ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–005–ROP; FRL–6315–6]

Approval and Promulgation of Implementation Plans; Phoenix, Arizona Ozone Nonattainment Area, Revision to the 15 Percent Rate of Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing minor changes to its 1998 15 percent rate of progress federal implementation plan (1998 FIP) for the metropolitan Phoenix (Arizona) ozone nonattainment area. The 1998 FIP contains a demonstration that the Phoenix metropolitan area has in place sufficient measures to meet the 15 percent rate of progress (ROP) requirement in the Clean Air Act. We are proposing changes to the control strategy for the 15 percent ROP demonstration. The proposed changes delete or add to the control strategy measures that have already been adopted in the Phoenix area; we are not proposing any new emission control regulations. This proposal does not alter our basic conclusion in the 1998 FIP that the Phoenix metropolitan area will meet the 15 percent ROP requirement as soon as practicable. We also discuss our policies on the contingency measures required by the Clean Air Act for the Phoenix ozone nonattainment area. Finally, we are proposing to revise the transportation conformity budget set in the 1998 FIP.

DATES: Comments on this proposal must be received in writing by April 26, 1999. Please address your written comments to the contact listed below. You may also request the opportunity to submit oral comments as allowed under Clean Air Act section 307(d)(5). EPA must receive your request for a public hearing by April 5, 1999. If we schedule a hearing, the record will remain open for 30 days after the hearing for submission of supplemental or rebuttal information only.

ADDRESSES: Written comments and requests for public hearing should be addressed to Frances Wicher at the EPA Region 9 address below.

EPA has placed copies of the draft technical support document (TSD) and other documents relied on for this proposal in a docket. You may inspect this docket during normal business hours at the following locations and may request copies of any document contained in the docket. A reasonable fee may be charged for any requested copies.

U.S. Environmental Protection Agency, Region 9, Office of Air Planning, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1248.

Arizona Department of Environmental Quality, Office of Outreach and Information, First Floor, 3033 N. Central Avenue, Phoenix, Arizona 85012. (602) 207–2217.

We have also posted copies of this proposal, the draft TSD, and EPA's 1998 plan and its TSD in the air programs section of EPA Region 9's website, www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 744–1248, wicher.frances@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose

What Is EPA Proposing in This Action?

EPA is proposing minor changes to its 1998 15 percent rate of progress federal implementation plan (1998 15 percent ROP FIP or 1998 FIP) for the metropolitan Phoenix (Arizona) ozone nonattainment area. We published the 1998 FIP in the **Federal Register** on May 27, 1998 at 63 FR 28898 (Reference 1). The 1998 FIP contains a demonstration that the Phoenix metropolitan area has in place or will have in place sufficient measures to meet the 15 percent rate of progress (ROP) requirement in section 182(b)(1) of the Clean Air Act (CAA) as soon as practicable. For the complete background to our 1998 FIP, please see section I.B. of the technical support document (TSD) for the 1998 FIP (Reference 2).

In this action, we are specifically proposing to change the control strategy (that is, the list of control measures) that makes up the 15 percent ROP demonstration for the Phoenix area by deleting the National Architectural Coatings Rule and adding Arizona's Clean Burning Gasoline (CBG) program. Neither of these proposed changes will affect our basic conclusion in the 1998 15 percent ROP FIP that the Phoenix metropolitan area has in place sufficient measures to meet the 15 percent rate of progress requirement in CAA section 182(b)(1) as soon as practicable. We are proposing these changes under our federal planning authority in CAA section 110(c).

Later in this preamble, we will also discuss in more detail our policies on the contingency measures required by CAA section 172(c)(9) for most ozone nonattainment area plans.

Finally, we will describe our proposed revisions to the transportation conformity budget set in the 1998 FIP.

Why Is EPA Proposing This Action?

