasonableness and practicability should be determined in comparison to the fuel measure that the state is proposing to adopt. This is not an abstract consideration of whether the other measures are reasonable or practicable, but rather a consideration of whether it would be reasonable or practicable to require such other measures in light of the potential availability of the preempted state fuel control. Thus, the relative cost-effectiveness of other control measures would be one factor that EPA would consider in determining whether they are reasonable and practicable, but it would not necessarily be the only or deciding factor. See EPA's August 1997 "Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPs" for further guidance on what EPA considers in making a finding of necessity.

Moreover, EPA does not believe it is appropriate or necessary to second

guess the State's choice of this particular fuel control by inquiring whether the State could have limited the oxygen content standard to the winter season rather than applying it year-round. Essentially, the commenter is suggesting that a wintertime oxygen content requirement is a reasonable and practicable alternative control measure and that EPA should evaluate that measure before concluding that there are not sufficient reasonable and practicable other control measures available to achieve the NAAQS. As discussed in the proposal, EPA interprets the reference to other measures that must be evaluated as generally not encompassing other state fuels measures. 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 non-fuels measures. This interpretation minimizes the burden on the oil industry of different state fuel measures where non-fuel measures are available, and thereby satisfies one of the underlying purposes of section 211(c)(4), but where the state must turn to a fuel measure, it gives the state flexibility to choose whatever particular fuel measure best suits its needs. Under this interpretation, EPA retains the ability not to approve a state fuel measure that is grossly over-burdensome, however, because the state must show that whatever fuel measure it selects is necessary to achieve needed emissions reductions. Thus, in demonstrating that measures other than requiring CBG gasoline are unreasonable or impracticable, Arizona need not address the reasonableness or practicability of other possible state fuel measures, such as a wintertime only oxygen content standard.

Arizona must still demonstrate that its chosen fuel control measure achieves emissions reductions necessary for attainment of a NAAQS, which is discussed below and in the proposal.

With regard to the other measures identified by the commenter, Arizona believes its I/M program is as stringent as possible. EPA has been working with ADEQ over the last year to improve its I/M program due to problems with preconditioning. As discussed further below, current modeling¹⁰ by ADEQ

¹⁰ Arizona completed the Reanalysis of the Metropolitan Phoenix Voluntary Early Ozone Plan (REOP) modeling analysis in October of 1997. This modeling analysis indicated that a 23 percent reduction in ozone values was needed to reach attainment. The total impact of all control measures

indicates that a large reduction in ozone precursors is needed to attain the ozone standard. Previous modeling analysis of a full I/M 240 program indicates that the associated emission reductions, combined with all other reasonable and practicable measures are significantly below this amount. The current proposed I/M program includes an alternative test cycle which will result in improved throughput of the I/M 240 test. EPA has informally given the alternative program conditional approval. We anticipate, that with the collection of additional data during the summer of 1998, that the program will be granted full approval.

Regarding stationary measures, the State has provided additional preliminary modeling¹¹ that indicates that Phoenix needs to achieve substantial percent reductions in both VOCs and NO_x in order to reach attainment in 1999, the attainment deadline for serious areas. The State believes that even if it implements all possible stationary source requirements (in addition to those stationary source measures currently in place), it will still need additional reductions to achieve these reductions and reach attainment. For example, the REOP modeling analysis indicates that stationary point source emissions contribute only 4.5 percent and stationary area source emissions contribute only 20 percent of the total VOC emission inventory in 1999. Stationary point sources contribute 7 percent and stationary area source contribute 3.6 percent of the total NO_x emissions in 1999. Based on all the evidence available, even with the elimination of all of these stationary source emissions (which is not technically feasible), substantial additional emission reductions above 25 percent will be needed to reach attainment by 1999.

Comment: One commenter stated that ADEQ used a flawed analysis in its attempt to show that non-winter minimum-oxygen control is necessary for ozone attainment by calculation of an "equivalent" VOC impact. The commenter argues that ADEQ's inaccurate analysis resulted in an overstatement of the VOC emissions impact of a non-winter oxygen content control.

Response: EPA believes that this commenter is referencing ADEQ's

included in that analysis on ozone values was 4.4 percent, significantly below the 23 percent needed to reach attainment. Additional analysis of this modeling was completed in November of 1997, indicating that emission reductions of ozone precursors of at least 70 percent are needed to attain the one-hour ozone standard.

¹¹ See footnote 10

discussion and analysis regarding the relationship between carbon monoxide (CO) reductions and VOC reductions. ADEQ stated in its SIP submittal that one comment regarding Arizona's proposed CBG rule challenged the summertime oxygen content standard. Thus, ADEQ developed an analysis of the potential impact of preemption of a State oxygen content standard on ozone attainment. ADEQ stated that because oxygenation of gasoline reduces CO emissions and CO is an ozone precursor, it was determined that preemption of the oxygen content standard would reduce the potential ozone reduction benefits of the Arizona CBG program.¹²

EPA has reviewed ADEQ's analyses¹³ and believes that these analyses are insufficient to show that a summertime oxygen content gasoline requirement is necessary for Phoenix to achieve the ozone NAAQS. EPA believes more in-depth analysis would need to be done by EPA, states, and industry before EPA could make any conclusions on this issue. Nonetheless, EPA believes ADEQ does not need this analysis to show that the year-round oxygen content requirement is necessary under section 211(c)(4)(C) to meet the ozone NAAQS.

