Michigan encompassed by the arc of a circle with an 840-foot radius with its center in approximate position 43°23.07′ N, 087°51.55′ W. This safety zone will temporarily close the entrance to Port Washington Harbor.

(ii) *Expected date and time.* Third week in July; sunset to termination of display.

(24) *Menominee Waterfront Festival.* (i) *Location.* All waters and adjacent shoreline off the southeast side of the Menominee Municipal Marina, Lake Michigan encompassed by the arc of a circle with an 840-foot radius of the fireworks launch platform with its center in approximate position 45°20.05′ N, 087°36.49′ W.

(ii) *Expected date and time.* The Saturday following the first Thursday in August; sunset to termination of display.

(25) *Sturgeon Bay Venetian Night Fireworks.* (i) *Location.* All waters and adjacent shoreline off the Sturgeon Bay Yacht Club, Sturgeon Bay Canal encompassed by the arc of a circle with a 350-foot radius of the fireworks launch platform with its center in approximate position 44°49.33′ N, 087°23.27′ W. This safety zone will temporarily close down the Sturgeon Bay Canal.

(ii) *Expected date and time.* First weekend in August; 10 a.m. to termination of fireworks display.

(26) *Algoma Shanty Days Fireworks.* (i) *Primary location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°36.22′ N, 087°25.55′ W forming the primary site.

(ii) *Alternate location.* All waters and adjacent shoreline encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°36.28′ N, 087°25.54′ W. If the display is moved to secondary site, the safety zone will temporarily close entrance to Algoma Harbor.

(iii) *Expected time and date.* Second week in August; sunset to termination of display.

(27) *Sister Bay MarinaFest—Sister Bay.* (i) *Location.* All waters and adjacent shoreline off the town of Sister Bay, Lake Michigan encompassed by the arc of a circle with a 560-foot radius of the fireworks launch platform with its center in approximate position 45°10.60′ N, 087°06.60′ W.

(ii) *Expected date and time.* First week in September; sunset to termination of display.

(28) *Milwaukee River Challenge—Milwaukee, WI.* (i) *Location.* All waters and adjacent shoreline between the Humboldt Ave. Bridge (mile marker 3.22) and E. Chicago St. (mile marker 1.08) on the Milwaukee River. This safety zone will temporarily close the Milwaukee River for crew boat races.

(ii) *Expected date and time.* Third week in September; 10 a.m. to 5 p.m.

(29) *Sheboygan South High School Homecoming Fireworks.* (i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 420-foot radius with its center in approximate position 43°44.57′ N, 087°42.13′ W. This safety zone will temporarily close the entrance to Sheboygan Harbor.

(ii) *Expected date and time.* One day in the first two weeks in October; sunset to termination of display.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed. U.S. Coast Guard Auxiliary, representatives of the event organizer, and local or state officials may be present to inform vessel operators of this regulation and other applicable laws.

(3) In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Milwaukee to transit the safety zone. Approval in such cases will be case-by-case. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

(c) Captain of the Port Milwaukee will announce the exact time and location of the annual events listed in this regulation by Notice of Implementation, Broadcast Local Notice to Mariners, or any other means deemed appropriate.

Dated: April 1, 2002.

M.R. DeVries,

Commander, U.S. Coast Guard, Captain of the Port, Milwaukee.

[FR Doc. 02–9417 Filed 4–17–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–076–SIP; FRL–7172–5]

Finding of State Implementation Plan Inadequacy; Arizona—Salt River Monitoring Site; Metropolitan Phoenix; PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to find that the State implementation plan (SIP) for the Metropolitan Phoenix (Maricopa County), Arizona PM–10 nonattainment area is substantially inadequate to attain the 24-hour particulate (PM–10) national ambient air quality standard (NAAQS) at the Salt River monitoring site, a small subarea of the nonattainment area. As a result, EPA is proposing to require the State of Arizona to submit a SIP revision to correct the inadequacy.

DATES: Comments on this proposal must be received in writing by May 20, 2002.

ADDRESSES: Comments should be mailed to: Frances Wicher, Office of Air Planning (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

This document and information on the PM–10 plans for the metropolitan Phoenix area are also available as electronic files on EPA's Region 9 Web Page at *www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 947–4155. E-mail: *wicher.frances@epa.gov.*

SUPPLEMENTARY INFORMATION:

Note: In this document, ''we,'' ''us'' and ''our'' refer to EPA. ''CAA or the Act'' refers to the Clean Air Act as amended in 1990 and subsequently. ''PM–10'' refers to particulate matter with a diameter of 10 microns or less. ''24-hour standard'' refers to the 24-hour National Ambient Air Quality Standard for PM–10 established at 40 CFR 50.6(a). ''SIP'' or ''plan'' refers to a state implementation plan. ''ADEQ'' is the Arizona Department of Environmental Quality. ''BACM'' and ''RFP'' are acronyms, respectively, for best available control measure and reasonable further progress.

