2. Installing a drill-head raise shutoff. This device would be installed in the drill-head raise pinch point and would immediately stop the hydraulic oil flow to the drill-head feed cylinder, thus preventing the feed cylinder from being raised and accidentally injuring the operator.

3. Installing auxiliary controls for the canopy raise/lower and boom swing functions to eliminate the pinch point where operators have been injured by the swinging boom.

4. Installing control guarding or double-acting fast-feed controls, or both, to prevent inadvertent activation.

5. Providing visual identification of pinch-point areas to alert the operator of the danger area.

6. Installing self-centering controls to prevent continued machine movement when the control lever is released.

7. Securing the rotating drill steels or wrench to prevent the operator from becoming entangled in these moving machine components.

8. Installing insertion/retrieval devices (resin insertion tools or drill steel retrieval) to eliminate the need for the operator to extend his body into a pinch point or climb onto the boom.

9. Standardizing location of controls to prevent inadvertent actuation of controls due to different roof-bolting machine control layouts.

10. Conducting a pre-operational inspection of machine controls to detect malfunctions prior to operation.

These possible solutions are intended to address the problems with roof-bolting machines and to prevent accidents. MSHA requests miners, mine operators, manufacturers, and other interested parties to comment on the qualitative and quantitative potential benefits and costs of compliance associated with adoption of these solutions, and any alternatives to these solutions.

Although MSHA is considering development of a proposed rule to address the hazards associated with roof-bolting machines, the Agency also solicits comment from the public on alternatives, other than rulemaking, to address safety hazards on roof-bolting machines used in the mines today.

IV. Specific Issues

Because a roof-bolting machine standard would apply to both coal and metal and nonmetal mining industries, commenters should provide specific justification for their positions based on sound engineering, work practices, and mining conditions. MSHA requests comment on the technological and economical feasibility and benefits of the solutions suggested in the Report of Findings and in this notice. Specifically, MSHA seeks input on the following issues: the current availability of technology to retrofit existing machines with two-handed fast-feed controls, double-acting fast-feed controls, control guarding, visual identification markers to alert the operator of the pinch point area, self-centering controls, or insertion/retrieval devices; the impact on the design and operation of existing machines if retrofitting were to be required; the impact of available technology on newly-purchased machines; the costs to manufacturers and mine operators of available technology; and any other information that is relevant to the findings in the Report. Commenters are encouraged to provide information specific to their mining conditions.

V. Impact

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations, and propose regulations on the basis that the benefits justify the costs. Regulatory agencies also are required to base decisions on the best reasonably obtainable scientific, technical, economic, and other data and information concerning the need for and the consequences of the proposed regulations.

MSHA is in the early stages of developing a proposed rule. The Agency anticipates that the benefit of a safety standard addressing design criteria and operating procedures for the use of roof-bolting machines in underground mines would be the prevention of fatalities and injuries which occur when these machines are operated.

VI. Public Participation

MSHA requests comments on the specific issues addressed in this notice as well as those addressed in the Report of Findings. Interested parties are particularly encouraged to be as specific as possible in addressing each of MSHA's possible solutions and in suggesting alternatives to these solutions. MSHA also requests that commenters include specific examples and cost estimates to support their rationale to assist the Agency in evaluating and analyzing their comments.

List of Subjects in 30 CFR Parts 57 and 75

Mine safety and health, Underground mining.

Dated: December 3, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 97–32203 Filed 12–8–97; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AI98

Board of Veterans' Appeals: Rules of Practice—Attorney Fee Matters

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the Rules of Practice of the Board of Veterans' Appeals (Board) to discontinue VA's paying attorney fees from past-due benefits, establish safeguards in the case of ''disinterested third-party'' payers, and simplify certain notice procedures. We believe that discontinuance of VA's paying attorney fees from past-due benefits is warranted because the administrative resources that it consumes would be better spent in activities more directly beneficial to veterans; the establishment of safeguards regarding ''disinterested third-party'' payers will help prevent circumvention of the law restricting payments by claimants and appellants; and simplified notice procedures relating to motions to review attorney-fee agreements or to challenge expense charges are adequate for establishing proof of service.

DATES: Comments must be received on or before February 9, 1998.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI98''. All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits.

This document proposes to amend the Board's Rules of Practice to (1) exercise the option provided in 38 U.S.C. 5904(d)(3) not to pay attorney fees directly to an attorney out of past-due benefits; (2) establish safeguards where a ''disinterested third party'' pays an attorney's fees or salary on behalf of a claimant or appellant; and (3) simplify notice procedures in connection with motions to review fee agreements for reasonableness and to review a representative's expenses.

