

preclude the Commission from offering such assistance to a person receiving the notice as the Commission deems necessary or appropriate. The issuance does not preclude or interfere with the Commission's continuing right to investigate and litigate the same matter or any ADEA matter under its enforcement authority.

(b) *Delegation of authority to issue Notices of Dismissal or Termination.* The Commission hereby delegates authority to issue Notices of Dismissal or Termination, in accordance with this section, to: District Directors; Area Directors; Local Directors; the Director of the Office of Field Programs; the Associate General Counsel for Systemic Investigations and Review Programs; the Director of Field Management Programs, Office of Field Programs; or their designees.

(c) *Contents of the Notice of Dismissal or Termination.* The Notice of Dismissal or Termination shall include:

- (1) A copy of the charge;
- (2) Notification that the proceedings of the Commission have been dismissed or otherwise terminated; and
- (3) Notification that the aggrieved person's right to file a civil action against the respondent on the subject charge under the ADEA will expire 90 days after receipt of such notice.

8. A new § 1626.18 is added to read as follows:

**§ 1626.18 Filing of private lawsuit.**

(a) An aggrieved person may file a civil action against the respondent named in the charge in either federal or state court under section 7 of the ADEA.

(b) An aggrieved person whose claims are the subject of a timely pending charge may file a civil action at any time after 60 days have elapsed from the filing of the charge with the Commission without waiting for a Notice of Dismissal or Termination to be issued.

(c) The right of an aggrieved person to file suit expires 90 days after receipt of the Notice of Dismissal or Termination.

(d) If the Commission becomes aware that the aggrieved person whose claim is the subject of a pending ADEA charge has filed an ADEA lawsuit against the respondent named in the charge, it may terminate further processing of the charge or portion of the charge affecting that person unless the District Director; Area Director; Local Director; Director of the Office of Field Programs; the Associate General Counsel for Systemic Investigation and Review Programs; the Director of Field Management Programs; or their designees determine at that time or at a later time that it would effectuate

the purpose of the ADEA to further process the charge.

9. A new § 1626.19 is added to read as follows:

**§ 1626.19 Filing of Commission lawsuit.**

The right of the Commission to file a civil action under the ADEA is not dependent on the filing of a charge and is not affected by the issuance of a Notice of Dismissal or Termination to any aggrieved person.

[FR Doc. 02-20126 Filed 8-9-02; 8:45 am]

BILLING CODE 6570-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[AZ 112-0052b; FRL-7253-6]

#### Revision to the Arizona State Implementation Plan, Maricopa County Environmental Services Department

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Maricopa County Environmental Services Department (MCESD) 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 regulates open outdoor fires.

**DATE:** Any comments on this proposal must arrive by September 11, 2002.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, AZ 85007.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North central Avenue, Suite 201, Phoenix, AZ 85004.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office(AIR-4),

U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the approval of local MCESD Rule 314. In the Rules section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 16, 2002.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 02-20224 Filed 8-9-02; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[AZ-106-0062; FRL-7257-6]

#### Approval and Promulgation of Implementation Plans; Arizona; Motor Vehicle Inspection and Maintenance Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve two State Implementation Plan (SIP) revisions submitted by the Arizona Department of Environmental Quality (ADEQ). These revisions consist of several changes that have been made to Arizona's Basic and Enhanced Vehicle Emissions Inspection Programs since the programs were originally approved by EPA. Arizona's Basic Vehicle Emissions Inspection (VEI) Program is implemented in the Tucson Air Planning Area carbon monoxide (CO) nonattainment area (Area B). The Enhanced VEI Program is implemented in the Maricopa County ozone and (CO) nonattainment area (the Phoenix area or Area A). These revisions include a modeling demonstration that shows that the VEI program implemented in Area A meets EPA's high enhanced performance standard for inspection and maintenance (I/M) programs. Also included in these revisions are various program changes including the

incorporation into the VEI programs of on-board diagnostic (OBD) testing, an exemption of the first five model year vehicles from the programs on a rolling basis, replacement of the previously approved remote sensing program implemented in Area A with an on-road testing study, and changes to the waiver provisions. Today's action proposes approval of Arizona's enhanced VEI program, implemented in Area A, as meeting EPA's high enhanced program requirements and proposes approval of changes to Arizona's previously approved basic VEI program implemented in Area B.