I. Summary of Today's Proposal

In 1997, we approved an attainment demonstration as part of the Metropolitan Phoenix serious area PM–10 SIP that showed the 24-hour PM–10 standard would not be violated at the

Salt River site after 1998. However, data from the ambient air quality monitor located at the Salt River site[1] shows continuing violations of the 24-hour standard. Based on these continuing violations, we propose to find that the SIP is substantially inadequate to provide for attainment of the 24-hour standard at the Salt River site. Under CAA section 110(k)(5), once we determine that a state's SIP is substantially inadequate to attain a national ambient air quality standard, we must require that state to revise its SIP to correct the inadequacy.

Based on the proposed finding of inadequacy, we are also proposing to require that the State of Arizona revise its serious area PM–10 SIP to assure expeditious attainment of the 24-hour PM–10 standard for the Salt River monitoring site and submit these revisions to EPA no later than 18 months after publication of the final rule for this proposal.

II. Background to Today's Proposals

A. The Metropolitan Phoenix Serious Area PM–10 Plan

The Phoenix area violates both the annual PM–10 standard of 50 μg/m^3 and the 24-hour standard of 150 μg/m^3. 40 CFR 50.6. In 1996, the Phoenix area was classified as a serious PM–10 nonattainment area under the CAA and required to develop a nonattainment plan that provided for expeditious attainment of both standards and met the other applicable CAA plan requirements for serious areas. *See* 61 FR 21372 (May 10, 1996). Since 1996, Arizona has made several SIP submittals that collectively address these planning requirements and we have acted on them in several rulemakings. For more background on the Phoenix PM–10 SIP and our actions on it, please see 65 FR 19964, 19965 (April 13, 2000) and 66 FR 50252, 50253 (October 2, 2001) and the Technical Support Documents for these actions.

In today's proposal, we are concerned with the Phoenix PM–10 SIP's provisions for attaining the 24-hour standard. In May, 1997, ADEQ submitted the *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area*, as a SIP revision. This plan, known as the microscale plan, included attainment and RFP demonstrations for the 24-hour PM–10 standard at the Salt River air quality monitoring site as well as three other ''microscale'' monitoring sites in the Phoenix area (Maryvale, Gilbert, and West Chandler). The demonstration for the Salt River site showed that, with additional controls adopted by the local air quality agencies, Maricopa County Environmental Services Department, attainment at the site would occur by May 1998. We approved the attainment and RFP demonstrations for the Salt River site and Maricopa County's controls on August 4, 1997. *See* 62 41856.

Since 1997, Arizona has made two other submittals to address 24-hour exceedances in the Phoenix area. The two submittals are the 1999 Maricopa Association of Governments (MAG) PM–10 plan and the June 2001 Agricultural Best Management Practices (BMP) plan. The MAG plan is the principal part of the overall Phoenix serious area plan and uses the urban airshed model (UAM) to evaluate 24-hour exceedances in the Phoenix nonattainment area and includes additional detailed analysis for the two microscale sites which were impacted by agricultural sources. Regarding the Salt River monitoring site, the plan states that it presents a unique situation that is difficult to model with UAM. *See* MAG plan, Appendix A, Exhibit 7, p. VI–11. The MAG plan, however, does not further evaluate the 24-hour violations at the Salt River site, relying instead on the approved attainment demonstration in the 1997 microscale plan.

The BMP plan revises the microscale analysis in the MAG plan by demonstrating that the Arizona's agricultural BMP rule provides sufficient emission reductions to demonstrate attainment of the 24-hour PM–10 standards at the two microscale sites, Gilbert and West Chandler, impacted by agricultural source. The BMP plan did not include any analysis of the Salt River site.

In January, 2002,[2] we approved the MAG plan, the BMP plan, and several rules which, combined with the earlier microscale plan, constituted the Phoenix serious area plan. With these approvals, we have approved all the CAA-required provisions in the Phoenix serious area PM–10 plan.

B. Clean Air Act Provisions for Inadequate SIPs

To assure that SIPs provide for timely attainment, section 110(k)(5) authorizes EPA to find that a SIP is substantially inadequate to meet a CAA requirement, and to require (''call for'') the State to submit, within a specified period not to exceed 18 months, a SIP revision to correct the inadequacy. This requirement for a SIP revision is known as a ''SIP call.'' Specifically, section 110(k)(5) provides, in relevant part:

> Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant [NAAQS] * * *, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions.

