the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this potential disapproval action will not have a significant economic impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

F. 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 the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 14, 1998.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 98–34420 Filed 12–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ079; FRL–6212–5]

RIN 2060–A122

Approval and Promulgation of Implementation Plans; Arizona—Maricopa Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to approve under the Clean Air Act (CAA or Act) a revision to the Arizona State Implementation Plan (SIP) reflecting Arizona State legislation that provides for the expeditious implementation of best management practices to reduce fugitive dust from agricultural sources in the Maricopa County (Phoenix) PM–10 nonattainment area. Because EPA is proposing to approve the State legislation as meeting the reasonably available control measure (RACM) requirements of the Act, EPA is also proposing to withdraw a federal implementation plan (FIP) commitment, promulgated under section 110(c) of the Act, to adopt and implement RACM for agricultural fields and aprons in the Maricopa area.

DATES: Written comments will be accepted until January 29, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: John Ungvarsky, EPA Region 9, 75 Hawthorne Street (AIR2), San Francisco, CA 94105, (Phone: 415–744–1286).

A copy of docket No. A–98–45, containing material relevant to EPA's proposed action, is available for review at: EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Interested persons may make an appointment with John Ungvarsky to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

A copy of docket no. A–98–45 is also available to review at the Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012. (602) 207–2217.

Electronic Availability

This document is also available as an electronic file on EPA's Region 9 Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: For questions and issues regarding this proposed rulemaking contact, John Ungvarsky (415) 744–1286.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements

1. Designation and Classification

Portions of Maricopa County [1] are designated nonattainment for the PM–10 national ambient air quality standards (NAAQS) [2] and were originally classified as ''moderate'' pursuant to section 188(a) of the Clean Air Act (CAA or Act). 56 FR 11101 (March 15, 1991). On May 10, 1996, EPA reclassified the Maricopa County PM–10 nonattainment area to ''serious'' under CAA section 188(b)(2). 61 FR 21372. Having been reclassified, Phoenix is required to meet the serious area requirements in the CAA, including a demonstration that best available control measures (BACM) will be implemented by June 10, 2000. CAA sections 188(c)(2) and 189(b). While the Phoenix PM–10 nonattainment area is currently classified as serious, today's proposed actions relate only to the moderate area statutory requirements.

Pursuant to section 189(b)(2), the State of Arizona was required to submit a serious area plan addressing both PM–10 NAAQS for the area by December 10, 1997. The State has not yet submitted that plan.

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[1] ''Maricopa,'' ''Maricopa County'' and ''Phoenix'' are used interchangeably throughout this proposal to refer to the nonattainment area.

[2] There are two PM–10 NAAQS, a 24-hour standard and an annual standard. 40 CFR 50.6. EPA promulgated these NAAQS on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter ($\mu g/m^3$). The 24-hour PM–10 standard of 150 $\mu g/m^3$ is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, Appendix K.

On July 18, 1997, EPA revised both the annual and the 24-hour PM–10 standards and also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5)(62 FR 38651). Today's proposed actions relate only to the CAA requirements concerning the 24-hour and annual PM–10 standards as originally promulgated in 1987.

2. Moderate Area Planning Requirements and EPA Guidance

The air quality planning requirements for PM–10 nonattainment areas are set out in subparts 1 and 4 of Title I of the Clean Air Act. Those states containing initial moderate PM–10 nonattainment areas were required to submit, among other things, by November 15, 1991 provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993. CAA sections 172(c)(1) and 189(a)(1)(C).[3] Since that deadline has passed, EPA has concluded that the required RACM/RACT must be implemented ''as soon as possible.'' *Delaney* v. *EPA*, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be ''as soon as practicable.'' See 55 FR 41204, 41210 (October 1, 1990) and 63 FR 28898, 28900 (May 27, 1998).

EPA has issued a ''General Preamble''[4] describing EPA's preliminary views on how the Agency intends to review state implementation plans (SIPs) and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM–10 nonattainment area SIP provisions. The methodology for determining RACM/RACT is described in detail in the General Preamble. 57 FR 13498, 13540–13541. With respect to PM–10, Appendix C1 of the General Preamble suggests starting to define RACM with the list of available control measures for fugitive dust and adding to this list any additional control measures proposed and documented in public comments. Any measures that apply to de minimis emission sources of PM–10 and any measures that are unreasonable for technology reasons or because of the cost of the control in the area can then be culled from the list. In addition, potential RACM may be culled from the list if a measure cannot be implemented on a schedule that would advance the date for attainment in the area. 57 FR 13498, 13560. 57 FR 18070, 18072 (April 28, 1992).

