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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ079–0014; FRL–6365–9]

RIN 2060–A122

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky at (415) 744–1286, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street (AIR2), San Francisco, CA 94105. This document is also available as an electronic file on EPA's Region 9 web page at http://www.epa.gov/region09/air.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements

1. Designation and Classification

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

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

2. Moderate Area Planning Requirements and EPA Guidance

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

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

Moderate area plans were also required to meet the generally applicable SIP requirements for reasonable notice and public hearing under section 110(a)(2), necessary assurances that the implementing

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

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

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

On May 14, 1999, the U.S. Court of Appeals for the D.C. Circuit in American Trucking Assoc., Inc., et al. v. USEPA, No. 97–1440 (May 14, 1999) issued an opinion that, among other things, vacated the new standards for PM–10 that were published on July 18, 1997 and became effective September 16, 1997. However, the PM–10 standards promulgated on July 1, 1987 were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards in the Maricopa area. Codification of those standards continues to be recorded at 40 CFR 50.6. In the notice promulgating the revised PM–10 standards, the EPA Administrator decided that the previous PM–10 standards that were promulgated on July 1, 1987, and provisions associated with them, would continue to apply in areas subject to the 1987 PM10 standards until certain conditions specified in 40 CFR 50.6(d) are met. See 62 FR at 38701. EPA has not taken any action under 40 CFR 50.6(d) for the Maricopa area.

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

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

agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111 and EPA guidance implementing these provisions.

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

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

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

II. Proposed Actions

On May 29, 1998, Arizona Governor Hull signed into law Senate Bill 1427 (SB 1427) which revised title 49 of the Arizona Revised Statutes (ARS) by adding section 49–457. This legislation established an agricultural best management practices (BMPs) committee for the purpose of adopting by rule by June 10, 2000, an agricultural general permit specifying BMPs for regulated agricultural activities[7] to reduce PM–10 emissions in the Maricopa PM–10 nonattainment area. ARS 49–457.A–F.

On September 4, 1998, the State of Arizona submitted ARS 49–457 to EPA. On December 30, 1998, EPA proposed to approve the legislation into the Arizona SIP for the Phoenix PM–10 nonattainment area under section 110(k)(3) of the CAA as meeting the requirements of sections 110(a) and 189(a)(1)(C) and proposed to withdraw the FIP RACM commitment for such sources. Please refer to Notice of Proposed Rulemaking (63 FR 71816) for greater detail on the Arizona legislation. For EPA's SIP approval criteria and its evaluation of the Arizona legislation, see 63 FR 71817.

III. Comments on Proposed Rule and EPA Responses

EPA received 3 comment letters on its proposed action for Phoenix. The comment letters were submitted by: (1) Nancy C. Wrona, Director, Air Quality Division, Arizona Department of Environmental Quality; (2) Dan Thelander, Chair, Agricultural Best Management Practices Committee; and (3) Jennifer B. Anderson, Staff Attorney, Arizona Center for Law in the Public Interest (ACLPI). The first two letters expressed strong support for EPA's proposed approval and did not raise any issues that EPA need address. ACLPI, in a January 29, 1999 letter, however, opposes EPA's proposed actions for a variety of reasons. EPA responds to ACLPI's specific major comments below. The reader is referred to the technical support document (TSD) for this rulemaking for EPA's responses to all of ACLPI's comments in its January 29, 1999 letter.

ACLPI comments that EPA should withdraw the proposed SIP revision. ACLPI claims that EPA's proposal would replace a weak FIP commitment with a weaker State commitment to do the same thing and that the State commitment violates the CAA for the same reasons as the FIP commitment. Therefore ACLPI incorporates by reference into its comments its brief for petitioners in *Ober* v. *Browner*, No. 98–71158.[8]

In the Ober litigation, EPA fully responded to the arguments raised by the petitioners in their brief as they relate to the action at issue there, EPA's FIP commitment for agricultural sources in Phoenix. For the complete text of our responses to those arguments, see brief for respondents at pp. 10–18 and 43–59. Because ACLPI chose not to recast the arguments in its Ober brief in the context of EPA's proposed SIP approval and FIP withdrawal, we have not done so for them. Thus the text in the comment sections below summarizes and/or excerpts portions of the brief for petitioners as filed in the Ninth Circuit. In the EPA response sections, however, we have addressed the comments as if they refer to this proposed action and not the FIP promulgation.