III. The Proposed Inadequacy Finding and Call for a SIP Revision

According to the approved attainment demonstration in the Phoenix serious area plan, the Salt River site should not have violated the 24-hour PM–10 standard after May, 1998. *See* 62 FR 31026, 31035. The site, however, continues to violate the standard.[3] Based on data recorded in EPA's Aerometric Information Retrieval System (AIRS), the Salt River monitor had 51 expected exceedances in 1999, 43 expected exceedances in 2000, and 19 expected exceedances through 3 quarters in 2001 or an average of at least 37 expected exceedances per year over the past three years.[4] The 24-hour PM–10 standard is violated when the expected number of exceedances average more than 1 per year over a three year period. *See* 40 CFR 50.6(a). These continuing violations clearly show that the existing attainment demonstration is flawed.

Because the attainment demonstration approved into the Phoenix area PM–10 SIP in 1997 is clearly faulty and there has been no substitute attainment demonstration submitted to date, we

[1] The Salt River site is located in south Phoenix next to the Salt River. The Salt River site is the area centered around the Salt River monitor located near 19th Avenue and Lower Buckeye Road.

[2] The final approval was signed on January 14, 2002 but has not been published in the **Federal Register** as of the signature date on this proposal.

[3] The Salt River site, approximately 32 square miles in area or about 1 percent of the 2880 square mile Phoenix nonattainment area, is located in an industrial area and its 24-hour violations are most likely due in large part to the industrial sources that surround it. This is in marked contrast to other monitoring sites in the rest of the Phoenix nonattainment area where 24-hour exceedances are almost exclusively due to windblown fugitive dust. The recently-approved provisions of the Phoenix serious area plan discussed above focused on windblown fugitive dust sources and adequately addressed 24-hour exceedances in the great majority of the Phoenix nonattainment area.

[4] Ambient concentrations of PM-10 are generally not measured daily but rather are measures only one day in every six, the minimum monitoring schedule for most PM–10 monitors in EPA's regulations. *See* 40 CFR 58(d)(1). To account for the unmonitored days, the number of recorded exceedances is adjusted by multiplying it by six. *See* 40 CFR part 50, appendix K. Therefore, one exceedances at a monitor operating one day in six equals, in the most simple case, six expected exceedance days.

propose to find that the Phoenix area PM–10 SIP is substantially inadequate to attain the 24-hour PM–10 standard at the Salt River site. Therefore, pursuant to CAA section 110(k)(5), we propose to require the State of Arizona to submit a revision to the Phoenix area SIP that corrects this deficiency and complies with all other applicable CAA requirements as described below.

IV. The Proposed Schedule and Requirements for the Revised SIP Submittal

A. Submittal Schedule

Under section 110(k)(5) of the CAA, we have the authority to establish the date by which a state must respond to a SIP call. This date can be no later than 18 months after the SIP call is issued.

We propose that the date for submitting the revisions to the Salt River attainment demonstration and related provisions described below be 18 months after publication of the final rule, or approximately late October, 2003. This date is appropriate in light of the substantial technical work that must precede the submittal, including a year of detailed monitoring and inventory work to identify contributing sources; preparation and validation of air quality modeling; research on and development and adoption of necessary controls; and a public hearing and opportunity for public comment.

B. SIP Requirements

CAA section 172(d) requires that any SIP revision for a nonattainment area that is required to be submitted in response to a SIP call must correct the deficiency that is the basis for the SIP call and must also meet all other applicable plan requirements of section 110 and title 1, part D.

We are proposing to find deficient a specific but limited provision of the Phoenix area's approved serious area SIP. The identified deficiency—the attainment demonstration for the Salt River site—will necessitate revisions to other provisions of the approved SIP but does not require that the State revise its entire plan for attaining the 24-hour standard in the metropolitan Phoenix nonattainment area.

A PM–10 attainment demonstration consists of two components: a control strategy and a technical evaluation, using an air quality model, of the effect of that control strategy on future air quality. A deficient attainment demonstration means that there are problems in one or both of these components; therefore, to correct a deficient attainment demonstration a state must evaluate and revise, as necessary, both components. Additionally, for PM–10 plans, the demonstration of reasonable further progress and the quantitative milestones required by CAA sections 172(c)(1) and 189(c) are derived from the control strategy and the attainment demonstration and must also be revised when they are revised.

The CAA establishes specific minimum requirements for control strategies in serious area PM–10 plans. Section 189(b)(1)(B) requires that such plans provide for the implementation of BACM. Pursuant to CAA section 188(e), we have granted Arizona's request to extend the attainment date for the 24-hour standard in the Phoenix nonattainment area to December 31, 2006. For such extension areas, section 188(e) requires that SIP include to our satisfaction the most stringent measures found in other states' implementation plans or achieved in practice.

Thus, in response to a final SIP call on the Salt River attainment demonstration, Arizona will need to submit the following:

(a) A demonstration based on air quality modeling that the plan will provide for attainment no later than December 31, 2006 at the Salt River site. CAA sections 189(b)(1)(A) and 188(e).