Moderate area plans were also required to meet the generally applicable SIP requirements for reasonable notice and public hearing under section 110(a)(2), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111 and EPA guidance implementing these provisions.

B. EPA's Moderate Area PM–10 FIP for Phoenix

On August 3, 1998, EPA promulgated under the authority of CAA section 110(c)(1) a federal implementation plan (FIP) to address the CAA's moderate area PM–10 requirements for the Phoenix PM–10 nonattainment area. 63 FR 41326 (August 3, 1998).

In the FIP, EPA promulgated, among other things, for both the annual and 24-hour PM–10 NAAQS, a demonstration that RACM will be implemented in the Phoenix area as soon as practicable.[5] As part of its RACM demonstration, EPA promulgated an enforceable commitment, codified at 40 CFR 52.127, to ensure that RACM for agricultural sources will be expeditiously adopted and implemented. See 63 FR 41326, 41350.[6]

II. Arizona Legislation for the Agricultural Sector

On May 29, 1998, Arizona Governor Hull signed into law Senate Bill 1427 (SB 1427) which revised title 49 of the Arizona Revised Statutes (ARS) by adding section 49–457. This legislation establishes an agricultural best management practices (BMPs) committee for the purpose of adopting by rule by June 10, 2000, an agricultural general permit specifying BMPs for regulated agricultural activities[7] to reduce PM–10 emissions in the Maricopa PM–10 nonattainment area. ARS 49–457.A-F. BMPs are defined in subsection N.2 of section 49–457 as ''techniques verified by scientific research, that on a case by case basis are practical, economically feasible and effective in reducing PM–10 particulate emissions from a regulated agricultural activity.'' Subsection N.1 defines ''agricultural general permit'' to mean:

> best management practices that: (a) reduce PM–10 particulate emissions from tillage practices and from harvesting on a commercial farm.[;] (b) reduce PM–10 particulate emissions from those areas of a commercial farm that are not normally in crop production. [;] (c) reduce PM–10 particulate emissions from those areas of a commercial farm that are normally in crop production including prior to plant emergence and when the land is not in crop production.

Subsection M provides for the initiation of BMP implementation through the commencement of an education program by June 10, 2000. Subsection H requires the Arizona Department of Environmental Quality (ADEQ) to submit to EPA a list of BMPs as a revision to the applicable implementation plan within 60 days of their adoption.[8]

The legislation specifies ADEQ's authority to enforce the general permit through a series of compliance actions. ARS 49–457.I–K. However, subsection G of section 49–457 also specifies that:

> [n]otwithstanding subsections I, J and K of this section, a person engaged in a regulated agricultural activity on the effective date of this Act shall comply with the general permit as provided in subsection H of this section by December 31, 2001. A person who commences a regulated agricultural activity after December 31, 2000, shall comply with the general permit within eighteen months of commencing the activity.

On September 4, 1998, the State of Arizona submitted ARS 49–457 to EPA

[3] States with moderate PM–10 areas were also required to submit either a demonstration that the plan would provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable (CAA section 189(a)(1)(B)); and, for plan revisions demonstrating impracticability, a demonstration of reasonable further progress (RFP) meeting the requirements of CAA sections 172(c)(2) and 171(1). Section 171(1) defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by part D of the Act or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable attainment date.''

[4] See ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

[5] In addition to the RACM demonstration, EPA also promulgated a demonstration of reasonable further progress and a demonstration that it was impracticable for the Phoenix area to attain either the annual or 24-hour PM–10 NAAQS by the applicable attainment deadline pursuant to CAA sections 172(c)(2) and 189(a)(1)(B). 63 FR 41326, 41340 and 41342.

[6] 40 CFR 52.127 provides that ''[t]he Administrator shall promulgate and implement reasonably available control measures (RACM) pursuant to section 189(a)(1)(C) of the Clean Air Act for agricultural fields and aprons in the Maricopa County (Phoenix) PM–10 nonattainment area according to the following schedule: by no later than September, 1999, the Administrator shall sign a Notice of Proposed Rulemaking; by no later than April, 2000, the Administrator shall sign a Notice of Final Rulemaking; and by no later than June, 2000, EPA shall begin implementing the final RACM.''