The gravamen of ACLPI's complaint is that the State's regulatory approach is that of a commitment to adopt and implement agricultural controls in the future rather than immediate, adopted and implemented regulations. This approach was initially developed for EPA's FIP and was then incorporated into the State legislation that is the subject of this rulemaking. Therefore, the original rationale for that approach is of central relevance and we briefly summarize it here as a prologue to the specific comments and responses that follow:

EPA has, beginning with the proposed rulemaking for its August 3, 1998 FIP and culminating in the Ninth Circuit litigation, explained at length its reasoning in promulgating an enforceable commitment for the control of PM–10 from agricultural fields and aprons in the Phoenix PM–10 nonattainment area rather than immediate, fully developed regulations for those sources. See 63 FR 15920, 15935–15936 (April 1, 1998); 63 FR 41332–41334; 63 FR 71817; brief for respondents at 43–59. In short:

> In general, EPA believes that because agricultural sources in the United States vary by factors such as regional climate, soil type, growing season, crop type, water availability, and relation to urban centers, each PM–10 agricultural strategy is uniquely based on local circumstances. Furthermore, EPA determined that the goal of attaining the PM–10 standards in Maricopa County with respect to agricultural sources would be best served by engaging all interested stakeholders in a joint comprehensive process on the appropriate mix of agricultural controls to implement in Maricopa County. EPA stated its belief that this process, despite the additional time needed to work through it, will ultimately result in the best and most cost-effective controls on agricultural sources in the County.
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> In the FIP notices, EPA also explained its intention to meet its RACM commitment by developing and promulgating BMPs. Given the number of potential BMPs, the variety of crops types, the need for stakeholder input, and the time necessary to develop the BMPs into effective control measures, EPA believes that the adoption and implementation schedule in the FIP is as expeditious as practicable. * * *

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

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

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

[8] Ober is a pending petition for review, filed by ACLPI on behalf of Phoenix residents, in the U.S. Court of Appeals for the Ninth Circuit, of EPA's action in promulgating the Phoenix FIP. While ACLPI's comment letter does not specify what portions of the petitioners' brief it intends to incorporate, EPA believes that the only arguably relevant portion is at pp. 29–36, relating to EPA's commitment for agricultural sources, and therefore addresses here only the arguments in those pages.

63 FR 71817. That schedule provided that RACM for agricultural fields and aprons in the Phoenix area would be proposed by September 1999, finalized by April 2000, and implementation begun by June 2000. 40 CFR 52.127; 63 FR 41350.

Specific ACLPI Comments and EPA Responses

Comment: ACLPI claims in its Ober brief that EPA has not met its burden under its policy of demonstrating that available agricultural controls are infeasible or otherwise unreasonable. Petitioners' brief at 32.[9]

Response: Under EPA's General Preamble, a ''reasoned justification'' is required for measures rejected as RACM. 57 FR 13540. By demonstrating that it lacked sufficient information at the time the FIP was developed and promulgated to determine the appropriate agricultural controls for the Phoenix area, EPA fully justified its conclusion that the only responsible approach was the one it pursued, i.e., a commitment, enforceable through the CAA citizen suit provision, section 304, to adopt and implement RACM controls on an expeditious schedule. For the same reason, EPA did meet its burden under its own policy to demonstrate that the measures promoted by petitioners were not reasonably available at the time EPA developed and promulgated the FIP. As we demonstrate below, the FIP approach evolved into the State legislation; therefore the same justification exists for the State in adopting its legislation.