In the 1998 15 percent ROP FIP, we included emission reductions from three proposed national consumer and commercial product rules in the ROP demonstration. Since the 1998 FIP was published, EPA has finalized these rules. The final rules varied from the proposals in ways that affected either the amount or timing of the emission reductions that we assumed for them in the 15 percent ROP demonstration. We stated in the 1998 FIP that if the final rules did not result in all the emission reductions we expected, we would take appropriate action to revise the plan. We are proposing the necessary revisions in this document.

We are also taking this action to comply with the voluntary remand that we requested and were granted from the Ninth Circuit Court of Appeals in order to address two issues raised in a petition to review the 1998 FIP. This petition, *Aspegren* v. *Browner,* No. 98–70824, asked the court to review two aspects of the 1998 FIP and then require us to take certain actions to revise the plan. The petitioners first asked the court to require EPA to evaluate the effects of the final federal rules on the Phoenix 15 percent ROP demonstration and to adopt any additional rules needed to assure that the 15 percent ROP is met. Second, the petitioners asked the court to require EPA to adopt and include in the FIP contingency measures consistent with CAA section 172(c)(9) and EPA guidance. See page 22 of the petitioners' brief in the case (Reference 3).

We have, therefore, reviewed the effect of the final federal rules on the 15 percent ROP demonstration in the 1998 FIP and are proposing changes to the control strategy. We are also responding to the petitioners' arguments regarding the Clean Air Act and our guidance requirements for contingency measures.

II. Background on the 15 Percent ROP FIP for Phoenix

What Is the CAA 15 Percent Rate of Progress Requirement?

Clean Air Act section 182(b)(1) requires each ozone nonattainment area with a classification of moderate or above to develop a plan to reduce volatile organic compounds (VOC) emissions (a contributor to ozone) in the area by 15 percent from 1990 levels. This plan is referred to as the 15 percent

rate of progress plan or the 15 percent ROP plan. The 15 percent ROP requirement applies only to areas that are not meeting the one-hour national ozone ambient air quality standard.

In 1991, we classified the Phoenix ozone nonattainment area as moderate and in 1997 reclassified the area to serious. Therefore the Phoenix area must meet the 15 percent ROP requirement.

For an area to show that it meets the 15 percent ROP requirement, it must show that future emissions in the area will be equal to or less than a target level of emissions that meets the 15 percent reduction. CAA section 182(b)(1) has detailed instructions and several restrictions for calculating the required target level.

We calculated the 15 percent ROP target for the Phoenix area in the 1998 FIP. This calculation is documented in sections II.B. and III.B. in the Technical Support Document (TSD) for the 1998 FIP (Reference 2). The target level for the Phoenix area is not affected by the changes we are proposing to the control strategy and remains the same as in the 1998 FIP.

The Clean Air Act requires ozone nonattainment areas to show the 15 percent ROP by November 15, 1996. Even though that date has passed, the Act's 15 percent ROP requirement still applies to the Phoenix area. However, because the date has passed, in order to show that the Phoenix area meets the 15 percent ROP requirement, we now have to show that the 15 percent ROP will be met ''as soon as practicable.'' In summary, this means that we have to show the plan includes all available measures that could meaningfully advance when the 15 percent ROP is met in Phoenix. For a more detailed description of the ''as soon as practicable'' requirement for 15 percent ROP, please see page 3687 of the proposal for the 1998 FIP (Reference 4).

What Is in the 1998 15 Percent ROP FIP?

The 1998 FIP included our demonstration that the Phoenix area would have sufficient controls in place to meet the 15 percent rate of progress requirement for the Phoenix area by no later than April 1, 1999. The FIP also showed that April 1, 1999 is the earliest date by which the 15 percent reduction could be met considering the availability of practicable measures for the Phoenix area. See page 3689 in the proposal for the 1998 FIP (Reference 4).

In the demonstration, we relied on a set of promulgated and proposed federal measures as well as numerous State measures that we had previously approved. These measures and their expected emission reductions are identified in Table 5 of the proposed FIP, see page 3690 in the proposal for the 1998 FIP (Reference 4).