[7] ''Regulated agricultural activities'' are defined as ''commercial farming practices that may produce PM–10 particulate emissions within the Maricopa PM–10 particulate nonattainment area.'' ARS 49–457.N.4.

[8] It is not entirely clear from the language of subsection H whether the statute requires the submittal to EPA of the general permit, BMPs or both as an applicable implementation plan revision. However, as long as either the BMPs or general permit are submitted, once approved by EPA, the agricultural control measures will be federally enforceable.

for inclusion in the Arizona SIP for the Phoenix PM–10 nonattainment area as meeting the RACM requirements of CAA section 189(a)(1)(C) and requested that the Agency approve that legislation in place of the FIP commitment in 40 CFR 52.127.[9] On October 27, 1998, EPA found the submittal to be complete pursuant to EPA's completeness criteria set forth in 40 CFR part 51, Appendix V.[10]

III. SIP Approval Criteria

Once a SIP submittal is deemed complete, EPA must next determine if the submittal is approvable as a revision to the SIP. In the case of the Arizona legislation, EPA must first determine whether ARS 49–457 meets the RACM requirements of CAA section 189(a)(1)(C) and EPA guidance interpreting that provision. EPA must also determine that the legislation meets the general SIP requirements described in section I.A.2 above.

Finally, in order for EPA to approve the SIP revision, EPA must determine that the SIP submittal complies with CAA section 110(l). Section 110(l) states that the ''Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of [the Clean Air] Act.'' EPA has concluded that where previously-promulgated FIP elements that have been found to comply with the applicable requirements of the Act, including those provisions pertaining to attainment and RFP, are being replaced by elements of a plan revision that EPA determines are substantially equivalent, that plan revision would satisfy the requirements of section 110(l).

IV. Evaluation of the Arizona Legislation

A. RACM and General SIP Requirements

As described in greater detail in section II above, ARS 49–457 requires that the agricultural BMPs committee established in the legislation must adopt BMPs (to be embodied in a general permit) for agricultural activities in the Maricopa PM–10 nonattainment area by June 10, 2000. The legislation also requires the committee to commence an education program by that date. As such, ARS 49–457 constitutes an enforceable commitment by the State to undertake these activities. Moreover, the legislation requires any person engaged in a regulated agricultural activity to comply with the general permit by December 31, 2001.

As discussed in section I.B, on August 3, 1998, EPA promulgated a moderate area PM–10 FIP for the Phoenix area that includes an enforceable commitment to adopt and begin implementing RACM for the agricultural sector by June 2000. In the proposed and final rules for the FIP, EPA explained at length the Agency's reasons for promulgating a commitment to adopt RACM in the future (rather than an immediately effective regulation) and for its adoption and implementation schedule. See 63 FR 15920, 15935–15937; 63 FR 41327, 41332–41334.

In general, EPA believes that because agricultural sources in the United States vary by factors such as regional climate, soil type, growing season, crop type, water availability, and relation to urban centers, each PM–10 agricultural strategy is uniquely based on local circumstances. Furthermore, EPA determined that the goal of attaining the PM–10 standards in Maricopa County with respect to agricultural sources would be best served by engaging all interested stakeholders in a joint comprehensive process on the appropriate mix of agricultural controls to implement in Maricopa County. EPA stated its belief that this process, despite the additional time needed to work through it, will ultimately result in the best and most cost-effective controls on agricultural sources in the County.

In the FIP notices, EPA also explained its intention to meet its RACM commitment by developing and promulgating BMPs. Given the number of potential BMPs, the variety of crops types, the need for stakeholder input, and the time necessary to develop the BMPs into effective control measures, EPA believes that the adoption and implementation schedule in the FIP is as expeditious as practicable and meets the Act's 189(a)(1)(C) requirement.[11]

EPA has evaluated the Arizona legislation and concluded that its requirements are substantially similar to those in the FIP commitment for agriculture. To the extent that the State statute differs from the FIP commitment, EPA believes that the former contains more substance and greater procedural detail that better informs the BMP development, adoption and implementation process. See, e.g., ARS 49–457.B, F, G and M.