As noted above, in developing the FIP for these sources, EPA promoted and participated in a stakeholder process that included discussions and coordination among federal, state and local government agencies and national and local agricultural organizations. This approach resulted in a consensus among the participants on the elements of a workable and expeditious agricultural strategy that would be incorporated initially into the FIP and subsequently into State legislation. 63 FR 15936–15937. In its FIP proposal, EPA explained that its enforceable commitment included a series of milestones to assure adoption and implementation of RACM. The Agency further explained:

> EPA would initially convene a stakeholder-based process to begin formal development of draft BMPs. Stakeholder groups represented will likely include but not be limited to the Arizona Farm Bureau Federation, Maricopa County Farm Bureau, ADEQ [Arizona Department of Environmental Quality], MAG [Maricopa Association of Governments], MCESD [Maricopa County Environmental Services Department], NRCS [Natural Resource Conservation Service], Cooperative Extension, the University of Arizona, tribes, and environmental and/or public health organizations. This effort would build upon the stakeholder-based discussions which occurred in 1997 and early 1998. By September 1998, the stakeholders would begin to draft BMPs. * * * In June 2000, BMP implementation will begin with an extensive collaborative public outreach and education campaign. Guidance documents would be developed to assist growers with implementation of the BMPs. Compliance assistance would also be a key element of the BMP program.

Id. at 15937.

In the FIP proposal, EPA also addressed the issue of how the federal commitment could ultimately be replaced:

> While EPA's intended BMP approach is designed to meet the RACM requirement, the Agency believes it can serve as a potential starting point and model for the development of a State-led SIP process for addressing BACM [Best Available Control Measures] for agricultural sources. Thus, the stakeholders could potentially build upon the BMP approach initiated for the FIP to address both RACM and BACM requirements for the agricultural sector in the SIP.[10] The Arizona Farm Bureau Federation, the Maricopa County Farm Bureau, NRCS, ADEQ, and other regulatory agencies are currently working collaboratively to develop a State-led BMP process for that purpose. EPA strongly endorses such a process.

Id. at 15937. Thus it was clear from the beginning of the regulatory development effort for the agricultural sources in Phoenix that the participants intended that both the federal and State processes would be substantially identical and, as such, a seamless transition from the FIP to the State replacement SIP could be effectuated. See, e.g., letter from David P. Howekamp, EPA, to Kevin Rogers, Maricopa County Farm Bureau (MCFB), January 7, 1998 and letter from Kevin G. Rogers to David P. Howekamp, January 22, 1998.

As expected, the approach and process in the State legislation that was ultimately passed and submitted by the State as a SIP revision are virtually coextensive with that of the FIP. For example, the legislation establishes a committee with the authority to adopt BMPs and conduct an educational program. See ARS 49–457.A-F, H and M. The provisions of the State legislation are discussed in detail in the proposal for this action at 63 FR 71816–71817.

Furthermore, in practice, a single entity has been established and has been operating to develop BMPs to comply with both the requirements of the FIP and State legislation. This entity, known as the Best Management Practices committee, has been meeting on a regular basis since September, 1998. In addition, a Technical Working Group was formed which is currently reviewing and evaluating a list of over 50 BMPs for possible use in Maricopa County. The Technical Working Group will then forward its recommendations to the BMP committee. Together, the committee and the working group are comprised of representatives from State and local agencies, universities, farmers/producers in Maricopa County, and EPA representatives. The committee expects to develop BMPs by September, 1999. These BMPs will then undergo review by State offices and the public and are expected to be adopted by June 10, 2000. Thus, for all practical purposes, the implementation efforts to date of the FIP commitment and the Arizona legislation are effectively the same.

As we have demonstrated above, the FIP and the State legislation were developed by the same participants and through the same process and were intended to be substantially identical. Therefore, the justification for the commitment approach in both the FIP and the SIP[11] are the same. ACLPI has had ample opportunity to comment and detail its arguments regarding the alleged inadequacy of that justification in connection with the FIP promulgation and the judicial challenge to that rulemaking. See letter from ACLPI to EPA, Region 9, May 18, 1998 and petitioners' brief at 29–36. For these reasons, while EPA acknowledges that the SIP submittal did not contain the ''reasoned justification'' provided for in Agency guidance, EPA believes that such a State justification would have been the same as that provided by EPA in connection with the FIP. Therefore, to the extent that the State did not duplicate that rationale, it is of no consequence. By its incorporation of its brief in Ober into its comments on the proposal for this action, ACLPI has put

[9] ''ACLPI'' and ''petitioners'' are used interchangeably throughout this document except where otherwise indicated.