**DATES:** Comments must be received on or before September 11, 2002.

**ADDRESSES:** Mail comments to Sylvia Dugré, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Region 9 office and the Arizona Department of Environmental Quality, Library, 1110 W. Washington Street, Phoenix, Arizona 85012.

#### Electronic Availability

This document and the Technical Support Document (TSD) for this rulemaking are also available as electronic files on EPA's Region 9 Web Page at <http://www.epa.gov/region09/air>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On May 8, 1995 (60 FR 22518), EPA fully approved Arizona's Basic and Enhanced VEI Programs as meeting the applicable requirements of the Clean Air Act (CAA) and the federal I/M rule as amended. A basic I/M program was required in the Tucson Air Planning Area CO nonattainment area and in the Maricopa County CO and ozone nonattainment area (the Phoenix area). At that time, Arizona was not required to have an enhanced I/M program, although Arizona was implementing most elements of an enhanced program in the Phoenix area (Area A). Arizona's program as implemented in Area A, however, was not approved as an enhanced program, because the program did not satisfy all the provisions of EPA's I/M rule for enhanced programs. An enhanced I/M program became a requirement for the Phoenix area when the area was reclassified from a "low" moderate CO nonattainment area (with a design value less than 12.7 ppm) to a serious CO nonattainment area effective August 28, 1996 (61 FR 39343, July 29,

1996), and when the area was reclassified from a moderate to a serious nonattainment area for ozone effective February 13, 1998 (63 FR 7290, February 13, 1998). Since the Arizona VEI programs were originally approved in May 1995, EPA has amended the federal I/M regulations<sup>1</sup> several times to provide states with more flexibility in designing their programs and to require testing of the on-board diagnostic (OBD) system. Since that time, Arizona has also made a number of changes to its enhanced and basic VEI programs.

##### II. Summary of Arizona's Submittals

ADEQ submitted the changes to its Basic and Enhanced Vehicle Emissions Inspection and Maintenance Programs as a revision to its SIP on July 6, 2001. The July 6, 2001 SIP revision package includes, among various other program changes, ADEQ's revised rule which extends the exemption for newer model year vehicles from the current model year to the first five model year vehicles and the revised rules incorporating legislative changes to the provisions for issuing a waiver. Also included in the SIP revision is State legislation that discontinues the remote sensing program that had been implemented in Area A and authorizes a study to determine the most effective on-road testing program for Arizona.

A SIP revision supplementing the July 6, 2001 SIP revision was submitted by ADEQ on April 10, 2002. This submittal contains the ADEQ rule revisions incorporating on-board diagnostics (OBD) testing and, in accordance with the State legislation, deleting the previously approved remote sensing program from the ADEQ regulations. It also contains a modeling demonstration, with adjustments for the IM147 transient loaded-mode emissions test, showing the I/M program implemented in Area A meets EPA's high enhanced performance standard. EPA found this submittal complete on May 2, 2002.

##### III. EPA Review of the SIP Revisions

EPA's requirements for basic and enhanced I/M programs are contained in 40 CFR part 51 Subpart S. The SIP revisions submitted by ADEQ must be consistent with these requirements and must meet EPA's requirements for enforceability, as well as, CAA section 110(l) requirements.

##### A. Geographic Coverage

EPA's I/M regulations require that state I/M programs be implemented in

the entire urbanized area, based on the 1990 census. 40 CFR 51.350. Since EPA approved the VEI programs into the SIP in 1995, Arizona has extended the boundaries of Area A<sup>2</sup>, where the Phoenix VEI program is implemented, to incorporate high-growth areas surrounding metropolitan Phoenix. The Maricopa County geographic area covered by the VEI program was increased and portions of Yavapai and Pinal Counties were included for the first time. Inspection of subject vehicles included within the Maricopa and Yavapai County portions of expanded Area A began on December 31, 1998. Inspection of subject vehicles in the Pinal County portion of Area A began January 1, 2001. By expanding the boundaries of Area A, ADEQ projected that 60,676 vehicles were covered by the program in the geographic area that was added to the program.