The proposed federal rules that we included in the 15 percent ROP demonstration are three rules that reduce emissions from certain consumer and commercial products: (1) architectural coatings (e.g., paints, stains, and finishes), (2) automobile refinish coatings, and (3) consumer products (e.g., household cleaning products, personal grooming products). At the time we issued the 1998 15 percent ROP FIP in May 1998, we had proposed these rules and were required by a court order to finalize them by mid-August 1998. We had been developing these rules for several years and had issued guidance memoranda allowing states to take a specified emission reduction credit for each measure in their 15 percent plans. For a further discussion of these measures and the credit allowed for them, see page 3691 in the proposal for the 1998 FIP (Reference 4).

The 1998 15 percent ROP FIP also included a ''as soon as practicable'' analysis which showed that the applicable implementation plan contains all VOC control measures that are practicable for the Phoenix area and that meaningfully accelerate the date by which the 15 percent level is achieved. For the 1998 FIP, we defined ''to meaningfully accelerate the date by which the 15 percent is demonstrated'' to mean to advance the demonstration date by three or more months. For a more detailed description of how we applied the ''as soon as practicable'' requirement in the 1998 15 percent ROP FIP, please see page 3691 in the proposal for the 1998 FIP (Reference 4).

III. Proposed Changes to the 1998 15 Percent ROP FIP

How Did the Changes to the Final National Rules Affect the Emission Reductions Included in the 1998 FIP?

In the FIP, EPA estimated that the proposed national rules would reduce emissions in the Phoenix area by 4.5 metric tons per day (mtpd) by April 1, 1999.

The final rules were published in the **Federal Register** on September 11, 1998. We made changes to the final rules in response to public comments that we received on the proposals. Most of the changes had no effect on the expected emission reductions from the rules. A few changes, however, did reduce slightly the emission reductions expected from the autobody coatings rule and delayed all or some of the emission reductions from the other two rules beyond April 1, 1999. See section II.B. in the draft TSD for this proposal (Reference 5).

Table 1 presents the effects of these rule changes on the anticipated emission reductions in the 1998 15 percent ROP FIP. In total, the rule changes reduce emission reductions creditable by April 1, 1999 from the national rules by 1.3 mtpd. For the detailed analysis of these changes, see section II.B. in draft TSD for this proposal (Reference 5).

TABLE 1.—SUMMARY OF CHANGES TO EMISSION REDUCTIONS FROM NATIONAL RULES FOR APRIL 1, 1999

[Metric Tons per Day]

Rule	Change	Reductions assumed in 1998 FIP	Reductions from rules	Net loss in emission reductions
Architectural Coatings (most limits effective 9/11/99).	Delay in effective date to 9/11/99	0.6	0	−0.6
Automobile Refinish Coatings (most limits effective 1/11/99).	Reduction in effectiveness from 37% to 33%	1.4	1.2	−0.2
Consumer Products (most limits effective 12/10/98).	Delay in effective date for pesticides until 12/10/99.	2.5	2	−0.5
Total		4.5	3.2	−1.3

What Effect Do These Changes in Emission Reductions Have on the 15 Percent ROP Demonstration in the 1998 FIP?

Because the federal measures are slightly less effective than we originally assumed, total emissions in the Phoenix area will be 1.3 mtpd higher than we expected in the 1998 FIP. We originally projected that the Phoenix area would meet the 15 percent ROP target emissions level on April 1, 1999 with 0.3 mtpd to spare. Increasing total emissions in the area by 1.3 mtpd will mean that instead of demonstrating the 15 percent ROP on April 1, 1999 with a small cushion of excess emission reductions, the area will be 1.0 mtpd short of its 15 percent ROP target level on that date.

How Is EPA Proposing To Revise the 1998 FIP To Account for the Changes to the National Rules?