[10] At the time the moderate area FIP was being developed, the State was preparing to develop its plan to meet the serious area PM–10 requirements of the Act in the Phoenix area, one of which is provisions to assure that the best available control measures for the control of PM–10 shall be implemented. See generally CAA section 189(b).

[11] The Arizona legislation operates as a commitment enforceable under CAA section 304 by mandating the adoption by June 10, 2000 of a general permit specifying BMPs with which sources must comply by December 31, 2001 and the initiation of an education program by June 10, 2000. ARS 49–457.G, H, M.

its arguments in the record for this rulemaking.

Comment: In their brief, petitioners argue that EPA's deferral of agricultural controls in the FIP through the use of a commitment is not reasonable because ''[t]echniques for controlling agricultural emissions are well known.'' In support of this argument, petitioners cite, among other things, existing South Coast Air Quality Management District (SCAQMD) rules, EPA guidance, and a report by a 1996 task force appointed by Arizona's Governor, and claim that EPA erred by not adopting those measures in the FIP. Petitioners' brief at 30–31. ACLPI also suggests that EPA's action with respect to agricultural controls is contrary to the Agency's own policies detailing available agricultural control measures. *Id.*

Response: As discussed above, EPA has explained at length the rationale for its commitment in the FIP to adopt and implement RACM for the agricultural sector in Phoenix. See, e.g., 63 FR 15936. The Arizona legislation takes a very similar approach for the same reasons.

EPA agrees that certain techniques are well known. The critical question, however, is not whether those measures are ''available,'' but whether they are ''reasonably available'' for the Phoenix area. ACLPI's arguments ignore the fact that, as noted above, PM–10 strategies in an agricultural context are highly dependent on specific local factors. 63 FR 41332–41333; Technical Support Document for U.S.EPA's Final Federal Implementation Plan for the Phoenix Nonattainment Area, Response to Comments Document, p. 16. (FIP TSD). As EPA explained in connection with the FIP, ''[a] resolution of these uncertainties, in the context of an assessment of the potential mix of control measures, is critical to a determination of whether controls such as those contained in the SCAQMD rules are reasonably available for the Maricopa County nonattainment area and will contribute to attaining the PM–10 standards in the area.'' [12] *Id.* at pp. 16–17. That reasoning applies to the State legislation as well.

Moreover, contrary to ACLPI's suggestion in its brief, the 1996 Governor's task force report supports—not undermines—the State's approach to agricultural controls in its legislation. That report recommends the ''[d]evelopment, implementation, and documentation of specific voluntary practices to reduce dust emissions from agricultural practices'' and specifies that they ''may become part of a list of mandatory agricultural BACM developed through coordination'' by local and state agencies with relevant expertise. The report further states that ''[a] coordination plan could be started immediately. Implementation would require cooperation with the agricultural community.'' Finally, the report lists several barriers to implementation. Report of the Governor's Air Quality task Force; Recommended Long-term Control Measures for Ozone, Carbon Monoxide, and PM–10, December 2, 1996, p. III–85–88. Thus, the task force recognized that the recommended measures would need considerable additional work and coordination among stakeholders before they could be fully realized in the Phoenix area.

Finally, the EPA guidance cited by petitioners lists agricultural control measures generally determined to be available for consideration by states in developing their PM–10 plans. EPA does not dispute the availability of such controls, but its guidance does not presume that these measures are reasonably available in any or all areas. Again, the question is whether the application of those measures to a specific area, like Maricopa County, is reasonable.