Paying Attorney Fees From Past-Due VA Benefits

Beginning during the Civil War, and continuing for more than a century, attorneys and agents were forbidden from charging more than $10 for services in connection with a claim for veterans benefits. In 1988, the ''Veterans' Judicial Review Act'' (VJRA), Pub. L. No. 100–687, Div. A, § 104, 102 Stat. 4105, 4108–09 (1988), removed that limitation, and provided that, under certain circumstances, an attorney or agent could charge a ''reasonable'' fee for such services. 38 U.S.C. 5904.

VJRA permitted a veteran to pay an attorney directly or, under certain conditions, to have the attorney paid by VA directly out of ''past-due benefits'' awarded in connection with a successful claim. Specifically, section 5904(d) of title 38, United States Code, as added in 1988 by VJRA and modified in 1992 by Pub. L. 103–446, permits the Secretary of Veterans Affairs to pay an attorney's fee directly to an attorney out of past-due VA benefits if (1) an agreement between the attorney and the client provides for such a payment; (2) the total fee is contingent on whether or not the matter is resolved in a manner favorable to the claimant; and (3) the total fee does not exceed 20 percent of past-due benefits. In 1992, VA added § 20.609 to title 38 of the Code of Federal Regulations, by which, among other things, the Secretary undertook to exercise this discretionary authority.

This document proposes to change the regulations to state that VA will not pay attorney fees out of past-due benefits. This proposal is based on a number of reasons.

First, the program puts a strain on the already overburdened Veterans Benefits Administration (VBA), which operates VA's 58 regional offices. Paying attorney fees from past-due benefits requires that some of the money due a claimant be withheld pending a determination—made by the Board of Veterans' Appeals—that the agreement meets the statutory and regulatory requirements for payment. Because almost all awards of benefits are made at individual regional offices, and because section 5904 permits VA to pay attorney fees only from past-due benefits, VBA has had to develop strict and complex procedures for withholding money. This in turn has required the designation of at least one ''attorney fee coordinator'' at each of the 58 regional offices, the involvement of at least one employee from the finance activity and from the agent cashier at those offices, as well as a significant amount of correspondence between the Board and the various regional offices on this issue—direct participation by as many as 175 VBA employees.

Second, the anticipated growth in attorney representation before VA has not materialized. The percentage of appellants represented by attorneys in completed Board proceedings has varied only slightly during the period 1993–96: 3.0 percent (786/26,400) (1993); 3.9 percent (861/22,045) (1994); 3.1 percent (873/28,195) (1995); and 3.4 percent (1,160/33,944) (1996).

Third, few attorneys ever qualify for payment from past-due benefits. In every case which results in the payment of past-due benefits and in which an attorney has filed an agreement with the claimant to be paid directly from past-due benefits, the Board makes a determination as to whether the agreement meets the statutory and regulatory standards for payment. Of the 110,584 decisions the Board issued during fiscal years 1993 through 1996, only 222 were decisions on fee agreements in which an attorney was to be paid from past-due benefits awarded. Those 222 decisions made over four years have required the special support of as many as 175 VBA employees per year, most of whom would have been spending their time in activities more directly benefiting veterans and their families: deciding claims and coordinating benefit payments.

Finally, a recently-completed study ordered by Congress recommends that VA get out of the business of paying attorney fees. Thus, the Veterans' Claims Adjudication Commission, established by Congress to determine means for increasing the efficiency of the VA system for claims disposition, found that:

The provision for payment by VA of attorney fees from past-due benefits is administratively cumbersome and distorts the role of government. Attorney representatives and veterans should be expected to transact fee payments between themselves. VA should not be involved in these transactions. * * * The provision for VA to compensate attorneys from awards of past-due benefits thrusts VA into a business that is excessively far from its central purpose. VA is not well suited to perform this function, and the requirement that it do so represents a significant opportunity cost. The resources used for this purpose would be better spent in activities of more direct benefit to veterans.

The Veterans' Claims Adjudication Comm'n, *Report to Congress* 130 (Dec. 1996). VA concurs in those findings and the conclusion.

While we believe that the right to hire an attorney is an important one, we do not believe that eliminating payment by the Department will materially affect the availability of such services. We think that a veteran is as able as anyone else to transact a fee payment without the intervention of the Department. These proposed amendments will not interfere with a claimant's ability to pay attorney fees directly to his or her attorney out of past-due benefits.