##### B. Vehicle Coverage

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and trucks. Light duty trucks are not included in the performance standard for basic I/M programs. Other levels of coverage may be approved if the necessary emission reductions are achieved. CFR 51.356.

The VEI programs approved by EPA in 1995 exempted vehicles manufactured in the current model year from inspection. Senate Bill 1427, enacted in 1998, expanded the exemption from testing for current model year vehicles to the prior four model years, making the first five model year vehicles exempt from testing on a rolling basis in both Area A and Area B. Implementation of this revision to the VEI programs began September 1, 1998. The exemption of newer model year vehicles from emissions testing results in a relatively small loss in emission benefit since newer vehicles are generally anticipated to be cleaner than older vehicles. Furthermore, recent data suggest that newer vehicles stay cleaner longer due to the slower rate of emission control system deterioration. An analysis of Arizona data done by Sierra Research shows that this portion of the vehicle fleet is responsible for only a small fraction of identifiable excess emissions.<sup>3</sup>

The federal regulations also require basic and enhanced I/M programs to

<sup>2</sup> The TSD for this proposed rulemaking contains the boundaries for Area A as defined by township and range.

<sup>3</sup> Sierra Research Draft Final Report, "Determination of Emissions Credit and Average Test Times for IM147 Testing," November 9, 1998, p. 59.

<sup>1</sup> See the Technical Support Document (TSD) for this proposed rulemaking for the list of federal register notices amending EPA's I/M regulations.

include inspection of all 1996 and later motor vehicles equipped with OBD systems. EPA required I/M programs to begin OBD checks on January 1, 2002. 40 CFR 51.373. OBD consists of a computer which performs checks of a number of different vehicle systems for malfunctions or deterioration which could result in the vehicle exceeding its emissions standards and a malfunction indicator light which is required to be illuminated when the system detects a problem. In accordance with EPA's requirements, Arizona began OBD testing 1996 and newer OBD-equipped vehicles in Area A and Area B in January 2002. Vehicles which receive an OBD inspection do not receive an IM147 tailpipe test, which is described below.

### C. On-Road Testing

On-road testing is required in enhanced I/M programs and is optional for basic I/M programs. The on-road testing requirement may be met by measuring on-road emissions through the use of remote sensing devices or through roadside pullovers including tailpipe or evaporative emission testing or a check of the OBD system. The federal regulations require on-road testing to evaluate annually the emission performance of 0.5% of the subject fleet statewide or 20,000 vehicles, whichever is less. 40 CFR 51.371.

Arizona began an on-road testing program using remote sensing devices (RSD) in Area A in 1995. Vehicles identified by RSD as high emitters were required to have a follow-up emissions test at a state run station and to undergo repairs if necessary. The State found that the program resulted in relatively small emissions reductions. Twenty-nine percent of the vehicles initially identified as high emitters were found to be meeting the applicable standards upon retest. Arizona estimated the cost effectiveness of the program as approximately \$800–\$1000 per ton of carbon monoxide and \$16,000 to \$20,000 per ton for volatile organic compounds (VOCs). In Arizona House Bill (HB) 2104, enacted in 2000, the State legislature replaced the RSD program with a requirement to conduct a study to identify more accurate and cost-effective on-road testing methods. The legislation authorized the analysis of alternative technologies, including remote sensing, to evaluate the performance of in-use vehicle emissions control systems. The goals of the study include improving methods of identifying high emission vehicles and increasing compliance with the annual/biennial inspection program. HB 2104 also provided dedicated funding to

complete the study and develop the new program.

ADEQ has amended its VEI program rules to remove the RSD provisions. ADEQ has contracted with Eastern Research Group, Inc. (ERG) in Austin, Texas to conduct the baseline assessment and evaluation of alternative testing technologies for the Arizona Alternative Compliance and Testing Study. Under the provisions of the contract with ERG, Arizona continues to meet EPA's requirement for on-road testing of 0.5% of the subject fleet statewide or 20,000 vehicles, whichever is less, annually.<sup>4</sup> Arizona has also committed to submit a VEI program SIP revision when the study is completed and the new on-road testing program designed. EPA is proposing to find that the Arizona Alternative Compliance and Testing Study satisfies EPA's requirements for on-road testing.