We are proposing to revise the control strategy in the 1998 FIP to assure that the 15 percent ROP continues to be demonstrated as soon as practicable in the Phoenix area. We are proposing to revise the control strategy by deleting the National Architectural Coatings Rule and adding, in its place, Arizona's Clean Burning Gasoline (CBG) program.

We are proposing to delete the National Architectural Coatings Rule because emissions from this rule will no longer be relied on in the Phoenix 15 percent ROP demonstration. Emissions reductions from this rule will not occur until September 11, 1999, well after the date the 15 percent ROP will be met in the Phoenix area. We are proposing to add Arizona's CBG rule to the control strategy to make up the emission reductions lost or delayed from the national rules.

Table 2 lists the measures in the proposed revised control strategy.

TABLE 2.—PROPOSED REVISED CONTROL STRATEGY FOR THE 1998 15 PERCENT PLAN ROP FIP FOR THE METROPOLITAN PHOENIX OZONE NONATTAINMENT AREA

Category	Approval status	Adjusted 1996 reduction (mtVOC/d)
Arizona Vehicle Emissions Inspection Program	Approved 60 FR 22518 (May 8, 1995)	3.3
Arizona Summertime Gasoline Volatility Limitation (7.00 psi RVP) (on-road and nonroad).	Approved 62 FR 31734 (June 11, 1997)	13
Federal RFG—Phase I (on-road and nonroad)	Approved June 3, 1997 (62 FR 30260)	6
National Phase I Non-Road Engines Standards	Promulgated July 3, 1995 (60 FR 34582)	9.1
MCESD Rules 331, 336, 337, 342, 346, and 351	Approval signed 1/20/97	11.3
Stage II vapor recovery	Approved 11/1/94 (59 FR 54521)	9.8
MCESD Rule 335 Architectural coatings	Approved 1/6/92 (57 FR 354)	2.9
Autobody refinishing (national rule)	Promulgated September 11, 1998 (63 FR 48806).	1.2
Consumer products (national rule)	Promulgated September 11, 1998 (63 FR 48819).	2
Additional Increment for CBG (partial credit)	Approved 2/10/98 (63 FR 6653)	2

On February 10, 1998, EPA approved into the Arizona state implementation plan, the State's Cleaner Burning Gasoline (CBG) program for the Phoenix nonattainment area. 63 FR 6653. The CBG program requires gasoline to be reformulated to reduce emissions of VOCs from automobiles. The program is being implemented in two stages. From June to September of 1998, gasoline sold in the Phoenix area had to meet standards similar to the federal phase I reformulated gasoline (RFG) program or California's Phase II RFG program. California Phase II RFG is generally considered to reduce emissions more in the Phoenix area than federal RFG. Starting May 1, 1999, gasoline sold in the Phoenix area has to meet standards similar to EPA's *Phase II* RFG program or California's Phase II RFG program.

The switch from a fuel similar to federal phase I RFG to a fuel similar to federal phase II RFG will result in additional emissions reductions of 2.0 mtpd from Phoenix on-road motor vehicles as of May 1, 1999. Please see, section III.A. and Appendix A of the draft TSD for this proposal (Reference 5) for the complete documentation of this emissions reduction.

How Does This Proposed Revision Affect When the 15 Percent ROP Will Be Demonstrated in the Phoenix Area?

We concluded in the 1998 FIP that the Phoenix metropolitan area has in place sufficient measures to meet the 15 percent rate of progress requirement as soon as practicable (ASAP) and that there were no other measures for the Phoenix area that could meaningfully advance the date by which the 15 percent ROP was demonstrated. We estimated the ''as soon as practicable'' demonstration date to be April 1, 1999. See page 3689 of the proposal for the 1998 FIP (Reference 4).