For all these reasons, we propose to amend 38 CFR 20.609(h), which provides the rules for payment of attorney fees from past-due benefits, by deleting all the current text and replacing it with the following statement: ''The Department of Veterans Affairs will not pay fees directly to an attorney at law from past-due benefits.''

Safeguards Where a ''Disinterested Third Party'' Pays an Attorney's Fee

In 1988, VA amended part 14 of title 38, Code of Federal Regulations, to reflect an opinion from the Office of Legal Counsel of the Department of Justice which concluded that the then-current $10 fee limitation did not apply to third parties not standing to benefit from a veteran's claim. 53 FR 52416, 52418 (Dec. 28, 1988) (38 CFR 14.634(a) (1989)). VA has incorporated the exception for third parties not standing to benefit from a veteran's claim into the current rules governing the payment of attorney fees. An organization, governmental entity, or other disinterested third party may pay attorney fees under circumstances in which a claimant or appellant may not, for example, when there has been no final Board decision with respect to an issue. *See* 38 CFR 20.609(d)(2).

In dealing with this exception over the years, we have reviewed fee agreements that list individuals as ''disinterested third parties'' who appear to be no more than ''straw men,'' i.e., nominal fee payers who really serve as a mere conduit for a prohibited payment

by a claimant or appellant. Typically, such ''disinterested third parties'' will agree to pay a fee equal to some percentage of the amount of any past-due benefits awarded the claimant, contingent on a successful outcome. Indeed, some contracts we have reviewed call for payment of a percentage of the actual past-due benefits by these third parties, a legally impossible feat because of the nonassignability of veterans benefits under 38 U.S.C. 5301.

In this context, VA's General Counsel has informally advised that, if a third party acts as a mere conduit for a prohibited payment by a claimant, the exception in the regulation would not apply.

Accordingly, we propose three amendments to Rule 609(d)(2) (38 CFR 20.609(d)(2)), relating to payment of fees by disinterested third parties.

First, we propose to prohibit, in any case involving a third-party payer, a fee which is contingent, in whole or in part, on whether or not the matter is resolved in a manner favorable to the claimant or appellant. The contingent fee functions as a financing device that enables a client to assert and prosecute an otherwise unaffordable claim. *See, e.g.,* Lester I. Brickman, Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?, 37 UCLA L. Rev. 29, 43 (1989). If a third party agrees to pay an attorney to represent a veteran (or other claimant) because the law bars the attorney from charging the veteran a fee, the issue of ''financing'' the cost of the litigation through a successful outcome is moot: By definition, a disinterested third party will receive no benefit from any award to the veteran, so that the outcome can generate no funds with which to pay the attorney. Nevertheless, we have seen a number of agreements in which a ''disinterested third party'' agrees to pay an amount equal to some percentage of a veteran's past-due benefits, an arrangement that appears to merely set the stage for a transfer from the veteran to the third party to the attorney. In our view, making a fee to be paid by a disinterested third party contingent on the outcome of the claim encourages the parties to break the law. Accordingly, we propose to bar contingent fees in such circumstances.

Second, we propose to establish a presumption that a person who is the spouse, child, or parent of the claimant or appellant, or who resides with the claimant or appellant, is not a disinterested third party. In our view, persons in such relationships usually have some financial or other interest in the success of the claim and are therefore unlikely to be disinterested.

Finally, we propose to require that the attorney or agent file a statement certifying that no agreement exists under which the claimant or appellant will provide anything of value to the third party in return for payment of the fee or salary. We believe that it is the responsibility of an attorney, as an officer of the court, and an agent, as a licensee of VA, to make appropriate inquiries. *Cf.* Fed. R. Civ. P. 11(b) (signature of attorney on court papers certifies, among other things, inquiry by the attorney which is reasonable under the circumstances). We also propose to amend Rule 609(g) (38 CFR 20.609(g)), relating to fee agreements, to clarify that any agreement for the payment of fees must include the name and mailing address of the disinterested third party. This will allow VA to advise such third parties of legal requirements regarding disinterested third parties.

Simplifying Notice Procedures

Both Rule 609(i) (38 CFR 20.609(i)), relating to motions to review attorney fee agreements, and Rule 610(d) (38 CFR 20.610(d)), relating to motions challenging expenses, require service of papers on opposing parties by certified mail, return receipt requested, and require filing signed certificates of receipt with the Board. We do not believe that this level of proof is necessary to ensure that all parties receive copies of various material. Accordingly, we propose to amend both rules to provide that proof of service in such cases will be by filing a statement with the Board certifying that copies have been sent to the other parties by first-class mail, postage prepaid. This is in line with general rules of service in the Federal Rules of Civil Procedure. Fed. R. Civ. P. 5(d) (generally, a certificate of service by a party (or attorney) is sufficient proof of service).