### D. Waivers

EPA's requirements permit I/M programs to provide a waiver which allows the motorist to comply with the program without meeting applicable test standards as long as certain prescribed criteria are met. 40 CFR 51.360. In basic programs, a minimum of \$75 for pre-1981 vehicles and \$200 for 1981 and newer vehicles must be spent by the motorist for appropriate repairs in order to qualify for a waiver. 40 CFR 51.360(a)(6). Beginning January 1, 1998, enhanced programs must require motorists to spend at least \$450 for appropriate repairs. 40 CFR 51.360(a)(7).

Arizona's rules provide that a waiver from the applicable standards may only be issued after a retest is failed after qualifying repairs, including performance of a low-emissions tune-up, are made. Although the required expenditures under Arizona's enhanced I/M program for Area A differ from those described in EPA's I/M requirements for enhanced programs, a side-by-side comparison demonstrates that, overall, they are not less stringent.

For enhanced programs EPA requires a minimum expenditure of at least \$450 to qualify for a waiver, but allows for an extension of time to repair a failed vehicle for the period of one test cycle for "economic hardship." 40 CFR 51.360(a)(9). EPA's regulations also allow a vehicle to receive multiple waivers as long as the vehicle fully passes the applicable test standards between such waivers. *Id.*

Arizona's program recognizes that the burden of repairs is greatest on owners

of older vehicles. The Arizona program includes minimum expenditures that decrease with the age of the vehicle, *i.e.*, \$450 for 1980+ model year vehicles, \$300 for 1975–79 model years, and \$200 for pre-1975 model years. The costs of repair due to tampering do not apply to the waiver cost limit. Under the State's program, waivers are denied to gross polluting vehicles, which are vehicles failing the emissions inspection at more than twice the applicable standard. A waiver may be granted only once in a vehicle's life. Waivers are denied if the vehicle has an inoperable catalytic converter. Thus, unlike the federal program where relief may be allowed for "economic hardship" and multiple waivers may be granted for failure during subsequent test cycles, the Arizona program includes more limited allowances for waivers and allows only a single such waiver. Therefore, EPA proposes to conclude that, taken as a whole, Arizona's waiver requirements are not less stringent than those required by the federal I/M regulations.

The provisions which deny a waiver to vehicles failing the emissions test at more than twice the applicable standard and limit the issuance of a waiver to once in a vehicle's lifetime also apply to the Area B basic I/M program. These provisions strengthen the program and provide additional emissions reductions.

### E. Enhanced I/M Performance Standard

EPA's I/M regulations require that the state perform modeling using the most current version of EPA's mobile source emissions model to determine that the emissions levels achieved by the state I/M program design meet the minimum performance standard provided in the federal regulations. 40 CFR 51.351(f). The elements of EPA's high enhanced program model program are contained in 40 CFR 51.351(f).

On January 1, 2000, ADEQ began using a revised test procedure called the IM147 for vehicles undergoing the transient, loaded emissions test in Area A. The IM147 test is derived from the IM240 test which had been used in Area A since 1995. The IM240 transient, loaded emissions test includes two phases. The IM147 is based on the second phase, which has a driving cycle that is longer and has significantly higher speeds than the first phase. The IM147 was developed to allow more vehicles to be tested per lane at the I/M testing facilities and to reduce the incidence of false failures due to

<sup>4</sup> A copy of the contract with ERG was included in the SIP revision and is part of the docket for this proposed rulemaking.

inadequate preconditioning,<sup>5</sup> while maintaining stringency close to the level of the I/M240 test.

Because the IM147 test type was not available as an input option in the MOBILE5b emission factor model, Arizona performed its modeling using the closest available test type, the IM240. The resulting credit was then adjusted based upon the analysis of a 2,518 vehicle sample of paired IM240 and IM147 emission tests. Based on this analysis and previous work done by ADEQ, EPA, and Sierra Research, it was determined that multiplying the IM240 modeling output CO, HC and NO<sub>x</sub> results by .994, .987, and .954 respectively,<sup>6</sup> was an appropriate surrogate for modeling the IM147 test directly.