The second stage of the Arizona CBG program will not produce the additional 2.0 mtpd reduction until it begins on May 1, 1999. The 15 percent ROP target level on May 1, 1999 is 231.2 mtpd. Total Phoenix-area VOC emissions on May 1, 1999 before reductions from the CBG program are factored in will be 232.0 mtpd, 0.8 mtpd above the target level. When the 2-ton reduction from the CBG program is factored in, total emissions in the Phoenix area will be 230.0 mtpd, well below the 231.2 mtpd target level. See section III.A. in the draft TSD for this proposal (Reference 5). Therefore, our proposal to revise the 1998 FIP to replace the lost reductions from the federal rules with reductions from the CBG rule will cause the date on which the 15 percent ROP is demonstrated in the Phoenix area to move from April 1, 1999 to the CBG stage II start date of May 1, 1999.

Will the 15 Percent ROP Goal Still Be Achieved as Soon as Practicable?

Because the demonstration date is later, we must re-evaluate the basic conclusion in the 1998 FIP that sufficient creditable measures are in place in the Phoenix area to assure that the 15 percent ROP goal will be met as soon as practicable.

The revised demonstration date is less than 2 months away. This time period is so short that we can not complete this rulemaking prior to May 1, 1999 and still provide an adequate period for the public to comment and then for sources

to comply with any new rules. We are, therefore, proposing to conclude that the Phoenix metropolitan area has in place sufficient measures to meet the 15 percent rate of progress requirement as soon as practicable and that there were no other measures available for the Phoenix area that could meaningfully advance the date by which the 15 percent ROP is demonstrated.

IV. CAA Section 172(C)(9) Contingency Measures

What Are the Clean Air Act's Requirements for Contingency Measures?

Section 172(c)(9) of the Clean Air Act requires that states submit contingency measures for their ozone nonattainment areas that will be implemented if their nonattainment plans fail to meet a ROP goal or to attain the national ozone standard by the required attainment date. The Act also requires that a state be able to implement its selected contingency measures without taking any further actions. We have discussed the Act's requirements for the section 172(c)(9) contingency measures and their role in nonattainment plans in more detail in section IV of the draft TSD for this proposal (Reference 5).

Other sections of the Act require contingency measures for other specific potential failures such as a failure of a serious or above ozone nonattainment area to meet a ROP goal (see section 182(c)(9)). We are not concerned here with these other requirements because they did not apply to the Phoenix area at the time its 15 percent ROP plan was due.

What Is EPA's Guidance for the Section 172(c)(9) Contingency Measures in Ozone Nonattainment Areas?

The Clean Air Act does not say how many contingency measures are required, what emission reductions they must achieve, or when a state must submit them. To fill this gap in the Act, we addressed these issues in our guidance documents.

For ozone nonattainment areas, we established guidelines that contingency measures should presumptively provide a VOC emission reduction of 3 percent of 1990 levels. We reason that the contingency measures should ensure an appropriate rate of progress in reducing emissions while a state revised its nonattainment plan following a failure to meet a ROP goal or to attain. We consider 3 percent an appropriate reduction because it is the annual rate of progress required by the Act after 1996. See pages 13510–13511 of our General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (the General Preamble) (Reference 6).

We also set the submittal date for the contingency measures as not later than November 15, 1993. We used our general authority in CAA section 172(b) to set this date. Section 172(b) allows us to establish submittal dates where the Act does not provide a specific date; however, the section limits how long we can give a state to submit a required element of a nonattainment plan. This limit in section 172(b) meant that we could have set a date earlier than, but not any later than November 15, 1993 for submittal of the section 172(c)(9) contingency measures. We decided that November 15, 1993 was the appropriate submittal date for the section 172(c)(9) contingency measures ''since States must demonstrate attainment of the 15 percent milestone at this time.'' See page 13511 of the General Preamble (Reference 6).

Are the 172(c)(9) Contingency Measures a Required Part of 15 Percent ROP Plans?

The commenter on the 1998 FIP proposal read the Clean Air Act and EPA guidance to require contingency measures as a necessary part of a complete 15 percent ROP plan submittal. The commenter also stated his position that we could not act on a 15 percent ROP plan without concurrently acting on contingency measures. The commenter provided no discussion or references in support of his position. See comment letter from the Arizona Center for Law in the Public Interest (ACLPI) (Reference 7).