To take just one of the available measures cited by petitioners—modified tillage methods—as an example, EPA's guidance notes that operational tillage modifications require areas to consider: replacing planting and seeding methods, planting and fertilizing of specific grasses, crops and trees, and revising grazing practices. It acknowledges that resorting to some of these modified farming approaches ''would require initial capital investments by the farming industry for new equipment.'' Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures, U.S.EPA, Office of Air Quality Planning and Standards (OAQPS), September 1992, p. 3–49. Both the American Farm Bureau Federation and the MCFB commented on possible negative economic impacts on agriculture if FIP controls were imposed on such sources. 63 FR at 41333–41334. It is because agricultural controls can be costly and intersect with land management practices and farming issues that EPA's policy is to work closely with all affected local, state and federal entities (e.g., USDA). Indeed, petitioners correctly note that EPA's guidance includes ''USDA-assisted soil conservation plans * * * on individual farms'' as an available measure. Petitioners' brief at 32.

Comment: According to the petitioners, citing CAA section 172(c)(1), the ''wholesale deferral of agricultural controls [in the FIP] is utterly indefensible because the Act required adoption of all reasonably available controls as expeditiously as practicable.'' They contend that for moderate PM–10 areas, the Act set an explicit, absolute deadline of December 10, 1993 for implementing such measures under section 189(a)(1)(C) and that where an absolute deadline under the Act has passed, EPA must correct the deficiency ''as soon as possible'' to effectuate Congressional intent. Delaney v. EPA, 898 F.2d 687, 691, 695 (9th Cir. 1990).

Response: The air quality planning requirements for moderate area PM–10 SIPs are set out in CAA section 189, which states that the moderate area SIP must contain provisions to assure that RACM for the control of PM–10 is implemented by December 10, 1993. CAA section 189(a)(1)(C). In its General Preamble, which contains guidance to the states for determining RACM and reasonably available control technology (RACT) in their PM–10 moderate area SIPs, EPA interpreted this specific deadline for PM–10 nonattainment areas to supersede the generally applicable ''as expeditiously as practicable'' deadline in CAA section 172(c)(1). See 57 FR 13501. However, because the December 10, 1993 deadline had passed by the time the State legislation at issue here was developed, the applicable deadline became ''as soon as possible'' under Delaney, 898 F.2d at 691. EPA has interpreted this requirement to be ''as soon as practicable.'' 63 FR 15926. We have delineated above the various factors that demonstrate that the schedule in the State legislation meets that test.

Comment: In its January 29, 1999 comment letter, ACLPI contends that EPA cannot claim that the State legislation provides for the expeditious implementation of RACM because the implementation date for the BMPs in the State plan is December 31, 2001 compared to an implementation date of June 2000 for the FIP.

[12] EPA provided examples of the differences between Maricopa County and the Coachella Valley that affect control strategy choices. For instance, SCAQMD rule 403.1 restricts activities capable of generating fugitive dust when wind speeds exceed 25 miles per hour; while PM–10 exceedances in Maricopa County can occur when winds exceed 15 miles per hour. Maricopa County has approximately 300,000 acres in production as opposed to the Coachella Valley's 60,000 areas. Finally, not only are the crops very different (Maricopa County is dominated by cotton, alfalfa, and wheat, while the Coachella Valley primarily grows fruits and vegetables), these crops have different planting and growing patterns.

Response: Under the State legislation, by June 10, 2000, BMPs must be adopted and embodied in a general permit in the Maricopa PM–10 nonattainment area and an education program must be initiated. By December 31, 2001, all regulated parties are required to be in compliance with the general permit. ARS 49–457.G, H, M.

The FIP requires that EPA shall begin implementing the final RACM, i.e., the BMPs, by June 2000. 63 FR 41350. Prior to proposing the FIP and as part of the stakeholder process, EPA, in conjunction with MCFB, concluded that it would not be possible to fully implement the BMPs by June 2000. See, e.g., letter from David P. Howekamp, EPA, to Kevin Rogers, MCFB, January 7, 1998 and letter Kevin G. Rogers to David P. Howekamp, January 22, 1998. Thus, as we stated in the proposal for the FIP, EPA's intention was to conduct an education program before enforcing the BMPs: ''In June 2000, BMP implementation will begin with an extensive collaborative public outreach and education campaign.'' 63 FR 15937. EPA's intention to begin its education program as the first phase of its implementation program by that date is consistent with the education program requirement in the State legislation. In fact, the State legislation is arguably more stringent than the FIP because it provides for full compliance with the BMPs by December 31, 2001, while the FIP has no such full or final implementation deadline. See 40 CFR 52.127; 63 FR 41350.