At the time the Arizona SIP revision was developed, MOBILE5b was EPA's latest available approved emission factor model, and was therefore the model used to project the emission reductions attributable to Arizona's IM147 enhanced program. Because of the complexity of the program, i.e., different tests for different model year vehicles and types of vehicles, several different modeling scenarios were combined to determine the level of emission reductions achieved by the State's program. These emission reductions were then compared to the emission reductions associated with EPA's high enhanced I/M performance standard. The modeling demonstrated that Arizona's enhanced program with the IM147 test meets EPA's high enhanced I/M performance standard.

#### F. Legal Authority for the Program

The federal I/M rule requires the state I/M program to remain in operation until it is no longer necessary. 40 CFR 51.372. State legislation enacted in 1999 added Arizona Revised Statute (ARS) 41-3009.01 which extends the I/M program to January 1, 2009, well beyond the date of expected attainment of the CO and ozone national ambient air quality standards (NAAQS) for the Phoenix area. With respect to this sunset date, in a letter<sup>7</sup> to EPA, dated August 23, 1998, ADEQ stated that ARS 41-2955 limits to ten years the existence of an agency such as ADEQ before it undergoes a sunset review. Therefore the Vehicle Emissions Inspection Program (VEIP) has been extended for the maximum time that is consistent

with ARS 41-2955, i.e., ten years. The letter supplies a recent history of legislative changes to the VEIP, concluding that "The VEIP has consistently received support for necessary program updates from the Legislature." In the final rule redesignating the Tucson area to attainment for CO and approving the Tucson maintenance plan, EPA concluded that, on the basis of this legislative history, it is reasonable to assume that the program will be extended when it expires at the end of 2008.<sup>8</sup> We continue to believe that ADEQ has demonstrated that the Arizona I/M programs will remain in operation as long as necessary and the requirements of 40 CFR 51.372 have been satisfied.

#### G. Effect of Program Changes on Emission Benefits

CAA section 110(l) states, in part, that EPA shall not approve a SIP revision if it would "interfere with any applicable requirement concerning attainment and reasonable further progress\* \* \* or any other applicable requirement of [the Act]." One of the tests that EPA has used historically to determine whether a SIP revision would interfere with attainment or reasonable further progress (RFP) is the "no relaxation" test. Under this test, if a SIP revision does not reduce or delay emission reductions when compared to the unrevised SIP, then EPA can conclusively find that it will not interfere with the area's applicable requirements concerning attainment or RFP.

In a recent court decision (*Hall v. EPA*, 273 F.3d 1146 (9th Cir. 2001)), the Ninth Circuit Court of Appeals determined that EPA cannot invariably rely on the "no relaxation" test in determining if a SIP revision is allowed under section 110(l)'s prohibition on interference with attainment and RFP. Rather, the court determined that, before EPA can conclude that the SIP revision is allowed under section 110(l), EPA must first conclude that "the particular plan revision before it is consistent with the development of an overall plan capable of meeting the Act's attainment requirements." (*Hall*, 273 F.3d at 1160). However, the court also found that the "no relaxation" test would "clearly be appropriate in areas that achieved attainment under preexisting rules." (*Hall*, 273 F.3d at 1160 n.11).

As described above, the changes to Arizona's VEI programs contained in the proposed SIP revision affect both the Phoenix and Tucson areas. Therefore,

EPA needs to address the proposed SIP revision's effect in both of these areas before we can determine whether we can approve this revision under CAA section 110(l).

**Tucson.** Arizona implemented its VEI program in the Tucson area as part of the control strategy to attain and maintain the CO standard in the area. Under the 1990 CAA Amendments, the Tucson area was designated "nonattainment" and "not classified" for carbon monoxide. 56 FR 56694 (November 6, 1991). In 2000, EPA redesignated the area to attainment for CO. See 65 FR 36353 (June 8, 2000).

EPA can use here, per *Hall*, the "no relaxation" test to determine if the proposed SIP revision is allowed under section 110(l)'s prohibition on interference with attainment because the Tucson area attained under a pre-existing rule. In this case, the pre-existing rule is the VEI program in place at the time the area was redesignated to attainment in June 2000. The program in place in 2000 is the same revised VEI program being proposed for approval today. Therefore, EPA proposes to conclude that this SIP revision, if approved, will not interfere with any applicable requirement concerning CO attainment in the Tucson area.