The *Aspegren* petitioners, in seeking review of our 1998 FIP, also relied on this reading to request the court to order us to include contingency measures in the 1998 15 percent ROP FIP. The petitioners, however, provided an extended argument for their position. The commenter's and petitioners' reading of the Act and our guidance is incorrect.

The Clean Air Act requires states to submit *nonattainment plans* that consist of numerous individual items that work together to provide progress toward and attainment of an air quality standard in a nonattainment area. While the various plan items may (and occasionally need to) refer to and/or depend on each other, each has its own unique Clean Air Act mandate and approval criteria and, therefore, each is a separate and distinct element of a nonattainment plan.

One of these individual plan items is contingency measures; another is a 15 percent ROP demonstration. The Act does not require that each individual element of a nonattainment plan, such as the 15 percent ROP demonstration, contain contingency measures. The Act's structure also allows us to approve or disapprove contingency measures independently from our actions on the 15 percent ROP plan.

Our guidance also does not treat the section 172(c)(9) contingency measures as a necessary part of a complete and approvable 15 percent ROP plan. As we discussed above, we could have set a due date for the contingency measures that was earlier than the one set in the CAA for the 15 percent ROP plans. The fact that we elected to require contingency measures to be submitted on the same date the CAA required submittal of the 15 percent ROP plans does not mean that one of these items is a subpart of the other.

The *Aspegren* petitioners point to two EPA guidance documents to support their reading. The first of these guidance documents is the General Preamble (Reference 6) which gives our preliminary interpretation of the Clean Air Act's requirements for nonattainment areas. The second is *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate of Progress Plans* (Reference 8) which provides detailed technical guidance on preparing 15 percent ROP demonstrations and certain other Clean Air Act requirements.

The petitioners list a total of four statements in these two guidance document which they interpret to require contingency measures in 15 percent ROP plans. Two of these statements simply give our rationale for selecting the November 15, 1993 submittal date for the contingency measures. We discussed this rationale above.

The other two statements use the term ''15 percent rate-of-progress plans'' as a compact reference to all the multiple submittals due at the same time as the 15 percent ROP plans. Along with the 15 percent ROP plan submittal and the section 172(c)(9) contingency measures submittal, states were also required to submit their attainment demonstrations for moderate ozone areas, and the section 182(c)(9) contingency measures for serious and above ozone nonattainment areas on November 15, 1993.

EPA has issued numerous guidance documents in addition to the ones cited by the petitioners that address the 15 percent ROP plans and the other submittals that were also due November 15, 1993. None of these documents states or even implies that the contingency measures are part of 15 percent ROP plans. Please see the draft

TSD for this action (Reference 5) for a complete discussion of the statements cited by the *Aspegren* petitioners, our other guidance documents, and other documents cited by the petitioners. See also section IV of the draft TSD for this proposal (Reference 5).

While the petitioners may dispute this interpretation of our guidance documents, we believe as the Agency that wrote the documents, we are best able to interpret them. See, e.g., *Arkansas* v. *Oklahoma,* 503 U.S. 91, 110, 112 (1992) and *Thomas Jefferson Univ.* v. *Shalala,* 512 U.S. 504, 512 (1994). We have consistently treated the section 172(c)(9) contingency measures as separate from the 15 percent ROP plan not only in our numerous guidance documents but also in our application of this guidance to rulemakings approving individual 15 percent plans across the country. In these rulemakings, we have consistently evaluated the approvability of the 15 percent plans without regard to the presence, absence, or approvability of contingency measures. Some of these rulemakings are listed in Appendix B to the draft TSD for this proposal (Reference 5).

V. Proposed Transportation Conformity Budget

What Are Transportation Conformity and a Transportation Conformity Budget?

Section 176(c) of the Clean Air Act requires that federally funded or approved transportation actions in nonattainment areas ''conform'' to, that is support, the area's air quality plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards.