While ARS 49–457 does not use the term ''RACM,'' its definition of BMPs is consistent with the criteria specified in the General Preamble. Likewise, the formation of a BMP committee, the requirements for BMP adoption and initiation of an educational program by June 10, 2000, and the requirement for full compliance with the general permit by December 31, 2001 is consistent with the process and timing that EPA determined in the FIP to represent expeditious implementation of RACM as required by CAA section 189(a)(1)(C).

EPA has also concluded that subsection F of section 49–457 provides the necessary assurances of adequate personnel and funding required by CAA section 110(a)(2)(E)(i) to develop and adopt the required BMPs.[12] In addition, ADEQ intends to fund the BMP rulemaking process through its CAA section 105 grant. That funding will be used to cover administrative costs of the BMP committee. The BMP general permit program will be funded from the resources currently allocated to the State's existing general permit program authorized under ARS 49–426.H.[13] EPA intends to assess the adequacy of the State's enforcement program, including methods and long-term resources, in connection with future rulemakings on the BMPs and/or general permit submitted by the State for inclusion in the SIP. See footnote 8.

B. CAA Section 110(l)

As discussed in the previous section, EPA has determined that the State legislation provides for the implementation of RACM for agricultural sources as expeditiously as practicable. Therefore, approval of the legislation and withdrawal of the FIP RACM commitment will not interfere with the RACM requirements of CAA section 189(a)(1)(C).

As stated in footnote 5, EPA in the FIP promulgated a demonstration, meeting the requirements of CAA section 189(a)(1)(B), that the Phoenix area could

[9] Letter from Russell Rhoades, ADEQ, to Felicia Marcus, EPA, regarding submittal of a state implementation plan revision: agricultural best management practices; September 4, 1998.

[10] Letter from David Howekamp, EPA, to Russell Rhoades, ADEQ, regarding completeness determination; October 27, 1998.

[11] In response to its FIP proposal, EPA received a number of comments on the Agency's proposed commitment for the agricultural sector. These comments included claims that a commitment would not meet the CAA requirements and EPA guidance for enforceable measures as expeditiously as practicable and that the proposed adoption and implementation schedule was too protracted. The reader is referred to 63 FR 41326, 41332–41334 for EPA's responses to these and other comments on its commitment for agriculture.

[12] Subsection F of ARS 49–457 provides that: ''[t]he Department of Environmental Quality, the Department of Agriculture and the College of Agriculture of the University of Arizona shall cooperate with and provide technical assistance and any necessary information to the committee. The Department of Environmental Quality shall provide the necessary staff support and meeting facilities for the committee.''

[13] Attachment 3 to letter from Russell Rhoades to Felicia Marcus; September 4, 1998.

not practicably attain either the annual or 24-hour PM–10 NAAQS by the applicable attainment deadline, December 31, 2001,[14] with the implementation of RACM.

The Agency determined that, even assuming an unrealistic 100 percent control of emissions from agricultural sources subject to the FIP commitment, simulated PM–10 concentrations are still over the annual standard. Thus, EPA found, pursuant to CAA section 189(a)(1)(B), that attainment of the annual PM–10 standard by December 31, 2001 is impracticable with the implementation of RACM. 63 FR 41326, 41340.

With respect to timely attainment of the 24-hour standard, EPA found that attainment at the evaluated monitoring sites would require substantial reductions from agricultural sources. EPA concluded that while reductions from agricultural sources are expected through the future implementation of the federal BMPs, EPA could not currently quantify the impact of these BMPs because they had yet to be developed. Therefore it was not possible for the Agency to determine an expected level of control. 63 FR 41326, 41341.

The BMPs developed pursuant to the Arizona legislation will be adopted and implemented by the same process and consistent with the schedule provided for in the FIP commitment for agricultural RACM. Therefore, the approval of ARS 49–457 and the withdrawal of the FIP commitment in 40 CFR 52.127 will not change the impracticability demonstration in the FIP. As a result, that impracticability demonstration will continue to meet the requirements of section 189(a)(1)(B). Thus EPA's proposed actions will not interfere under section 110(l) with the attainment requirements of the CAA.