As an attainment area, the Tucson area has neither a requirement to demonstrate RFP nor one for an I/M program; therefore, the proposed SIP revision does not interfere with any applicable requirement for RFP or any other applicable requirement of the CAA.

**Phoenix.** The Phoenix-area VEI program is an important component of the area's control strategies for both carbon monoxide and ozone.<sup>9</sup>

**Carbon monoxide.** In March, 2001, Arizona submitted a revised serious nonattainment area CO plan for the Phoenix area. This plan relied in part on the VEI program being proposed for approval today to demonstrate both progress toward and attainment of the CO standard in the area. See *Revised MAG 1999 Serious Area Carbon Monoxide Plan for the Maricopa County Nonattainment Area*, Maricopa

<sup>5</sup> If a vehicle is not thoroughly warmed up, high emissions can be caused by air-fuel ratio enrichment or an inactive catalytic converter.

<sup>6</sup> See the TSD in the docket for this proposed rulemaking for further information.

<sup>7</sup> See the TSD for this proposed rulemaking for a copy of the letter.

<sup>8</sup> 65 FR 36356, June 8, 2000.

<sup>9</sup> The Phoenix area is also a PM-10 nonattainment area; however, the VEI program plays a very minor roll in the control strategy for this pollutant. Moreover, the area's recently-approved PM-10 plan was prepared based on the VEI program that we are proposing to approve today. See 66 FR 50136 (October 2, 2001). Therefore, this SIP revision is consistent with and supports the development of the Phoenix area's plan for meeting the Act's attainment, RFP and control requirements (i.e., reasonably available control measures, best available control measures, and most stringent measures). There is no CAA requirement for I/M programs in PM-10 nonattainment areas.

Association of Governments, March 2001, Chapter 9. Therefore, these revisions to the VEI program are consistent with and support the development of the Phoenix area's plan for meeting the Act's attainment and RFP requirements. Also, the revisions to the program collectively provide a further reduction in total area CO emissions of around 3.0 percent over those achieved by the program as implemented prior to 2000. *Id.* As discussed above, the revised VEI program meets the CAA's requirements for enhanced I/M programs for serious CO nonattainment areas. Therefore, we propose to conclude that this SIP revision, if approved, will not interfere with any applicable requirements for attainment and RFP or any other applicable requirements of the CAA and is approvable under section 110(l).

**Ozone.** In April 2001, EPA determined that the Phoenix area had attained the 1-hour ozone standard by its statutory deadline of November 15, 1999. *See* 66 FR 29230 (May 30, 2001). The area has continued in attainment since 1999 with no recorded exceedances of the 1-hour ozone standard and an overall downward trend in ozone levels. *See* Letter, Nancy Wrona, ADEQ to Colleen McKaughan, EPA, June 12, 2002.

Because of its clean air record, Arizona was not required to submit a serious area attainment demonstration<sup>10</sup>; therefore, we are unable to judge whether the proposed revisions are consistent with the area's formal plan to attain the standard by its applicable statutory deadline. However, because the area has achieved attainment under the pre-existing program, we can use, per *Hall*, the "no relaxation" test to determine if the proposed SIP revision is allowed under section 110(l)'s prohibition on interference with attainment.

For the purposes of section 110(l), EPA compares the proposed revisions to the "pre-existing" VEI program which was in place during the 1997 to 1999 time frame when the area achieved attainment.<sup>11</sup> The most substantial changes to the VEI program are: (1) The

change from the IM240 to the IM147 emission test; (2) the elimination of the remote sensing program; and (3) the expansion of the program into Pinal County. Collectively, these three program revisions reduce VOC, CO, and NO<sub>x</sub> emissions as compared to emissions reductions achieved by the VEI program over the 1997–1999 attainment period by approximately 1,400 metric tons per year (mtpy), 16,000 mtpy, and 95 mtpy, respectively. *See* Email, Teresa Pella, ADEQ to Frances Wicher, EPA, June 14, 2002.