Comment: ACLPI argues that an enforceable commitment to adopt control measures is not consistent with the CAA and prior practice. Specifically, petitioners object that EPA's decision to promulgate an enforceable commitment, as opposed to actual control measures, does not meet the CAA requirements for enforceable measures as expeditiously as practicable, and that the commitment offers no assurance that adequate controls will ever be adopted. Petitioners' brief at 34–36.

Response: Historically EPA has interpreted the CAA to allow states to submit, and EPA to approve, enforceable commitments to adopt rules in the future, and the courts have upheld such approvals. See, e.g., *Friends of the Earth* v. *EPA*, 499 F.2d 1118, 1124 (2d Cir. 1974).[13] Indeed, in *Kamp* v. *Hernandez*, 752 F.2d 1444, 1446, modified in other part, 778 F.2d 527 (9th Cir. 1985), the court reviewed EPA's approval of a plan that required Arizona to adopt regulations in the future to control fugitive emissions. Petitioners challenged EPA's approval, claiming that the lack of such controls in the plan meant that it did not assure attainment and maintenance of the sulfur dioxide standards. While finding that the Act requires plans to ''rely on emission limitations to the maximum extent feasible,'' the court upheld EPA's approval, agreeing with the Second Circuit's reasoning that ''the demands of its ''difficult and complex job'' require that EPA be given some flexibility to approve nearly complete implementation plans.'' Id. at 1455. Here, as shown above, it was not feasible for the State to impose immediate controls on agricultural sources and the enforceable commitment in the State's legislation provides for the implementation of RACM as soon as practicable.

Petitioners rely on *NRDC* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994) to support their argument. There, the D.C. Circuit considered EPA's authority under CAA section 110(k)(4) which was added as part of the 1990 Amendments to the Act, to conditionally approve a SIP submittal which consisted entirely of a commitment letter to submit the required measure by a date certain.[14] Here, however, EPA did not rely on section 110(k)(4); rather the Agency proposed to approve the Arizona legislation under section 110(k)(3). 63 FR 71818.

Moreover, when section 110(k)(4) was enacted as part of the 1990 Amendments, it provided a new type of approval for a limited set of commitments that, in general, could not be enforced under the Act's enforcement mechanisms, including the citizen suit provision.[15] There is no evidence that by enacting this provision Congress intended to replace EPA's well-established policy of using its general approval authority to approve enforceable commitments and, in fact, EPA has continued to approve enforceable commitments under its general authority. See 62 FR 1150, 1187 (Jan. 8, 1997).

IV. Final Actions

EPA has evaluated ARS 49–457 and has determined that it is consistent with the CAA and EPA regulations. Therefore, EPA is approving ARS 49–457 under section 110(k)(3) of the CAA as meeting the requirements of sections 110(a) and 189(a)(1)(C). Because EPA is approving the Arizona statute as meeting the RACM requirements of the CAA for agricultural sources in the Phoenix area, EPA is also withdrawing the FIP RACM commitment for such sources by deleting § 52.127, Commitment to Promulgate and Implement Reasonably Available Control Measures for the Agricultural Fields and Aprons, in subpart D of part 52, chapter I, title 40 of the Code of Federal Regulations. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to

[13] Courts have agreed that such commitments are enforceable by the public under the CAA citizen suit provision, section 304. See, e.g., *American Lung Association of New Jersey* v. *Kean*, 670 F. Supp. 1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3d Cir. 1989); *NRDC* v. *New York State Dep't of Environmental Conservation*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Environment* v. *Deukmejian*, 731 F. Supp. 1448, reconsideration granted in part, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition Against Columbus Center* v. *New York*, 967 F.2d 764 (2d Cir. 1992); *Trustees for Alaska* v. *Fink*, 17 F.3d 1209 (9th Cir. 1994).