One of the primary tests for conformity is to show that transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and to meet the air quality standards. These motor vehicle emissions levels are set in the area's air quality plans and are known as the ''transportation conformity budget.''

What Transportation Conformity Budget Is EPA Proposing?

We are proposing to establish a transportation conformity budget of 87.1 metric tons of VOC per average summer day. This proposed budget has been calculated as described in section V of the draft TSD for this proposal (Reference 5). It reflects all on-road mobile source control measures that will be in place by May 1, 1999: the implementation of Arizona's enhanced vehicle inspection program, the State's limitation on the volatility of gasoline sold in the Phoenix area, and Phase II of the State's Cleaner Burning Gasoline program.

This proposed budget will replace the 76.7 metric tons of VOC per average summer day budget set in the 1998 FIP. See page 28903 of the 1998 FIP (Reference 1).

Why Is the Proposed Budget Higher Than the Budget in the 1998 FIP?

We erred in calculating the budget in the 1998 FIP. We are proposing to correct that error here and to include the reductions from the State CBG program in the budget.

We calculated total on-road motor vehicle emissions in the 1998 FIP by multiplying the vehicle miles traveled in the Phoenix area in 1996 by motor vehicle emission factors for 1999. This calculation followed our policies for demonstrating the 15 percent ROP after 1996 which require that the ROP demonstration be based on 1996 activity levels and the controls in the 15 percent ROP plan even if emission reductions from those controls did not happen until after 1996. We then used the resulting on-road motor vehicle emissions total as the emissions budget for transportation conformity.

This budget number, however, is the product of 1996 travel levels and 1999 control levels. The combination of travel levels from one year and control levels from another year does not happen in reality and therefore does not create real a emissions level against which the conformity of a transportation plan can be judged. To create a real emissions level for conformity that reflects the controls in the 15 percent ROP plan, the budget should be a product of travel and control levels for the same year. Because the Act requires the 15 percent ROP plan to address growth only through 1996, the appropriate year for calculating the conformity budget in 15 percent ROP plans is 1996. The proposed conformity budget is, therefore, a product of 1996 travel and 1996 control levels. These 1996 control levels however, account for all the on-road motor vehicle controls in the proposed revisions to the 15 percent ROP FIP. Please see section V of the draft TSD for this proposal (Reference 5) for the fuller discussion of the error and the correction.

Consultation Process

Our transportation conformity rules require that we consult with appropriate local, State and federal transportation agencies as well as local and state air pollution control agencies before setting a final transportation conformity budget. Therefore, between this proposal and our final action, we will be consulting with these agencies on this proposed transportation conformity budget and the methods and assumption we used to calculate it.

VI. Conclusion

Under our authority in CAA section 110(c) and for the reasons discussed above, EPA is proposing to determine that the Phoenix metropolitan area has in place sufficient control measures to meet the 15 percent rate of progress requirement in CAA section 182(b)(1)(A) as soon as practicable. This proposed determination is based on our analysis of the effect of the final federal measures (which were originally relied on in proposed form) on the 1998 15 percent ROP FIP and the proposed addition of Arizona's Cleaner Burning Gasoline Program and proposed deletion of the National Architectural Coatings Rule from the control strategy for the 15 percent ROP demonstration. It is also based on our reanalysis of the ''as soon as practicable'' demonstration in that previous FIP.

EPA is also proposing to revise the transportation conformity budget to 87.1 metric tons of VOC per average summer day.

VII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order

12866 and is therefore not subject to OMB review.

B. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure of $100 million or more in any one year by state, local, and tribal governments, in aggregate, or by the private sector. Section 203 requires EPA to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

This proposed rule does not include a Federal mandate and will not result in any expenditures by State, local, and tribal governments or the private sector. Therefore, EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments.