(b) Provisions for implementing BACM as expeditiously as practicable on all sources or source categories that contribute significantly to exceedances of the 24-hour PM–10 standard in the Salt River area. CAA section 189(b)(1)(B). [5] In the SIP revision, Arizona need only provide for the implementation of BACM on those significant sources or source categories for which we have not already approved BACM.

(c) A demonstration that the revised SIP includes, and provides for expeditious implementation of, the most stringent measures found in the implementation plan or achieved in practice that are feasible for the Phoenix nonattainment area for each significant source or source category for which we have not approved a MSM showing.

(d) A demonstration that the revised SIP provides for reasonable further progress in the Salt River area. The SIP revision must also provide for quantitative milestones for the Salt River area which are to be achieved every 3 years and which are consistent with the RFP demonstration. To be consistent with the serious area plan, the milestone dates should be December 31, 2003 and December 31, 2006.

The SIP revision must also meet the general requirements applicable to all SIPs including reasonable notice and public hearing under section 110(l), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280 to carry out the SIP; and the description of enforcement methods for the adopted controls as required by 40 CFR 51.111.

Finally, any controls adopted to demonstrate attainment at the Salt River site or to meet the BACM or MSM requirements must be applied to all similar sources in the Phoenix nonattainment area. The Salt River monitor, as with all the microscale monitors, was sited for two purposes: first, to measure air quality in the local area and second, to be representative of air quality at other sites in the Phoenix nonattainment area with similar sources. *See* Microscale plan, Appendix A, p. 2–1. The requirement to adopt controls necessary to demonstrate attainment at the Salt River site addresses the first purpose, to reduce PM–10 levels in the local area to healthy levels, while the requirement to apply those controls to similar sources in other areas of the nonattainment area addresses the second purpose, to reduce PM–10 levels in similar, but unmonitored, areas.

If Arizona fails to submit the required SIP revisions in response to a final SIP call, we are required to issue a finding that the State failed to make a required SIP submittal under section 179(a), a finding which starts a 18 month clock for the implementation of sanctions under the CAA and a two year clock for a federal implementation plan. *See* 40 CFR 52.31.

V. Administrative Requirements

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

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

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

[5] Under CAA section 189(b)(1)(B), BACM is to be implemented no more than 4 years after an area is reclassified from moderate to serious for PM–10, or June 10, 2000 for the Phoenix area. Because this deadline is now passed, the applicable deadline become ''as expeditiously as practicable'' under *Delaney* v. *EPA* 898 F.2d 687 (1990).

Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action under Executive Order 12866.

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs on the States, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. This proposed SIP call is required by the Clean Air Act because the current SIP is substantially inadequate to attain the 24–hour PM–10 standard. Arizona's direct compliance costs will not be substantial because the SIP call requires Arizona to submit only those revisions necessary to address the SIP deficiency and applicable Clean Air Act requirements. Finally, EPA has consulted with the State and local agencies prior to making this proposal.

This proposed rule, if finalized, will 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, because it is in keeping with the relationship and the distribution of power and responsibilities between EPA and the States as established by the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Executive Order 13175 does not apply to this proposed rule because the proposed rule, if finalized, will not effect any tribal government or any tribal lands and thus will have no tribal implications.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule, if finalized, will not have a significant economic impact on a substantial number of small entities. Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. *See, Motor and Equip. MFRS. Ass'n* v. *Nichols,* 142 F.3d 449 (D.C. Cir. 1985).

This proposed SIP call, if finalized, will not establish requirements applicable to small entities. Instead, it will require Arizona to develop, adopt, and submit an attainment demonstration and related requirements but will leave entirely to Arizona the tasks of determining how to obtain the emission reductions necessary to show attainment, including which entities to regulate, and of adopting the necessary regulations. Because the rule, if finalized, will not establish requirements applicable to small entities, I certify that this action does not have a significant impact on a substantial number of small entities.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more in any one year. 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 for any rule requiring a budgetary impact statement. 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 proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more in any one year to either State, local, or tribal governments in the aggregate, or to the private sector and has therefore not prepared a budgetary impact statement. This proposed rule, if finalized, will not significantly or uniquely impact any small governments.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In making a finding of SIP deficiency, EPA's role is to review existing information against previously established standards (in this case, what constitute a violation of the 24–hour PM–10 standard). In this context, there is no opportunity to use VCS. Thus, the requirements of NTTAA section 12(d) (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 52

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

Dated: April 10, 2002.

Nora L. McGee,

Acting Regional Administrator, Region IX.

[FR Doc. 02–9494 Filed 4–17–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–784, MM Docket No. 00–136, RM–9898]

Digital Television Broadcast Service; Birmingham, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission, at the request of the Alabama Educational Television Commission, licensee of noncommercial station WBIQ–TV, dismisses its petition for rule making seeking the substitution of DTV channel