EPA has also concluded that approval of ARS 49–457 and withdrawal of the FIP commitment will not interfere with the RFP requirements in sections 172(c) and 171(1) of the CAA. For moderate PM–10 areas demonstrating impracticability, EPA has determined that these statutory requirements are met by a showing that the implementation of RACM has resulted in incremental emission reductions below pre-implementation levels. See, e.g., 63 FR 41326, 41342. In the FIP, EPA found that the CAA's RFP requirements have been met for both the annual and 24-hour PM–10 standards. See footnote 5. With respect to the annual standard, EPA stated that:

> in order to show annual reductions from 2000 to 2001, emission reductions of more than 239 mtpy would need to result from the implementation of the BMPs on agricultural sources. The projected regional inventory for agricultural sources is 6,972 mtpy in 2001.* * * The FIP rule will need to reduce emissions in this category by slightly more than 3 percent in order to demonstrate annual incremental reductions between 2000 and 2001.* * * EPA has every confidence that such minimal reductions can be achieved.

63 FR 41326, 41343. With respect to the 24-hour standard, EPA found that, assuming no emission reductions from agricultural sources, the statutory RFP requirements were met at the evaluated monitoring sites. *Id.*

Again, ARS 49–457 contains a commitment to implement RACM level controls for agricultural sources consistent with the FIP commitment. Therefore, the approval of ARS 49–457 and the withdrawal of the FIP commitment in 40 CFR 52.127 will not change the RFP demonstrations in the FIP. As a result, those RFP demonstrations will continue to meet the requirements of sections 172(c) and 171(1). Thus EPA's proposed actions will not interfere under section 110(l) with the RFP requirements of the CAA.[15]

As the above analysis demonstrates, the State legislation is substantially equivalent to the FIP provisions and, therefore, clearly satisfies the requirements of section 110(l).

V. Proposed Actions

EPA has evaluated ARS 49–457 and has determined that it is consistent with the CAA and EPA regulations. Therefore, EPA is proposing to approve ARS 49–457 under section 110(k)(3) of the CAA as meeting the requirements of sections 110(a) and 189(a)(1)(C).

Because EPA is proposing to approve the Arizona statute as meeting the RACM requirements of the CAA for agricultural sources in the Phoenix area, EPA is also proposing to withdraw the FIP RACM commitment for such sources. Specifically, the Agency is proposing to delete § 52.127, Commitment to Promulgate and Implement Reasonably Available Control Measures for the Agricultural Fields and Aprons, in subpart D of part 52, chapter I, title 40 of the Code of Federal Regulations. EPA believes that the approval of the State statute and withdrawal of the FIP commitment gives preference to the State's controls consistent with the CAA's intent that states have primary responsibility for the control of air pollution within their borders. CAA sections 101(a)(3) and 107(a).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP 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 Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's proposed SIP approval and FIP withdrawal actions do not create a mandate on state, local or tribal governments. The proposed actions do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to these proposed actions.

[14] EPA has concluded that since the CAA moderate area attainment deadline, December 31, 1994, in section 188(c)(1) has passed and the Maricopa area has been reclassified, the only attainment deadline currently applicable to the area is the serious area deadline provided for in CAA section 188(c)(2); i.e, achievement of attainment as expeditiously as practicable, but no later than December 31, 2001. For a discussion of this conclusion and an analysis of the issue, see 63 FR 15920, 15926.

[15] For the reasons set forth in this section, EPA has also concluded that its proposed actions will not interfere with any applicable requirements of the CAA concerning the PM–2.5 standards.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. These proposed actions are not subject to Executive Order 13045 because they are not economically significant as defined under Executive Order 12866 and do not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's proposed actions do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these proposed actions.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. These proposed actions will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because these proposed actions do not create any new requirements, I certify that these proposed actions will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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).

F. 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 annual 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 these proposed actions do not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. These proposed actions approve pre-existing requirements under State or local law and withdraw Federal requirements, and impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from these proposed actions.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, Sec. 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. These federal actions do not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

Dated: December 22, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–34422 Filed 12–29–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

45 CFR Part 61

RIN 0991–AA98

Health Care Fraud and Abuse Data Collection Program: Reporting of Final Adverse Actions—Extension of Comment Period

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On October 30, 1998, we published a notice of proposed rulemaking designed to set forth the policy and procedures for implementing the new Healthcare Integrity and Protection Data Banks (HIPDB), in accordance with the statutory requirements of section 1128E of the