C. 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. This proposed rule will not have a significant impact on a substantial number of small entities because it imply proposes a revision to a demonstration based on previously established requirements and contains no additional requirements applicable to small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This proposed rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

E. Applicability of Executive Order 13045: Children's Health Protection

This rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not economically significant under E.O. 12866 and it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

F. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, 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.'' This proposal will not create a mandate on State, local or tribal governments. The rule will not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, 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 complied 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 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.''

This proposal will neither create a mandate nor impose any enforceable duties on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. The National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This proposed rule does not include technical standards for exposure limits; therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: March 19, 1999.

Carol M. Browner,

Administrator.

References

1. 63 FR 28898–28904 (May 27, 1998); *Approval and Promulgation of Implementation Plans; Phoenix, Arizona Ozone Nonattainment Area, 15 Percent Rate of Progress Plan and 1990 Base Year Emission Inventory*; Final rule.

2. Air Division, U.S. EPA, Region 9, ''Final TSD for the Notice of Final Rulemaking on

the Clean Air Act Section 182(b)(1) 15 Percent Rate of Progress Requirement for the Phoenix Metropolitan Area,'' May 18, 1998.

3. Brief for the Petitioners, *Carolyn Aspegren and David Matusow* vs. *Carol Browner, Administrator, and U.S. EPA* (No. 98–70824), October 13, 1998.

4. 63 FR 3687–3693 (January 26, 1998); *Approval and Promulgation of Implementation Plans; Phoenix Arizona Ozone Nonattainment Area, 15 Percent Rate of Progress Plan and 1990 Base Year Emission Inventory;* Proposed rule.

5. Air Division, U.S. EPA, Region 9, ''Draft Addendum to the Technical Support Document for the Notice of Final Rulemaking on the Clean Air Act Section 182(b)(1) 15 Percent Rate of Progress Requirement for the Phoenix Metropolitan Ozone Nonattainment Area,'' March 18, 1999.

6. 57 FR 13498 (April 16, 1992). *State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.* General Preamble for future proposed rulemakings.

7. Letter, David S. Baron, Assistant Director, ACLPI, to Frances Wicher, EPA Region 9, February 24, 1998.

8. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate of Progress Plans,* Office of Air Quality Planning and Standards, U.S. EPA. EPA–452/R–93–002, March 1993.

[FR Doc. 99–7336 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT10–1–6700b; UT–001–0014b; UT–001–0015b; FRL–6314–9]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Forward and Definitions, Revision to Definition for Sole Source of Heat and Emissions Standards, Nonsubstantive Changes; General Requirements, Open Burning; and Forward and Definitions, Addition of Definition for PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action to approve State Implementation Plan (SIP) revisions submitted by the Governor of the State of Utah on July 11, 1994, for the purpose of establishing a modification to the definition for ''Sole Source of Heat'' in UACR R307–1–1, as well as to make a nonsubstantive change to UACR R307–1–4, Emissions Standards. On February 6, 1996, a SIP revision to UACR R307–1–2 was submitted by the Governor of Utah which contains changes to Utah's open burning requirements to require that the local county fire marshal has to establish 30-day open burning windows in order for open burning to occur. Other minor changes are made in this revision to UACR R307–1–2.4, ''General Burning'' and R307–1–2.5, ''Confidentiality of Information.'' In addition, on July 9, 1998, SIP revisions were submitted that would add a definition for ''PM_{10} Nonattainment Area'' to UACR R307–1–1. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as a noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing on or before April 26, 1999.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah, 84114–4820.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: March 11, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 99–7425 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–207–0074b; FRL–6306–9]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision Santa Barbara County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). This action is an administrative change which revises various definitions in Santa Barbara Air Pollution Control District (SBCAPCD) Rule 102, Definitions and South Coast Air Quality Management District (SCAQMD) Rule 102, Definition of Terms.

The intended effect of proposing approval of this action is to incorporate changes to the definitions for clarity and consistency with revised federal and state definitions. EPA is proposing approval of this revision to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this administrative change as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 26, 1999.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules are available for public inspection at EPA's Region 9