While the VOC and CO reductions contribute to reducing ozone levels, the decrease in NO<sub>x</sub> emissions may have the effect of potentially increasing ozone levels in the Phoenix area. However, the NO<sub>x</sub> reductions are so small (less than 0.2 percent of the total NO<sub>x</sub> inventory, *Id.*) that any increase in ozone levels resulting from the NO<sub>x</sub> reductions will be negligible and more than offset by a decrease in ozone levels resulting from the much more substantial VOC and CO reductions.<sup>12</sup> Therefore, EPA proposes to conclude that this SIP revision, if approved, will not adversely affect the area's clean air status and is allowed under section 110(l)'s prohibition on interfering with any applicable requirement pertaining to attainment.

The only existing RFP demonstration for the area is the 15 percent rate-of-progress (ROP) demonstration required by CAA section 182(b)(1). *See* 64 FR 36243 (July 6, 1999). This ROP requirement addresses VOC only. Emission reductions from the VEI program are credited in the Phoenix area's 15% ROP plan, but that credit is based on the program as implemented in 1996. *See* 63 FR 3687, 3690. This proposed SIP revision results in additional reductions in VOC over the reductions achieved from the VEI program implemented in 1996; therefore, EPA proposes to conclude that the revision, if approved, will not interfere the area's applicable requirement to demonstrate RFP.

Finally, as discussed above, EPA has concluded that the revised program meets the enhanced I/M program

requirements for serious ozone nonattainment areas.

#### IV. Proposed Action

In today's action EPA is proposing to find that the Arizona enhanced I/M program implemented in Area A meets CAA and EPA requirements for a high enhanced program. We are also proposing to find that the VEI program implemented in Area B continues to meet EPA's I/M requirements for basic programs. In addition, we are proposing to approve various Arizona statutes amending the VEI programs and the latest revisions to the basic and enhanced VEI program regulations. Specifically, the Arizona statutes are:

Amendments to A.R.S. 49–541, 49–542.05, 49–544, 49–545, 49–551 and the repeal of 49–542.01 submitted to EPA as a SIP revision on July 6, 2001.

Amendments to A.R.S. 49–542, 49–543, and the repeal of 49–541.01 submitted to EPA as a SIP revision on April 10, 2002.

The Arizona regulations are:

Arizona Administrative Code (AAC), Title 18, Chapter 2, Article 10 "Motor Vehicles; Inspection and Maintenance" as of December 31, 2000 except for AAC R 18–2–1020, submitted to EPA as a SIP revision on July 6, 2001.

Amendments to AAC R 18–2–1006 and 18–2–1019, and the repeal of AAC R 18–2–1014 and R 18–2–1015 submitted to EPA as a SIP revision on April 10, 2002.

#### V. Administrative Requirements

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 proposed 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 approves 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

<sup>10</sup> *See Memorandum*, John S. Seitz, Director, OAQPS, EPA, to Regional Air Directors, "Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," May 10, 1995.

<sup>11</sup> Attainment of the 1-hour ozone standard is demonstrated when the average number of exceedances per year over a three-year period is 1 or less. Thus, to demonstrate attainment by November 1999, the Phoenix area had to average 1 or fewer exceedances per year over the 1997 to 1999 time period.

<sup>12</sup> Two previous analyses of the effect of NO<sub>x</sub> reductions on 1-hour ozone levels in the Phoenix area show uncompensated NO<sub>x</sub> reduction of 3.7 percent and 9 percent of the total NO<sub>x</sub> inventory resulted a 0.001 ppm and 0.004 ppm, respectively, increase in peak 1-hour ozone levels. *See Memorandum*, Cari Anderson, MAGTPO, to Sharon G. Douglas and others, SAI, re: NO<sub>x</sub> RACT Simulation for the 9–10 August 1992 Episode, March 29, 1994 and "Reanalysis of the Metropolitan Phoenix Voluntary Early Ozone Plan," ENSR, October 1997, p. 5–2. The 1-hour ozone standard is 0.12 ppm; current peak 1-hour ozone levels in Phoenix area are 0.115 ppm.

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This 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, Carbon monoxide, Intergovernmental Regulations, Ozone, Reporting and recordkeeping requirements.

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

Dated: August 1, 2002.

**Laura Yoshii,**

*Acting Regional Administrator, Region 9.*

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