As stated above, if EPA finds the VOC reductions produced by the VOC performance standard and oxygen content standard under CBG Types 1 and 3 to be necessary, then the comparable reductions produced by either of the alternatives of CBG Type 2 gasoline would also be necessary. In today's action EPA is finding that VOC reductions are necessary under section 211(c)(4)(C) and is approving the VOC performance standard (and oxygen content standard); the HC performance standard (and the oxygen content standard); and the oxygen, T50, T90, and aromatic HC requirements because either they are not preempted under section 211(c)(4)(C) or to the extent that they are or may be preempted, they are necessary and hence approvable under section 211(c)(4)(C).

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.¹⁴ Compliance with the VOC performance standard and oxygen content standard (required by CBG gasoline types 1 and 3) would produce

some additional VOC reductions beyond those produced by the 7.0 psi RVP requirement. ADEQ's modeling shows that federal RFG would provide additional reductions of 8 percent over a baseline fuel of conventional gasoline with a 7.0 RVP requirement. In addition, EPA's complex model indicates that an increase in oxygen weight percent leads to a reduction in total VOC emissions.¹⁵ Refiners would also obtain comparable VOC reductions through the HC performance standard, or the oxygen, T50, T90, and aromatic HC requirements. Thus, EPA is finding in today's action that the VOC reductions produced by the VOC performance standard and oxygen content standard under CBG Type 1 and 3 gasoline are necessary; and the comparable emissions reductions produced by the alternative of CBG Type 2 gasoline are also necessary.

V. 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 PM₁₀ NAAQS, pursuant to the CAA. Therefore, EPA approves the Arizona CBG Interim Rule into the Arizona SIP for the Phoenix ozone and PM₁₀ 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, and environmental factors and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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 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.

This final rule will not have a significant impact on a substantial number of small entities because this federal action authorizes and approves into the Arizona SIP requirements previously adopted by the State, and imposes no new requirements. Therefore, I certify 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 estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector, in any one year. This 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 action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of

¹² ADEQ Technical Support Document at page 7. This analysis is contained in appendices K and L to the Technical Support Document.

¹³ Appendix K, entitled CO reductions and equivalent VOC reductions from an increase in Gasoline Oxygen Content and Appendix L, entitled Ozone sensitivity to CO expressed in relation to VOC.

¹⁴ See 62 FR 31734 (June 11, 1997).

¹⁵ 40 CFR 80.45(c)(1) (i) and (ii)

Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Volatile organic compounds, Nitrogen oxides, Particulate matter, Incorporation by reference, Intergovernmental relations, Ozone, PM₁₀, 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: January 23, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(89) and (c)(90) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(89) Plan revisions were submitted on September 12, 1997 by the Governor's designee.

(i) Incorporation by reference

(A) Arizona Cleaner Burning Gasoline Interim rule submitted as a revision to the Maricopa Country Ozone Nonattainment Area Plan, adopted on September 12, 1997.

(90) Plan revisions were submitted on January 21, 1998 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Cleaner Burning Gasoline Interim rule submitted as a revision to the PM-10 Maricopa County State Implementation Plan, adopted on September 12, 1997.

* * * * *

[FR Doc. 98-3327 Filed 2-9-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX82-1-7336b; FRL-5962-5]

Approval and Promulgation of State Implementation Plan, Texas: 15% Rate-of-Progress Plan, 1990 Emission Inventory, Motor Vehicle Emission Budget, and Contingency Plan for the Beaumont/Port Arthur Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving a revision to the Texas State Implementation Plan (SIP) for the Beaumont/Port Arthur ozone nonattainment area for the purpose of satisfying the 15% rate-of-progress requirements of the Clean Air Act (Act) as amended in 1990, which will aid in ensuring the attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. The EPA is also approving the area's associated Motor Vehicle Emission Budget (MVEB).

In addition, EPA is approving revisions to the 1990 base year emissions inventory and the contingency plan for this area.

This action also replaces the proposed limited approval/limited disapproval of the Beaumont/Port Arthur 15% Plan and Contingency Plan published on January 29, 1996. The May 22, 1997 (62 FR 27964), limited approval of the Volatile Organic Compound (VOC) control measures continues in effect.

DATES: This direct final rule document is effective April 13, 1998, unless adverse comments are received by March 12, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Regional Office listed below. Copies of the documents relevant to this

final action are available for public inspection during normal business hours at the following locations.

Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.

Texas Natural Resource Conservation Commission (TNRCC), 12100 Park 35 Circle, Building F, Austin, Texas 78753.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Eaton R. Weiler, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665-7242.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements

Section 182(b)(1) of the Act as amended in 1990 requires all ozone nonattainment areas classified as moderate and above to submit a SIP revision by November 15, 1993, which describes, in part, how these areas will achieve an actual reduction in VOC emissions of at least 15 percent, from a 1990 baseline, during the first six years after enactment of the Act (November 15, 1996). The Act also sets limitations on the creditability of certain types of reductions. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (new car emissions standards) promulgated prior to 1990, or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990. Furthermore, the Act does not allow credit for corrections to Vehicle Inspection and Maintenance Programs (I/M), or corrections to Reasonably Available Control Technology (RACT) rules as these programs were required prior to 1990. Emissions and emissions reductions shall be calculated on a typical weekday basis for the "peak" 3-month ozone period (generally June through August).

In addition, section 172(c)(9) of the Act requires that contingency measures be included in the plan revision to be implemented if reasonable further progress is not achieved, or if the standard is not attained.

In Texas, the Beaumont/Port Arthur ozone nonattainment area is classified as "moderate" and is subject to the