Other Changes

In addition to the changes noted above, we propose to make nonsubstantive changes required for purposes of clarity. We also propose to make changes to correspond to new organization names within the Board.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect only the processing of claims by VA and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: December 1, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is proposed to be amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In subpart A, § 20.3, paragraphs (n), (o), and (p) are redesignated as paragraphs (o), (p), and (q), respectively; and a new paragraph (n) is added to read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(n) *Past-due benefits* means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

* * * * *

3. In subpart G, § 20.609, paragraphs (d)(2), (f), (g), (h), and (i) are revised and paragraph (j) is added to read as follows:

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) * * *

(2) *Payment of fee by disinterested third party.* (i) An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a

manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in question has no financial interest in the success of the claim.

(iii) The provisions of paragraph (g) of this section (relating to fee agreements) shall apply to all payments or agreements to pay involving disinterested third parties. In addition, the agreement shall include or be accompanied by the following statement, signed by the attorney or agent: ''I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid.''

* * * * *

(f) *Presumption of reasonableness.* Fees which total no more than 20 percent of any past-due benefits awarded, as defined in Rule 20.3(n) (§ 20.3(n) of this part), will be presumed to be reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of attorneys-at-law and agents (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the attorney-at-law or agent. The agreement must include the name of the veteran, the name of the claimant or appellant if other than the veteran, the name of each disinterested third-party payer (see paragraph (d)(2)), the applicable Department of Veterans Affairs file number, and the specific terms under which the amount to be paid for the services of the attorney-at-law or agent will be determined. A copy of the agreement must be filed with the Board of Veterans' Appeals within 30 days of its execution by mailing the copy to the following address: Office of the Chief Counsel (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW, Washington, DC 20420.

(h) *Payment of fees by Department of Veterans Affairs directly to an attorney-at-law from past-due benefits.* The Department of Veterans Affairs will not pay fees directly to an attorney at law from past-due benefits.

(i) *Motion for review of fee agreement.* The Board of Veterans' Appeals may review a fee agreement between a claimant or appellant and an attorney-at-law or agent upon its own motion or upon the motion of any party to the agreement and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is excessive or unreasonable; must be accompanied by all evidence the moving party desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent by first-class mail, postage prepaid, to each other party to the agreement, setting forth the address to which each such copy was mailed. Such motions (other than motions by the Board) must be filed at the following address: Office of the Chief Counsel (01C), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. The other parties may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion and must include a signed statement certifying that a copy of the response and any evidence was sent by first-class mail, postage prepaid, to each other party to the agreement, setting forth the address to which each such copy was mailed. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion. If a reduction in the fee is ordered, the attorney or agent must credit the account of the claimant or appellant with the amount of the reduction and refund any excess payment on account to the claimant or appellant not later than the expiration of the time within which the ruling may be appealed to the Court of Veterans Appeals.

(j) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans'Appeals.

(Authority: 38 U.S.C. 5902, 5904, 5905)

4. In subpart G, § 20.610, paragraph (d) is revised, and paragraph (e) is added to read as follows:

§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) *Expense charges permitted; motion for review of expenses.* Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans' Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must specifically identify which expenses charged are unreasonable; must set forth the reason, or reasons, why such expenses are excessive or unreasonable; must be accompanied by all evidence the claimant or appellant desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent by first-class mail, postage prepaid, to the representative. Such motions must be filed at the following address: Office of the Chief Counsel (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW, Washington, DC 20420. The representative may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion and must include a signed statement certifying that a copy of the response and any evidence was sent by first-class mail, postage prepaid, to the claimant or appellant, setting forth the address to which the copy was mailed. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, whether travel expenses are in keeping with expenses normally incurred by other representatives, etc. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion.

(e) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this

chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals.

[FR Doc. 97–32107 Filed 12–8–97; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ059–0005; FRL–5933–4]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Maricopa County's Ordinance P–7, Maricopa County Trip Reduction Ordinance, as a revision to the Arizona State Implementation Plan (SIP). EPA's final approval of this proposed rule will incorporate it into the federally approved SIP. EPA has evaluated the rule and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before January 8, 1998.

