

**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****14 CFR Part 389**

[Docket No. OST-99-5003]

RIN 2105-AC47

**Withdrawal of Proposed Rulemaking Action; Fees and Charges for Special Services****AGENCY:** Office of the Secretary, DOT.**ACTION:** Withdrawal of proposed rulemaking.

**SUMMARY:** This document withdraws an Office of the Secretary (OST) notice of proposed rulemaking that proposed to update the fees and charges paid by recipients of certain aviation licensing and related services provided by the Department. The proposal was predicated on specific labor and overhead cost studies and data that, with the passage of time and organizational changes within OST, have been rendered stale, greatly reducing their utility as bases for cost-based fees and charges.

**ADDRESSES:** You may obtain a copy of this document from the DOT public docket through the Internet at <http://dms.dot.gov>, docket number OST-99-5003. If you do not have access to the Internet, you may obtain a copy of the notice by United States mail from the Docket Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. You must identify docket number OST-99-5003 and request a copy of the document entitled "Withdrawal of Proposed Rulemaking."

You may also review the public docket in person in the Docket office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office is on the plaza level of the Department of Transportation. Additionally, you can also get a copy of this document from the **Federal Register** Web site at <http://www.gpo.gov>.

**FOR FURTHER INFORMATION CONTACT:** John D. Miller, Office of Aviation Analysis (X-50), Office of the Assistant Secretary for Aviation and International Affairs, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-4834; fax: (202) 366-7035; e-mail: [John.Miller@dot.gov](mailto:John.Miller@dot.gov).

**SUPPLEMENTARY INFORMATION:****Background**

Part 389 of Title 14 of the Code of Federal Regulations—Fees and Charges for Special Services—describes certain special services related to aviation

economic proceedings, such as certification of new air carriers, licensing of air taxi operators, and award of international route authority to U.S. airlines, that the Department provides to the public, and sets forth the fees and charges applicable to those services.

In January 1999, we issued a Notice of Proposed Rulemaking (NPRM), 64 FR 3229, to obtain comments on proposed revisions to the filing fee schedule and related provisions of Part 389. In the main, the NPRM proposed (1) To eliminate, except in the case of a treaty or agreement, the waiver of processing fees for those foreign air carriers whose home countries waive processing fees for U.S. air carriers, as set forth in existing section 389.24; (2) to revise and update the individual services and related fee amounts included on the schedule contained in existing section 389.25(a), including significant fee increases for several existing services and new fees for several services not previously covered; and (3) to implement certain procedural changes to facilitate processing of licensing applications.

Our proposed fee amounts were based on work-process analysis of more than 600 service applications, including (1) the direct labor costs incurred to process individual applications and (2) the office space, utilities and related overhead costs allocable to individual applications based on the organizational structure of the Office of the Assistant Secretary for Aviation and International Affairs.

**Comments**

We received comments on the NPRM from the British Government, the Air Transport Association of America, the International Air Carrier Association, and representatives of 20 foreign air carriers. All commenters objected to our proposal to eliminate the waiver of foreign air carrier processing fees as contrary to U.S. law and provisions of bilateral agreements, or as counterproductive for U.S. air carriers. Similarly, all contested the rationale for, or proposed amount of, one or more of our individual fee items as unreasonable, unwarranted or excessive. No party objected to our proposed changes to facilitate applications processing.

**Withdrawal**

Following our receipt and review of comments on the NPRM, unanticipated events interrupted the rulemaking process. In particular, the horrific events of September 11, 2001, and their aftermath required us to redirect

resources to more immediate priorities. Under the Air Transportation Safety and Stabilization Act (Pub. L. 107-42), for example, we were charged with dispensing up to \$5 billion in direct payments to assist air carriers that had suffered losses as a result of the September 11 attacks. The delays experienced since September 11 have greatly reduced the utility of the labor cost data underlying our 1999 fee proposal. That proposal has been further compromised by outdated overhead allocations due to numerous organizational changes which have occurred within the Office of the Assistant Secretary for Aviation and International Affairs since the NPRM was issued. For these reasons, the Department believes that the labor and overhead cost estimates used to develop its proposed fees are no longer timely and do not support finalization of the proposed rule. We are, therefore, withdrawing the 1999 NPRM.

Issued in Washington, DC, on November 4, 2005.