[14] Under section 110(k)(4), the Administrator ''may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain,'' within one year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

[15] As noted above, under section 110(k)(4), if a commitment is not fulfilled, the conditional approval must be converted to a disapproval. Once a SIP provision is disapproved, there is no longer any commitment left to enforce under the Act.

develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does 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.

C. Executive Order 13045

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

D. Executive Order 13084

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this rule does not create any new requirements, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

EPA has determined that this rule does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law and withdraws Federal requirements, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 1999. Filing a petition for reconsideration by

the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: June 17, 1999.

Carol M. Browner,

Administrator.

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

PART 52—[AMENDED]

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

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

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(93) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(93) Plan revisions were submitted on September 4, 1998 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Revised Statute 49–457.

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§ 52.127 [Removed and Reserved]

3. Section 52.127 is removed and reserved.

[FR Doc. 99–16371 Filed 6–28–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6369–1]

National Primary Drinking Water Regulation: Consumer Confidence Reports; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of August 19, 1998, a final rule setting out the requirements for annual drinking water quality reports that water suppliers must provide to their customers. The final rule included several minor typographical mistakes. This document corrects those mistakes.

DATES: Effective on June 29, 1999.

FOR FURTHER INFORMATION CONTACT: Rob Allison, 202–260–9836; E-mail: allison.rob@epa.gov.

SUPPLEMENTARY INFORMATION: In the August 19, 1998 **Federal Register** (63 FR 44511), EPA published the Consumer Confidence Report Rule. Paragraph f of the section on Report Content (§ 141.153) mistakenly refers to the requirements of § 141.153(d)(7) when it should refer to § 141.153(d)(6). This rule corrects that mistake.

The preamble to the August 19, 1998 rule explained that systems that detect certain contaminants at concentrations above 50% of the applicable MCL or action level must include additional educational information about those contaminants in their reports. As explained in the preamble to the final rule, EPA intended that all systems detecting a contaminant at greater than 50% of the MCL or AL and not in violation or exceedence would include this educational statement. (See discussion at 63 FR 44514 (August 19, 1998)). Systems that violate or exceed the applicable National Primary Drinking Water Regulation would not include this additional statement because another part of the rule requires them to provide a clear and readily understandable explanation of the violation, including the potential adverse health effects. EPA's rule language at § 141.154(d) inaccurately described this requirement when it said that the requirement applied to ''systems which detect lead above the action level in more than 5%, but fewer than 10%, of homes sampled....'' EPA's phrasing inadvertently exempts systems that detect lead above the AL in precisely 10% of homes sampled. EPA is clarifying its requirement by amending the statement to read ''Systems which detect lead above the action level in more than 5%, and up to and including 10%, of homes sampled * * *.''

In addition, Appendices A and B to Subpart O mischaracterized regulatory levels for total coliforms and total trihalomethanes. The Appendices listed the Maximum Contaminant Level Goal (MCLG) for Total Trihalomethanes (TTHMs) as zero. This is incorrect; under current EPA regulations, TTHMs have no MCLG. This notice amends Appendices A and B to replace the number zero for the TTHMs MCLG with ''n/a'' (the abbreviation for ''not applicable.'') Similarly, the Appendices mistakenly listed the Maximum Contaminant Level for Total Coliforms as ''presence of coliform bacteria in ≥5% of monthly samples''. EPA is today correcting the Appendices to show that the MCL for total coliforms is ''(systems that collect 40 or more samples per month) 5% of monthly samples are positive; (systems that collect fewer than 40 samples per month) 1 positive monthly sample'.

Finally, in paragraphs (f)(2) and (f)(3) of the section on Special Primacy Requirements (§ 142.16), the rule mistakenly refers to 40 CFR 141.155(b) when it should refer to 40 CFR 141.155(c). This amendment corrects that mistake.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting minor errors in the promulgated rule. Thus, notice and public comment procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since August 19, 1998, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).