ADDRESSES: Comments may be mailed to: Frances Wicher, Office of Air Planning, (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the ordinance and EPA's evaluation of the ordinance is available for public inspection at EPA's Region 9 office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office Of Air Planning (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

Maricopa County is designated nonattainment and classified as a serious area for ozone, carbon monoxide (CO), and particulate matter. See 62 FR 60001 (November 6, 1997), 61 FR 39343 (July 29, 1996) and 60 FR 30046 (June 7, 1995). Emissions from motor vehicles contribute substantially to exceedances of the national ambient air quality standards for all three pollutants in the Maricopa area. Over the years the State has adopted a comprehensive motor vehicle emission control program including a number of transportation control measures to address this problem.

In 1988, the Arizona legislature adopted a trip reduction program for Maricopa County (see 1988 Session, Arizona House Bill (H.B.) 2206, section 23, codified at Arizona Revised Statutes (A.R.S.) Title 49, Chapter 3, Article 8) and directed Maricopa County to implement the program.

The State submitted this program in its 1988 Carbon Monoxide Plan for the Maricopa County nonattainment area and EPA approved the program as part of its approval of that plan. 53 FR 30224 (August 10, 1988) and 40 CFR 52.120(c)(65)(i)(A)(*l*). In 1990, EPA's approval of the 1988 CO plan was vacated by the Ninth Circuit Court of Appeals in *Delaney* v. *EPA*, 898 F. 2d 687 (1990). EPA subsequently restored its approval of the control measures in that plan, including the trip reduction program. 56 FR 3219 (January 29, 1991).

Since 1988, the legislature has revised the trip reduction program several times to tighten the trip reduction goals, decrease the threshold size of employers subject to the program from 100 to 50 employees, extend the program to schools, and to otherwise revise the program. In addition, the legislature directed Maricopa County to ''make and enforce'' an ordinance consistent with A.R.S. 49–588 (Requirements for major employers). A.R.S. 49–474.01(B) (1993 6th Special Session, H.B. 2001, section 24). On May 26, 1994, in compliance with the statute, the County subsequently adopted Maricopa County Environmental Services Department (MCESD), Ordinance No. P–7 Maricopa County Trip Reduction Ordinance.

II. Maricopa County Trip Reduction Ordinance

MCESD Ordinance No. P–7 was submitted as a SIP revision by the Arizona Department of Environmental Quality to EPA on August 31, 1995. The submittal became complete by operation of law under CAA section 110(k)(1)(B) on February 29, 1996.

The ordinance requires employers with 50 or more employees or schools with 50 or more employees or students to, among other things, conduct and submit annually an employee/student commute survey (section 7(A)); disseminate information on alternative modes and other trip reduction measures (section 7(E)); develop and submit a trip reduction plan designed to meet target reductions in single-occupant-vehicle (SOV) trips and vehicle miles traveled (VMT) (section 7(C)); and implement the trip reduction plan (section 7 (B) and (D)).

Failure to meet trip reduction goals does not constitute a violation of the ordinance if the employer or school is attempting in good faith to meet the goals (section 13(C)(2)); however, failure to comply with other specific requirements of the ordinance, such as the failure to submit or to implement an approved trip reduction plan, do constitute violations of the ordinance and are subject to penalties as provided in A.R.S. 49–593(D).

The Maricopa County Trip Reduction Program is staffed by the Maricopa County Trip Reduction Program Staff under MCESD. The 1996 annual report on the program states that in 1996, 2,501 employment sites were processed, more than 570,000 employees and students were surveyed, and more than 1,500 trip reduction plans were reviewed. The report demonstrates that the program has been effective in reducing both SOV trips and VMT in the Maricopa area. See Annual Report 1996, Maricopa County Trip Reduction Program, MCESD.

III. Clean Air Act Requirements

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

There are currently no Clean Air Act requirements mandating trip reduction programs (also known as employer commute options or ECO programs). The CAA Amendments of 1990 required severe and above ozone nonattainment areas and serious CO nonattainment areas to adopt ECO programs (see sections 182(d)(1)(B) and 187(b)(2), respectively, of the Clean Air Act as amended on November 15, 1990). However, prior to the July 1996 reclassification of the Maricopa area from a moderate to a serious CO nonattainment area, Congress passed legislation amending section 182(d)(1)(B) to make the adoption and implementation of ECO programs voluntary (Public Law 104–70, § 1, 109 Stat. 773, signed into law on December 23, 1995). Therefore, to be approvable, the ordinance need only meet the general SIP provisions of CAA section 110(a) (1) and (l) and EPA's regulations and policies implementing these provisions.