**Michael W. Reynolds,***Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 05-22451 Filed 11-9-05; 8:45 am]

BILLING CODE 4910-62-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[R09-OAR-2005-AZ-0007, FRL-7994-7]

**Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve a local rule that addresses opacity standards.

**DATES:** Any comments must arrive by December 12, 2005.

**ADDRESSES:** Submit comments, identified by docket number R09-OAR-2005-AZ-0007, by one of the following methods:

- *Agency Web site:* <http://docket.epa.gov/rmepub/>. EPA prefers receiving comments through this electronic public docket and comment

system. Follow the on-line instructions to submit comments.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

- *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
- *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are “anonymous access” systems, and EPA will not know

your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at <http://docket.epa.gov/rmepub> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, EPA Region IX, (415) 947–4118, [petersen.alfred@epa.gov](mailto:petersen.alfred@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

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**I. The State’s Submittal**

*A. What rule did the State submit?*

Table 1 lists the rule we are proposing to approve with the date that it was adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULE

Local Agency	Rule No.	Rule Title	Revised	Submitted
PCAQCD .....	2–8–300	Performance standards .....	05/18/05	09/12/05

On September 28, 2005, the rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are there other versions of this rule?*

On April 28, 2004 (69 FR 23103), EPA finalized a limited approval and limited disapproval of a version of Rule 2–8–300.

*C. What are the purposes of the submitted rule revisions?*

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. This rule was developed as part of the local agency’s program to control particulate matter.

The purposes of the rule revisions relative to the SIP rule are as follows:

- The clarification is added that provisions of the rule apply to an “existing source,” a “point source,” and a “stationary source,” which are appropriately defined.
- The opacity standard is decreased from 40% in all areas to (a) 20% in nonattainment or maintenance attainment areas after June 2, 2005 and

(b) 20% in attainment or unclassified areas after April 23, 2006.

- A provision is added to allow submittal of a petition to the Control Officer (CO) by September 15, 2005 for an alternative opacity standard (AOS), if the source complies with the applicable particulate matter (PM) mass rate standard, but cannot comply with the 20% opacity standard. Requirements for the petition contents are listed. If an AOS is approved by the CO, he shall submit the AOS to the EPA Administrator for approval as a SIP revision. If an AOS is not approved, the source shall comply with the 20% opacity standard or submit a compliance plan before April 23, 2006.

- A definition of “process weight rate” is added to clarify its applicability to continuous processes and batch processes.

The TSD has more information about this rule.

**II. EPA’s Evaluation and Action**

*A. How is EPA evaluating the rule?*

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require reasonably available control measures (RACM), including reasonably available control technology (RACT) in moderate PM–10

nonattainment areas (see section 189(a)), must require best available control measures (BACM), including best available control technology (BACT) in serious PM–10 nonattainment areas (see section 189(b)), and must not relax existing requirements (see sections 110(l) and 193). A portion of PCAQCD is designated attainment, a portion is designated moderate nonattainment, and a portion is designated serious nonattainment for PM–10.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *PM–10 Guideline Document* (EPA–452/R–93–008).

*B. Does the rule meet the evaluation criteria?*

The deficiency cited in the previous limited approval/limited disapproval action of PCAQCD Rule 2–8–300 is as follows: *The 40% opacity standard does not meet the requirements of BACM/BACT. Analogous generic 20% opacity standards meet the requirements of RACM/RACT in other parts of the country, and we believe BACM/BACT in PCAQCD should be at least as stringent.* See 69 FR 23103 (April 28, 2004).

The revision to a 20% opacity standard in the submitted rule corrects the cited deficiency for unclassified, attainment, maintenance, and moderate nonattainment areas to a level comparable to RACM/RACT in other parts of the country. We believe that BACM/BACT, as required for the serious nonattainment area in PCAQCD, should be at least as stringent as RACM/RACT. We do not have justification for an opacity standard more stringent than 20% to fulfill BACM/BACT for general PM-10 sources in the serious nonattainment area. Therefore, we believe that the 20% opacity standard fulfills RACM/RACT and BACM/BACT for the general PM-10 sources to which the rule is applicable, even though some specific PM-10 sources might achieve a more stringent opacity standard in fulfilling BACM/BACT.

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling the requirements of RACM/RACT and BACM/BACT and should be given full approval.

#### C. Public comment and final action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the CAA. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate the rule into the federally enforceable SIP.

### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law,

it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

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

Dated: October 19, 2005.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 05-22377 Filed 11-9-05; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[OAR-2005-0150b; FRL-7995-2]

#### Designation of Areas for Air Quality Planning Purposes; Arizona; Correction of Boundary of Phoenix Metropolitan 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** EPA is proposing to correct the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area to exclude the Gila River Indian Reservation. EPA is proposing this action under the authority of section 110(k)(6) of the Clean Air Act and in light of the Federal trust responsibility to the Tribes. This action is intended to facilitate and support the Gila River Indian Community's efforts to develop, adopt and implement a comprehensive Tribal Implementation Plan by removing unnecessary obligations that flow from the erroneous inclusion of a portion of the Reservation in the Phoenix metropolitan 1-hour ozone nonattainment area.

**DATES:** Any comments on this proposal must arrive by December 12, 2005.

**ADDRESSES:** Submit comments, identified by docket number R09-OAR-2005-150, by one of the following methods:

1. *Agency Web site:* <http://docket.epa.gov/rmepub/>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

3. *E-mail:* [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

4. *Mail or deliver:* Wienke Tax, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal