ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ092–002; FRL–7141–3]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the PM–10 Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the serious area particulate matter (PM–10) plan for the Maricopa County portion of the metropolitan Phoenix (Arizona) PM–10 nonattainment area. We are also granting Arizona's request to extend the Clean Air Act deadline for attaining the annual and 24-hour PM–10 standards in the area from 2001 to 2006. Finally, we are approving Maricopa County Environmental Services Department's fugitive dust rules, Maricopa County's Residential Woodburning Restrictions Ordinance, and commitments by Maricopa County jurisdictions to implement PM–10 controls.

EFFECTIVE DATE: August 26, 2002.

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This document and the Technical Support Document are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA. This supplementary information is organized as follows:

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I. Summary of Today's Actions

We are approving the serious area state implementation plan (SIP) for attainment of the annual and 24-hour PM–10 standards in the metropolitan Phoenix (Maricopa County), Arizona, area. This action is based on our determination that this plan complies with the Clean Air Act's (CAA) requirements for attaining the PM–10 standards in serious PM–10 nonattainment areas such as the metropolitan Phoenix area.

Specifically, we are approving the following elements of the plan as they address both the 24-hour and annual PM–10 standards:

- The base year emissions inventory of PM–10 sources;
- The demonstration that the plan provides for implementation of reasonably available control measures (RACM) and best available control measures (BACM) for all source categories that contribute significantly to PM–10 standard violations;
- The demonstrations that attainment by the CAA deadline of December 31, 2001 is impracticable;
- The demonstrations that attainment will occur by the most expeditious alternative date practicable, in this case, December 31, 2006;
- The demonstration that the plan provides for reasonable further progress and quantitative milestones;
- The demonstration that the plan includes to our satisfaction the most stringent measures found in the implementation plan of another state or are achieved in practice in another state and can feasibly be implemented in the area;
- The demonstration that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations of the PM–10 standards;
- Contingency measures; and
- The transportation conformity mobile source emissions budget.

We are also approving Maricopa County's fugitive dust rules, Rules 310 and 310.01, and its residential woodburning restriction ordinance as well as commitments by the local jurisdictions in the Phoenix area to implement control measures.

Finally, we are granting Arizona's request to extend the attainment date for both the annual and 24-hour PM–10 standards from December 31, 2001 to December 31, 2006.

With today's action, EPA has now approved all elements of the serious area PM–10 plan for the Phoenix area. Today's final approvals also correct disapprovals of previous Phoenix PM–10 plans that resulted in the imposition of one CAA sanction in the Phoenix area and a clock running for the imposition of another. With these approvals, the sanction is lifted and the clock stopped.

This preamble summarizes our actions on the Phoenix serious area plan, gives some background to this action, and provides responses to the most significant comments we received on the proposals for this final action. We have not repeated the concise evaluation of the plan that we provided in the two proposals for today's action. We refer the reader to these proposals for this evaluation. See the annual standard proposal at 65 FR 19964 (April 13, 2000) and the 24-hour standard proposal at 66 FR 50252 (October 2, 2001). Our complete evaluation can be found in our technical support document (EPA TSD) that accompanies this final action. The EPA TSD also includes our full responses to all comments received on both proposals. The EPA TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

II. The Serious Area PM–10 Plan for the Phoenix Area

Arizona has made several submittals to address the CAA requirements for serious PM–10 nonattainment area plans in the Phoenix area. These submittals include the 1997 Microscale plan,[1] the 1997 BACM submittal,[2] the 2000 Revised Maricopa Association of Governments (MAG) plan,[3] the 2001 Best Management Practices (BMP) submittal (BMP TSD),[4] and a number of

[1] *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area,* Arizona Department of Environmental Quality (ADEQ), May, 1997, submitted May 9, 1997, approved in part and disapproved in part on August 3, 1997 (62 FR 41856).

[2] *Serious Area Committed Particulate Control Measures for PM–10 for the Maricopa County Nonattainment Area and Support Technical Analysis,* MAG, December 1997, submitted December 11, 1997.

[3] *Revised Maricopa Association of Governments 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area,* February 2000, submitted February 16, 2000. On January 8, 2002, Arizona submitted revisions to the Maricopa County's commitments to improve its fugitive dust rule which were in this plan.

[4] *Maricopa County PM–10 Serious Area State Implementation Plan Revision, Agricultural Best Management Practices (BMP),* ADEQ, June 2000, submitted on June 13, 2001.

rules.[5] These submittals collectively comprise the full serious area PM–10 plan for the Phoenix area.

The MAG plan is the primary document for the serious area plan. It contains the base year inventory, the BACM demonstrations for all significant source categories (except agriculture) for both standards, the demonstration that attainment of both standards by 2001 is impracticable, the demonstration that attainment of the annual standard and the 24-hour standard (at all but four sites addressed by the microscale plan) will occur as expeditiously as practicable, the reasonable further progress (RFP) demonstration and quantitative milestones for the annual standard, contingency measures for the annual standard, the transportation conformity budget, and the request and supporting documentation—including the most stringent measure analysis (except for agriculture)—for an attainment date extension for both standards under CAA section 188(e).

The BMP TSD updates the MAG plan to reflect the State's May, 2000 adoption of the agricultural general permit rule to control PM–10 from agricultural sources in Maricopa County. It includes a background document which provides the BACM and most stringent measure demonstrations for agricultural sources for both standards, the final demonstration of attainment and RFP for the 24-hour standard at two monitoring sites, quantitative milestones for the 24-hour standard, and revisions to the contingency measure provisions for both standards. It also includes documentation quantifying emission reductions from the agricultural general permit rule and documentation related to implementing this rule. The BMP TSD was prepared by ADEQ.

The 1997 BACM submittal contains the initial commitments by the cities and towns in the Maricopa County portion of the Phoenix nonattainment area to implement BACM within their jurisdictions. These commitments were resubmitted in the revised MAG plan.

The Microscale plan is a serious area PM–10 plan that includes BACM, RFP, and attainment demonstrations for the 24-hour PM–10 standard at four Phoenix area monitoring sites: Salt River, Maryvale, Gilbert, and West Chandler. It was prepared and submitted by ADEQ in 1997 as a component of the overall serious area PM–10 plan for the Phoenix area.[6]

III. Proposals for and Information Related to Today's Actions

A. The Proposals for Today's Actions

Two proposals preceeded today's final action. The first proposal was published on April 13, 2000 (65 FR 19964) and addresses the Phoenix serious area plan's provisions for attaining the annual standard. The initial comment period for this proposal was 60 days but was extended twice and finally closed on July 27, 2000. We received 14 comments on this proposal from both public and private groups and from numerous private citizens.

The second proposal was published on October 2, 2001 (66 FR 50252) and addresses the Phoenix serious area plan's provisions for attaining the 24-hour standard and contingency measures for both PM–10 standards. In this second proposal, we also revised and reproposed several findings from the annual standard notice. These reproposals were necessary because of SIP submittals made by Arizona after the April 2000 proposal. The 30-day comment period for this proposal ended on November 1, 2001. We received one comment letter.

B. Already-Approved Elements of the Phoenix Serious Area PM–10 Plan

Two important elements of the metropolitan Phoenix serious area PM–10 plan have already been approved. These elements were submitted as either part of the Microscale plan or the BMP general permit rule and its TSD.

We approved the Microscale plan in part and disapproved the plan in part on August 4, 1997. We approved provisions for implementing BACM for 3 of the 8 source categories found to be significant contributors to 24-hour exceedances in the Phoenix area and disapproved them for 5 others. We also approved the attainment and RFP demonstrations for the Salt River and Maryvale sites because the Mircoscale plan demonstrated expeditious attainment at these sites but disapproved these demonstrations for the West Chandler and Gilbert sites because the plan did not demonstrate attainment at them. Except for our findings related to the implementation of BACM, we have not reevaluated and are not approving again those 24-hour provisions already approved as part of our actions on the Microscale plan.[7]

On October 11, 2001, we approved the State's agricultural BMP general permit rule and found that it provided for the implementation of RACM for the agriculture source category. See 66 FR 51869. We are today finding that the rule also provides for the implementation of BACM and meets the most stringent measure requirement in CAA section 188(e). These latter findings are in addition to and not in substitution for the October 11, 2001 RACM finding.

With today's action and these previous approvals, we have now approved all elements of the Phoenix serious area PM–10 plan.

C. Effect of Today's Actions on the 1998 Federal PM–10 Plan for the Phoenix Area

On August 3, 1998, we promulgated a moderate area PM–10 federal implementation plan (FIP) for the Phoenix area. In the FIP, we included a rule for controlling fugitive dust from vacant lots, unpaved parking lots, and unpaved roads. See 40 CFR 52.128 (modified, December 21, 1999). We also included a commitment to adopt and implement RACM for agricultural source categories. *See* 40 CFR 52.127 as published at 63 FR 41326, 41350 (August 3, 1998) (withdrawn at 64 FR 34726 (June 29, 1999)). With the Federal fugitive dust rule and commitment and already approved State and local controls, we demonstrated that the Phoenix area had in place RACM on all significant source categories, that the area would make reasonable further progress toward attainment but that attainment by 2001 was impracticable. *See* 63 FR 41326.

On June 29, 1999, we replaced the federal commitment to develop agricultural controls in the FIP with a

[5] These include the revised Maricopa County Environmental Services Department (MCESD) Rule 310, Fugitive Dust Sources (adopted February 16, 2000) and Rule 310.01, Fugitive Dust from Open Areas, Vacant Lots, Unpaved Parking Lots, and Unpaved Roadways (adopted February 16, 2000), both submitted on March 2, 2000; the revised Maricopa County Residential Woodburning Restrictions Ordinance (adopted November 17, 1999) submitted on January 28, 2000; and the Agricultural BMP General Permit Rule submitted on July 11, 2000, approved October 11 2001 (66 FR 51869).

[6] A complete history of the Microscale plan, including the reasons for its development, can be found in the proposal and final actions for that plan and in proposal for the 24-hour standard. See 62 FR 31025 (June 6, 1997), 62 FR 41856 (August 4, 1997) and the 24-hour standard proposal at 50254.

[7] According to the approved serious area plan attainment demonstration in the Microscale plan, the Salt River site should not have violated the 24-hour PM–10 standard after May, 1998. The site, however, continues to violate the standard. Because there is already an approved serious area plan attainment demonstration, the remedy under the CAA for correcting this demonstration is for EPA to issue a formal request to the State to revise it SIP pursuant to section 110(k)(5), a process known as a ''SIP call.'' We will be proposing that SIP call soon. However, because the elements of the Phoenix serious area plan that we are approving today do not address the attainment of the 24-hour standard at the Salt River site, the issues with the site's attainment demonstration do not affect today's action.

State commitment to adopt best management practices for the agricultural sources. 64 FR 34726.

Today's actions do not withdraw or otherwise modify the demonstrations in the FIP or the federal fugitive dust rule.

D. Clean Air Act Sanctions in the Phoenix Area

In the 1998 FIP, we also disapproved the RACM and attainment demonstrations for the annual PM–10 standard in the 1991 MAG moderate area PM–10 plan. See 63 FR 41326 (August 3, 1998, effective September 2, 1998). Under CAA section 179(a), once we disapprove a SIP provision because it fails to meet a CAA requirement, a State has 18 months from the effective date of the disapproval to correct the deficiency before the first of two sanctions goes into place. If the state still has not corrected the deficiency within 24 months of the effective date of the disapproval, the second sanction goes into place.[8]

On March 2, 2000, before Arizona could submit and we could act to approve substitute RACM and attainment demonstrations, the 18-month clock expired and the 2:1 offset sanction went into place in the Phoenix area. The second clock for the highway funding limitations was set to expire on September 2, 2000.

Under section 179(a) and our sanctions regulations at 40 CFR 52.31(d)(1), we must approve a SIP revision that corrects the deficiencies to permanently end the sanctions clocks and lift any imposed sanctions. However, we may temporarily stay the clocks and any imposed sanctions if we have proposed to approve a SIP revision that corrects the deficiencies and have issued an interim final determination that the State has corrected the deficiencies. 40 CFR 52.31(d)(2)(i).

We proposed to approve the RACM and attainment demonstrations for the annual standard on April 13, 2000. 65 FR 19964. In a rule published concurrently with that proposal, we issued an interim final determination that stayed both the offset sanction and the clock running on the highway sanctions. 65 FR 19992.

With today's action, we are fully approving the State's substitute RACM and attainment demonstrations for the annual standard. These full approvals correct the deficiencies that resulted in the disapproval and permanently end the offset sanction and stop the clock for the highway sanctions.

The serious area plan for the Phoenix area was due on December 10, 1997; however, Arizona submitted only a partial plan. On February 6, 1998, we made a finding that the State had failed to submit a required SIP (published on February 25, 1998 at 63 FR 9423). This finding also started sanctions clocks and a two-year clock under CAA section 110(c) for EPA to promulgate a substitute federal implementation plan if the State did not have a fully approved one.

On July 8, 1999, Arizona submitted the full serious area plan, and on August 4, 1999, we found the plan complete. This finding stopped the sanction clocks for failure to submit; however, it did not stopped the FIP clock. Under section 110(c), the FIP clock continues until we approve the full serious area plan. Today's action approves the plan and ends our obligation to promulgate a serious area PM–10 FIP for the Phoenix area.

E. EPA's Policies on Approving Serious Area PM–10 Plans and Granting Attainment Date Extension

We have issued a General Preamble, 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992), and Addendum to the General Preamble (''Addendum''), 59 FR 41998 (August 16, 1994), describing our preliminary views on how we intend to review SIPs submitted to meet the Clean Air Act's requirements for PM–10 plans. The General Preamble mainly addresses the requirements for moderate areas and the Addendum, the requirements for serious areas.

In the proposal for the 24-hour standard, we also provided our preliminary interpretation of and policy on granting an extension of the attainment date under CAA section 188(e). We are finalizing this extension policy today only as it relates specifically to our action on the attainment date extension requested by the State of Arizona for the Phoenix area.

IV. Response to Comments on the Proposed Actions

The following are our responses to the most significant comments that we received on the proposals for today's actions. In section 7 of the EPA TSD, we provide more detailed responses to these comments as well as responses to all comments received. A copy of the EPA TSD may be downloaded from our website or obtained by writing or calling the contact listed above.

A. Comments on EPA's Policies for Approving Serious Area PM–10 Plans and Granting Attainment Date Extensions

Comment: EPA interprets the CAA to not require a state to apply BACM to any source or source category that it has demonstrated to be de minimis. See 59 FR 41998, 42011 (August 16, 1994). In its July 2000 comments on the annual standard proposal, ACLPI disagrees that EPA can exempt de minimis sources from the Act's BACM requirement. ACLPI argues that there are no exceptions to the Act's requirement that serious area plans include ''provisions to assure that the best available control measures for the control of PM–10 shall be implemented.'' ACLPI incorporates by reference its arguments in its Brief for the Petitioners in *Ober* v. *Whitman* (9th Cir., No. 98–71158) (*Ober II*) at pp. 21–19, noting that although *Ober II* involves a challenge to our exemption of de minimis sources from the RACM requirement, the same reasoning applies to invalidate the BACM exemption as well.

Response: Ober II was a challenge to our 1998 PM–10 moderate area FIP for the Phoenix area. In the FIP, we exempted from the RACM requirement, source categories with de minimis impacts on PM–10 levels. We established a de minimis threshold of 1 μg/m\3\ for the annual standard and 5 μg/m\3\ for the 24-hour standard, initially taking these thresholds from the new source review (NSR) program for attainment areas. We showed that these were the correct thresholds for determining which source categories were de minimis for the RACM requirement by showing that the application of RACM on the de minimis source categories would not make the difference between attainment and nonattainment by the applicable attainment deadline. See 63 FR 41326, 41330 (August 3, 1998). In *Ober II*, ACLPI challenged our ability to exempt de minimis source categories from the RACM requirement and the specific thresholds that we used.

In March, 2001 (well after the close of the comment period on the annual standard proposal), the 9th Circuit issued its opinion in *Ober II. Ober* v. *Whitman*, 243 F.3d 1190 (9th Cir. 2001). The court held that we have the power to make de minimis exemptions to control requirements under the Clean Air Act and that our use of the de minimis levels from the NSR program is appropriate. In addition, the Court determined that it is appropriate for us

[8] The two CAA sanctions are a limitation on certain highway approvals and funding and an increase in the emissions offset ratio to 2 to 1 for any major new stationary source or major modification. See CAA section 179(b). Our sanctions regulations provide that the first sanction to be imposed is the offset ratio unless we have established at the time of the disapproval that the highway sanction will be first. 40 CFR 52.31(d).

to use, as a criterion for identifying de minimis sources, whether controls on the sources would result in attainment by the attainment deadline. *Ober II* at 1198

In finding that EPA had the authority to exempt de minimis source categories of PM–10 from CAA control requirements, the Court wrote:

> Courts have refused to allow de minimis exemptions where the statutory language does not allow it. * * * There is no explicit provision in the Clean Air Act prohibiting the exemption from controls for de minimis sources of PM–10 pollution. Nor is the statutory language uncompromisingly rigid. The Act provides that a plan must include ''reasonably'' available control measures to bring the area into attainment unless attainment is ''impracticable.'' Those terms allow for the exercise of agency judgment. * * * We conclude that EPA, in discharging its duty to enforce the Act, is permitted under [*Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)] to exempt de minimis sources of PM–10 from pollution controls.

Ober II at 1194 (internal cites and quotes omitted).

The Court's reasoning is equally applicable to the BACM requirement. Like the RACM requirement, there is no explicit provision in the Act prohibiting the exemption from the BACM requirement for de minimis sources of PM–10 pollution. Nor is the language in section 189(b)(1)(B) requiring the implementation of BACM ''uncompromisingly rigid.'' Like RACM, the Act and EPA policy provide that a PM–10 plan must include the ''best'' available control measures to bring the area into attainment unless attainment is ''impracticable.'' The term ''best''—no less than the term ''reasonably''—allows for the exercise of agency judgment.

In *Ober II*, the Court also upheld the procedures and criteria we used to determine what constituted a de minimis source or source category for RACM. *Ober II* at 1198. We have applied exactly the same procedures and criteria for BACM. For BACM, we proposed the same NSR thresholds as a starting point for determining what constitutes a de minimis source category. See 24-hour standard proposal at 50281. We also required the State to demonstrate that its identified de minimis sources are in fact de minimis by showing that controls on them would not make the difference between attainment and nonattainment by the applicable deadline. See 24-hour standard proposal at 50281.

Finally, we note that we invoke a de minimis exemption from the Act's general but open-ended control requirements like RACM, BACM, and MSM as a means of ensuring that states focus their always limited resources on the controls most likely to result in real air quality benefits. It is more likely to harm air quality than to help it if these limited resources are diverted away from more substantive measures into the adoption and implementation of measures with trivial impacts.

Nowhere is the need to concentrate resources on the most significant sources more necessary then in large urban areas dominated by PM–10 fugitive dust sources, such as the metropolitan Phoenix area. Adequate controls in these types of areas require very large investments of both financial and human resources because of the number of sources and the type of needed controls.[9] As the court has recognized in *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360 (D.C.Cir. 1979), ''[c]ourts should be reluctant to apply the literal terms of a statute to mandate pointless expenditures of effort. * * * The ability * * * to exempt de minimis situations from a statutory command is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design.'' Cited in *Ober II* at 1194.

Comment: In its July 2000 comments on the annual standard proposal, ACLPI argues that our de minimis exception violates the Act's central mandate for attainment of the PM–10 standards by December 31, 2001 or as expeditiously as possible thereafter because it allows us and the states to eschew otherwise available control measures based on an arbitrary de minimis test even if the aggregate effect of implementing controls on all ''de minimis'' sources would hasten attainment. It further comments that even if the de minimis exception is allowed, the thresholds set by EPA are arbitrary because they were not based on actual PM–10 conditions in the nonattainment area, but on levels borrowed from the wholly unrelated new source review (NSR) program.

Response: ACLPI misstates the scope of the BACM de minimis exemption. We do *not* consider a source category or groups of source categories to be de minimis if applying BACM to it or them would meaningfully expedite attainment in areas demonstrating attainment by December 31, 2001 or would make the difference between attainment and nonattainment by December 31, 2001 in areas requesting an extension. See 24-hour standard proposal at 50281 and Addendum at 42011.

Under our de minimis policy, whether the NSR thresholds are appropriate for an area depends on the specific facts of that area's PM–10 nonattainment problem, that is, it depends on the actual PM–10 conditions in the nonattainment area. We do not accept the NSR thresholds as the correct de minimis thresholds without first requiring a conclusive showing that they do not adversely affect the area's ability to show expeditious attainment. See Addendum at 42011.

We used these NSR thresholds in our 1998 FIP. ACLPI raised the same objections to their use there for the RACM requirement as it does here for the BACM requirement. *Ober II* at 1196. The Ninth Circuit in reviewing the FIP found that it was permissible for us to adopt the PM–10 de minimis thresholds already in place in the new source review program to identify de minimis sources for the RACM requirement. *Ober II* at 1196. Our reasoning for applying those thresholds for BACM is the same as our reasoning for applying them for RACM; therefore, we believe that the NSR thresholds are an appropriate starting point for determining which source categories are significant and which are de minimis for the purposes of applying BACM.

Comment: Under the section 188(e) extension provisions, a state must show that it has complied with all requirements and commitments in its implementation plan. We interpret this requirement to apply only to the control measures in the state's previously submitted PM–10 implementation plans. See 24-hour standard proposal at 50282. ACLPI argues that in addition to fully implementing the control measures in the SIP revisions that it has submitted, a state must also show that it has implemented other provisions of its SIP. ACLPI also comments that EPA's attempt to limit this requirement to PM–10 commitments has no basis in the Act.

Response: We believe that this criterion's purpose is to assure that a state is not rewarded with additional time to attain the PM–10 standards if it has not implemented earlier commitments and requirements to reduce PM–10 levels. Given this purpose, the focus of the test to determine if a state has met this

[9] There are literally thousands of sources subject to fugitive dust controls in the Phoenix area, including constructions sites, agricultural fields, vacant lots, unpaved roads, and paved roads. For example, MCESD issued 2500 construction permits in 1999; we mailed 50,000 letters to owners of vacant lots as part of our 1999 outreach on the PM–10 FIP. Effective fugitive dust control from many of these sources requires either an ongoing and extensive compliance and enforcement presence or large capital expenditures (e.g., paving unpaved roads, purchasing and operating PM–10 street sweepers).

criterion should be on the implementation of PM–10 emission reducing control measures rather then on the implementation of programs, such as monitoring and permitting, that make up the overall air quality program's infrastructure but are not emission reducing measures themselves.

Limiting the section 188(e) review to just the PM–10 implementation plan is firmly based on the structure, purpose and language of the Act. The attainment date extension provisions are located in title I, part D, subpart 4 ''Additional Provisions for Particulate Matter Nonattainment Areas.'' Hence, any reference to *the* implementation plan within this subpart is to the PM–10 implementation plan, absent specific language to the contrary. The criterion ''the State has complied with all requirements and commitments pertaining to that area in *the* implementation plan'' in section 188(e) (emphasis added) contains no language that implies a reference to all of an area's implementation plans. Moreover, section 188(e) addresses setting the most expeditious attainment date for meeting the PM–10 air quality standards. There is at best a tenuous and strained connection between the implementation status of plans for attaining other air quality standards (*e.g.,* ozone or carbon monoxide) and the appropriate and most expeditious date for attaining the PM–10 standard.

The language in section 188(e) is almost identical to the language in section 188(d) that allows a one-year extension of the moderate area attainment date if, in part, ''the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan.'' In interpreting and applying section 188(d), we have always considered ''the applicable implementation plan'' in question to be the State's SIP for PM–10. *See Memorandum,* Sally L. Shaver, OAQPS, to Regional Air Directors, ''Criteria for Granting 1-Year Extensions of Moderate Area Attainment Dates, Making Attainment Determinations, and Reporting on Quantitative Milestones,'' November 14, 1994. *See* also, 66 FR 32752, 32754 (June 18, 2001) (Attainment date extensions for Utah's PM–10 nonattainment areas).

Comment: EPA interprets the CAA to allow states to exempt from the most stringent measures requirement in section 188(e) any source or source category that it has demonstrated to be de minimis. 24-hour standard proposal at 50283. ACLPI disagrees that EPA can exempt de minimis sources of PM–10 from the Act's MSM requirement, arguing that the Act requires areas seeking an extension of the serious area PM–10 attainment deadline to demonstrate that their plans include the most stringent measures that are included in the implementation plan of any State or achieved in practice in any State, and can feasibly be implemented in the area,'' and that there is no de minimis exception to this explicit mandate.

Response: As stated above in response to a similar comment regarding the exemption of de minimis sources from the BACM requirement, we believe the *Ober II* Court's reasoning in upholding that exemption for the RACM requirement is also applicable to the MSM requirement. Again, we invoke a de minimis exemption from the Act's general but open-ended control requirements like RACM, BACM, and MSM as a means to ensure that states focus their always limited resources on the controls most likely to result in real air quality benefits.

Like the RACM requirement, there is no explicit provision in the Act prohibiting a de minimis source category exemption from the MSM requirement. Nor is the language in section 188(e) ''uncompromisingly rigid.'' In fact, the phrase—''to the satisfaction of the Administrator''—in the MSM provision specifically calls for the Agency to exercise its judgement in deciding how exactingly to apply the requirement. *See Ober II* at 1194.

In our policy on the MSM requirement, we are using the same principles for determining when a source is considered de minimis under the MSM requirement that we used for the RACM requirement upheld by the *Ober II* Court. In doing so, we have carefully constructed the de minimis exemption for the MSM requirement to prevent states from eliminating any controls on sources or source categories that alone or together would result in more expeditious attainment of the PM–10 standards. See annual standard proposal at 19967 and 24-hour standard proposal at 50583. We note that the Phoenix serious area plan did not reject any potential MSM on de minimis grounds.

Comment: ACLPI argues that EPA's proposed de minimis exception violates the Act's requirement that states seeking an extension demonstrate attainment by the most expeditious alternative date practicable because it allows EPA and the states to reject otherwise available control measures based on an arbitrary de minimis test even if the aggregate effect of implementing MSM on all de minimis sources would hasten attainment. It also argues EPA's proposal to determine an appropriate de minimis level by determining whether applying MSM to proposed de minimis source categories would ''meaningfully hasten attainment'' is vague and fails to comport with the Act.

Response: ACLPI misstates the scope of the MSM de minimis exemption. We do not consider a source category or groups of source categories to be de minimis if applying MSM to it or to them would hasten attainment. We stated this clearly in both the proposal for the annual standard provisions and for the 24-hour standard provisions: Annual standard proposal at 19969; 24-hour standard proposal at 50583.

In Ober II, the Court found:

> Using the [attainment] deadline to determine whether controls must be imposed makes sense. The deadline is not an arbitrary date unrelated to air quality concerns. * * * In this case, the [FIP] concludes that the deadline will not be met even if these small sources of PM–10 were controlled. Under those circumstances, it is reasonable to decline to control the de minimis sources of pollution.

Ober II at 1198.

In interpreting the MSM requirement to allow exemptions on de minimis grounds, we are also using the applicable attainment date to determine whether controls should be imposed. At the time a state submits its application for an attainment extension, (including the showing that its plan includes MSM), it must also submit a demonstration that attainment will occur by the ''most expeditious alternative date practicable.'' See CAA section 188(e). If it can be shown that including a certain set of potential MSM would not result in more expeditious attainment, then it is consistent with the Act to not require their inclusion as a condition of approval.

What constitutes ''meaningfully hastening attainment'' depends on the actual PM–10 conditions in the nonattainment area and the particular PM–10 standard under consideration.[10] Because of this dependence, we cannot in policy specify a time period that is appropriate in all situations. We can propose the appropriate time period only within the context of acting on a specific extension request. For today's rulemaking, the plan did not invoke a de minimis exemption for evaluating MSM; therefore, we did not need to propose the time period we would

[10] This is similar to the de minimis thresholds which we also cannot specify in advance because they too must be set based on the actual PM–10 conditions in the nonattainment area and the particular PM–10 standard under the consideration. See Addendum at 42011.

consider meaningful for evaluating its de minimis exemption.

Comment: Under our policy on MSM, a state may reject a measure as infeasible for the area on economic grounds. *See* 24-hour standard proposal at 50283. ACLPI disagrees that a state can take economic considerations into account when determining the feasibility of MSM for the purposes of the MSM demonstration required under section 188(e). ACLPI argues that the Act only allows for the rejections of an MSM if it cannot feasibly be implemented in the area and any measure that is included in another SIP or achieved in practice in another state is by definition economically feasible because it is capable of being done or carried out if sufficient resources are devoted to it. ACLPI also argues that only its interpretation of MSM fits within the Act's strategy of offsetting longer attainment time frames with more stringent control requirements and that by allowing for the rejection of MSM based on cost, EPA has made MSM virtually indistinguishable from BACM.

Response: We believe that Congress very clearly intended that the phrase ''feasible in an area'' in section 188(e) to include economic considerations. Section 188(e) lists five criteria that we may consider in determining whether to grant an extension and the length of an extension, the last of which is ''the technological *and economic* feasibility of various control measures.'' Emphasis added. The term ''various control measures'' clearly refers back, in part, to the requirement in the first part of section 188(e) that contains the requirement that the plan include ''the most stringent measures that * * * can feasibly be implemented in the area.''

By allowing us to consider the economic feasibility of measures in judging whether to grant an extension and how long an extension to grant, Congress necessarily also allowed states to consider economic feasibility in demonstrating the need for an extension of a given length. If section 188(e) compelled states to adopt all MSM that were technologically feasible no matter their cost, then there would be no economic feasibility issues for us to review in exercising our discretion to grant an extension. ACLPI's position would read the very explicit criterion—the technological and economic feasibility of various control measures—out of section 188(e). A statute should not be interpreted to render any provision of that statute meaningless. See *Northwest Forest & Resource* v. *Glickman,* 82 F.3d 825, 834 (9th Cir. 1996). See also *Gustafson* v. *Alloyd Co.,* 115 S. Ct. 1061, 1067 (1995) (no Act of Congress should ''be read as a series of unrelated and isolated provisions.''); *Department of Revenue of Oregon* v. *ACF Industries,* 114 S. Ct. 843, 848 (1994) (''a statute should be interpreted so as not to render one part inoperative'') (quotation omitted).

We agree that the Act's general strategy is to offset longer attainment time frames with more stringent control requirements. We do not agree that the MSM requirement in section 188(e) is the primary mechanism that assures that increasingly stringent control requirements are adopted in areas requesting an extension. In fact, the most stringent control measure provision in section 188(e) will not necessarily result in the adoption of any additional control measures above and beyond those already adopted by the state to provide for BACM and expeditious attainment.

The MSM provision is written to assure that a state consider the most effective controls from elsewhere in the country for implementation in the area requesting an attainment date extension. The results of the analysis are completely dependent on how well other areas have controlled their PM–10 sources. If other areas have not controlled a particular source category well, then the resulting MSM for that source category will not be the more effective level of control than what is actually feasible for the area. The MSM provision, however, does not require a state to determine if the feasibility of controlling a source category at a level greater than the most stringent level from another area. In other words, it does not require states to determine the maximum level of control that could be applied to a source category given local conditions and the additional implementation time afforded by an extension.

In considering the MSM provision, there is a tendency to assume that there are always better controls elsewhere than there are in the local area. This assumption is unwarranted, especially for an area that has already gone through a systematic process of identifying and adopting BACM for their significant sources. These areas are likely to have already evaluated the best controls from other areas (as Arizona did, see MAG plan, Chapter 5) and either adopted them as BACM or rejected them as not feasible for their area. As a result, the likelihood of uncovering substantial new controls during a MSM evaluation is low.

More important than the MSM provision for assuring adoption of additional controls is the requirement in CAA sections 189(b)(1)(A)(ii) and 188(e) that the PM–10 plan demonstrate attainment by the most expeditious alternative date practicable but no later than December 31, 2006. The SIP revision containing this demonstration must accompany any request for extension of the attainment date under section 188(e). Because we are required to grant the shortest possible extension, a state must demonstrate that it has adopted the set of control measures that will result in the most expeditious date practicable for attainment. This requirement may mean that a state must adopt controls that go beyond the most stringent measures adopted or implemented elsewhere.

Comment: ACLPI disagrees with EPA's interpretation of the phrase ''to the satisfaction of the Administrator'' in section 188(e). Specifically, ACLPI rejects the notion that by using this phrase, Congress intended to grant EPA discretion to accept an MSM demonstration even if it falls short of having every MSM possible because this interpretation contradicts the express language of section 188(e) as well as the requirement that the area achieve attainment by the most expeditious date practicable. ACLPI argues that the Act uses the phrase to grant EPA the authority to determine whether a state has adequately demonstrated that its plan includes the most stringent measures that are feasible, not to give the agency carte blanche to circumvent the will of Congress by ignoring the State's failure to meet this requirement.

Response: First, the Act does not require states to adopt every possible MSM. There is nothing in the express language of section 188(e) that requires such an outcome. The MSM requirement in section 188(e) is not phrased as ''all most stringent measures'' or as ''every most stringent measure practicable or possible.''

Our interpretation of the MSM requirement is consistent with how we have historically interpreted the general RACM requirement in CAA section 172(c)(1), a requirement which does use the word ''all.'' This section requires that nonattainment area plans ''provide for the implementation of *all* reasonably available control measures * * * ''. (emphasis added). In interpreting this requirement, we have long held that a state is not obligated to adopt and implement measures that will not contribute to expeditious attainment.[11]

[11] We would not consider a measure to be reasonable if it does not contribute to expeditious attainment. See General Preamble at 13560; 63 FR 15920, 15932 (April 1, 1998) (proposed Phoenix area PM–10 FIP); and 66 FR 26913, 26929 (May 15,

Continued

We established this position in a policy that predates the CAA Amendments of 1990. 44 FR 20372, 20375 (April 4, 1979). Congress did not revise the RACM requirement in the 1990 Amendments and thereby endorsed our position. We reaffirmed this position in 1992, see General Preamble at 13560 (April 16, 1992). The court has also endorsed this position in the specific context of the section 189(a) RACM requirement where the court found that using the attainment deadline to determine whether controls must be reasonable ''makes sense.'' *Ober II* at 1198.

We are interpreting the MSM requirement using the same principle. We are again using the applicable attainment date to determine whether the MSM provision requires a particular control or set of controls to be imposed. Before we can grant an attainment date extension, the state must show that its plan will result in attainment by the ''most expeditious alternative date practicable.'' See CAA sections 188(e) and 189(b)(1)(A)(ii). If a state can be shown that including a certain set of potential MSM would not result in more expeditious attainment, then it is reasonable and consistent with the Act not to require their inclusion as a condition of approval.

Second, Congress did not need to add the phrase ''to the satisfaction of the Administrator'' to grant us the authority to review the adequacy of a state's MSM demonstration. It had already given it to us by granting us the discretionary authority under section 188(e) to grant or to deny a state's extension request. By attaching the phrase specifically to the MSM requirement, Congress emphasized EPA's administrative authority to determine an appropriate interpretation of what is conceivably a very open-ended and exacting requirement.

Finally, in reviewing whether Arizona has appropriately excluded an otherwise feasible measure or group of feasible measures in its MSM analysis, we have invoked only one criterion: whether or not the measure or group of measures are necessary for attainment by the earliest alternative date practicable. Given that this is our sole criterion, our interpretation of ''to the satisfaction of the Administrator'' does not conflict with the Act's requirement for attainment by the earliest alternative date practicable.

2001) (approval of the Beaumont/Port Arthur ozone nonattainment area plan). Similarly, for the purposes of the MSM requirement, we would not consider such a measure to be feasible for the area.

Comment: ACLPI argues that EPA's proposed methodology for determining MSM is flawed because it apparently does not require states to quantify expected emission reductions from measures for purposes of making MSM demonstrations.

Response: We do not believe that quantification is always necessary or possible or can always be done accurately enough to be meaningful and therefore cannot be required as the sole means of determining relative stringency. Often, control measures are easily comparable without quantification. In these cases, quantification adds no additional information and is unnecessary. In other cases, quantification is not possible or cannot be done accurately enough because there is no methodology and/or insufficient data to calculate the difference in emissions reductions between measures.

Because quantification is often problematic, we have not established in our policy on the MSM provision a specific method that a state must use to compare the stringency of measures, rather we expect a state to select the best method for making this comparison on a case-by-case basis taking into account the need to provide a clear and conclusive demonstration. See 24-hour standard proposal at 50284.

B. Comments on EPA's Detailed Evaluation of the Phoenix Serious Area PM–10 Plan

Comment: ACLPI disagrees with EPA's statement that the Act does not require the metropolitan Phoenix serious area plan to address the adequacy of the PM–10 monitoring network, asserting that section 110(a)(2)(B)(i) specifically mandates this.

Response: Section 110(a)(2)(B)(i) in title 1, part A of the CAA requires implementation plans to provide for the establishment and operation of a system to monitor, compile and analyze data on ambient air quality. These systems must necessarily be in place and operating long before a state can develop a nonattainment area plan under title I, part D of the CAA (such as the Phoenix serious area plan) because it is the data from this monitoring network which establish the area's nonattainment status and its initial classification as well as the degree of control needed to attain the applicable standard. Therefore, SIP monitoring provisions are addressed separately and well in advance of the development of nonattainment area plans.

Nonattainment area plans are not, in general, required to address how the area's air quality network meets our monitoring regulations. Nor do we generally approve or disapprove monitoring networks as part of nonattainment area plans. These plans are submitted too infrequently to serve as the vehicle for assuring that monitoring networks remain adequate and current. Instead, our monitoring regulations in 40 CFR part 58 require states to submit reports on the adequacy of their ambient air quality monitoring networks annually. We discuss the adequacy of the monitoring network as part of our proposed action on the Phoenix plan to support our finding that the plan appropriately evaluates the PM–10 problem in the area. Reliable ambient data is necessary to validate the base year air quality modeling which in turn is necessary to assure sound attainment demonstrations. The network, however, does not need to meet all our regulatory requirements to be found adequate to support air quality modeling. A good spatial distribution of sites, correct siting, and quality-assured and quality-controlled data are the most important factors for generating adequate data for air quality modeling.

Comment: Several times in its comments, ACLPI asserts that the Phoenix serious area plan fails to includes a specific measure and also fails to provide a reasoned justification for the rejection of the measures and that this violates both the CAA and EPA guidance, which require serious area PM–10 SIP revisions to provide for the implementation of all BACM or provide a reasoned justification for their rejection.

Response: ACLPI is incorrectly characterizing both the CAA's BACM requirement and our guidance regarding it. Neither requires the implementation of *all* BACM. CAA section 189(b)(1)(B) requires that SIPs include ''provisions to assure that the best available control measures for the control of PM–10 shall be implemented * * *'' There is nothing in this express language of this section that requires the implementation of all BACM; the requirement is not phrased as ''all best available control measures'' or as ''every best available control measure possible.''

In our serious PM–10 nonattainment area planning guidance (Addendum at 42014), we have interpreted the BACM requirement to mean that a state must only provide for the implementation of BACM on its significant source categories: ''in summary [of the process for selecting BACM for area sources], the State must document its selection of BACM by showing what control measures applicable to each source category (not shown to be de minimis)

were considered. The control measures selected should preferably be measures that will prevent PM–10 emissions rather than temporarily reduce them.'' See also Addendum at 42011 (De Minimis Source Categories). Again, this guidance does not require the implementation of all BACM.

Comment: ACLPI notes that the Arizona legislature repealed the remote sensing program during the 2000 regular session and thus the plan fails to demonstrate adequate legal authority for that measure. ACLPI also notes that the September 10, 2001 ruling by the Arizona Federal District Court found the State's repeal and discontinuation of the RSD program a violation of the CAA and asked that the ruling be included in the record for this rulemaking. Finally, ACLPI asserts that as a measure that has been implemented in the State for 3 years, it is a MSM and thus required under CAA section 188(e).

Response: The remote sensing (RSD) program is not a measure developed specifically for the MAG serious area PM–10 plan, but rather one Arizona adopted in 1994 as part of its carbon monoxide and ozone plans. In the MAG PM–10 plan, Arizona used the RSD program in the same manner as it used a number of other existing measures: to support its demonstration that the State has provided for the implementation of BACM for the on-road motor vehicle category.

In the 24-hour standard proposal, we reviewed the plan's BACM and MSM demonstrations for this source category assuming that the RSD program was no longer in place and determined that the plan still provided for the implementation of BACM and inclusion of MSM without it. See 24-hour standard proposal at 50259. Arizona has in place one of the nation's most comprehensive programs to address on-road motor vehicle emissions. With the additional measures in the serious area plan (including a more stringent diesel I/M program and measures both encouraging and requiring diesel fleet turnover), we believe the plan easily provides for the implementation of BACM and inclusion of MSM for on-road motor vehicle exhaust. See 24-hour proposal at 50258.

The plan included a very small NO_X benefit of 4 kg per day, 0.003 percent of the daily NO_X inventory. See email, Cathy Arthur (MAG) to Frances Wicher (EPA), ''Impact of Removal of Remote Sensing Program on NO_X in 2006,'' October 2, 2001. While not calculated in the serious area plan, a rough estimate of potential directly-emitted PM–10 reductions from the program is no more than one-half ton *per year* (or 2.6 lbs per day). Neither the NO_X benefit nor the directly-emitted PM–10 benefit would contribute to expeditious attainment of the PM–10 standards in the Phoenix area, so the State did not need to include the measure to assure expeditious attainment.

Arizona stopped implementing the RSD program because of its high cost per ton of reductions, in the order of thousands of dollars per ton of pollutant reduced; that is, its economic infeasibility. See ADEQ, Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Program, June 2001, p. 26. Under EPA's MSM policy, economic infeasibility is a valid reason for rejecting a measure as MSM. See 24-hour standard proposal at 50283.

Because we have determined that the Metropolitan Phoenix serious area plan provides for the implementation of BACM, inclusion of MSM and expeditious attainment without the RSD program, any deficiency in legal authority for the program does not affect our approving the plan or granting an attainment date extension under CAA section 188(e).

Comment: ACLPI disagrees that the plan provides a reasoned justification for the rejection of CARB diesel which ACLPI claims both EPA and MAG conceded is an MSM. ACLPI asserts that EPA did not accept the State's justification and developed its own justification for the failure to adopt the measure. Citing *Delaney* v. *EPA,* 898 F.2d 695 (9th Cir. 1990), ACLPI states that it is not EPA's role to supply justifications that the state has not itself claimed. ACLPI also asserts that BACM cannot be excused if it would not advance the attainment date by one year; a measure must be adopted if it would advance the attainment date by even one day.

Response: Neither EPA nor MAG concedes that CARB diesel is a most stringent measure that is feasible for the Phoenix area. The serious area plan rejects CARB diesel as infeasible for the Phoenix area based on costs. MAG plan, p. 9–46. Noting the uncertainties regarding this cost estimate, we could not judge whether this justification was reasonable or not. Annual standard proposal at 19973. The question then was whether we could still approve the MSM demonstration without CARB diesel and absent a reasoned justification for not including it.

Our sole criterion for determining if the plan provides for MSM is whether it has excluded any feasible MSM or a group of feasible MSM that, if adopted and implemented early, would result in attainment of the PM–10 standards more expeditiously. On-road and nonroad engines (the source categories that would be affected by CARB diesel) are not implicated in 24-hour exceedances of the PM–10 standard. Microscale plan, tables 3–2 to 3–5. Except for the Salt River monitoring site with its fugitive dust generating industrial sources, 24-hour exceedances in the Phoenix area are due exclusively to windblown dust from disturbed ground. Microscale plan, p. 16. Introducing CARB diesel would not contribute to expeditious attainment of the 24-hour standard.

Annual standard exceedances are also dominated by fugitive dust sources with on-road and nonroad engines contributing little to annual PM–10 levels in the area. The small emission reduction associated with the introduction of CARB diesel would not advance the attainment date in the area, either by itself or in combination with other measures. It takes a reduction of more than 4 metric tons per day to advance the annual standard attainment by a year in the Phoenix area. EPA TSD section ''Reasonable Further Progress and Quantitative Milestones.'' The MAG plan estimates reductions from introducing CARB diesel at less than 0.8 mtpd in 2006. MAG plan, p. 10–37. Advancing attainment by one year is the appropriate increment for judging whether a measure would expedite attainment of the annual standard. One year is the smallest increment of time that one can advance attainment of the annual standard because the annual standard is measured over a calendar year, from January 1 to December 31. See 40 CFR part 50.

Because the including CARB diesel would not result in more expeditious attainment of either PM–10 standard, we find that the Phoenix serious area plan has meet the MSM requirement without it and without including a reasoned justification for rejecting it ACLPI's reliance on *Delaney* is misplaced. In that case, the Court found that EPA's 1979 guidance explicitly provided that certain measures were presumptively reasonably available and that it was the state's burden to overcome that presumption. In 1992, we repealed the provisions of the 1979 guidance at issue in *Delaney* and added provisions specifically for PM–10 that establishes no presumption for those measures. See General Preamble at 13560. Here, there was no EPA policy presumption that CARB diesel was a feasible measure for the Phoenix area which Arizona had to overcome.

Comment: ACLPI argues that the metropolitan Phoenix plan improperly rejects various TCMs related to congestion management and idling

reduction on the grounds that individually each measure would have a relatively small impact on PM–10 emissions because the CAA does not contain a ''small impact'' exception from BACM and the plan's purported justification for rejecting the TCMs does not comport with EPA's BACM guidance. ACLPI also argues that the omission of these measures based solely on the amount of their individual impact violates the requirement of attainment as expeditiously as practicable because collectively, the measures might have a significant impact.

Response: Table TCM–3 in the EPA TSD lists four congestion management or idling measures that were identified as potential BACM but were not adopted as part of the plan: off-peak movement of goods, truck restrictions during peak times, limit excessive car dealership vehicle starts, and limit idling time to 3 minutes. Contrary to ACLPI's assertions, the plan did not reject these measures on ''small impact'' grounds. Rather, it provides no clear justification for rejecting any of these measures.

Prior to the development of the serious area plan, the Phoenix area already had in place a comprehensive set of TCMs. See EPA TSD, Table TCM–2. With the additional measures in the serious area plan (including additional traffic light synchronization, transit improvements, and bicycle and pedestrian facility improvements), we believe the plan easily provides for the implementation of BACM for on-road motor vehicles even without the four measures listed above. See annual standard proposal at 19974 and 24-hour standard proposal at 50260. In addition, these measures have little PM–10 benefit; therefore, their adoption and implementation would not contribute to expeditious attainment of the PM–10 standards in the Phoenix area.

As we have discussed previously, neither the CAA nor EPA guidance requires the implementation of all BACM, only that a state provide for the implementation of best available control measures on its significant source categories. *See* CAA section 189(b)(1)(B) and the Addendum at 42014. Moreover, we do not believe that the CAA requires us to reject an otherwise sound plan because of minor issues that do not affect the principal purposes of the plan: implementation of BACM and progress towards and expeditious attainment. Because the measures would not contribute to expeditious attainment and the State has provided for the implementation of BACM without them, we do not believe that the lack of these measures or a reasoned justifications for rejecting the measures is grounds for disapproving the plan.

Comment: Several times in its comment letter, ACLPI states that some jurisdictions in the nonattainment area have not made commitments to adopt certain measures when other jurisdictions have and that the plan provides no explanation as to why the implementation of these measures by all jurisdictions is infeasible. ACLPI asserts that EPA guidance indicates that BACM should be adopted and implemented throughout a serious PM–10 nonattainment area unless 100 percent implementation is infeasible. ACLPI also contents that because some jurisdictions have committed to more stringent control measures than other jurisdictions, their measures must be considered BACM/MSM and the plan must either provide for these measures' implementation by all jurisdictions or demonstrate why this is infeasible.

Response: ACLPI cites our serious PM–10 nonattainment area planning guidance at Addendum at 42014 to support its first premise. This guidance states:

> When evaluating economic feasibility, States should not restrict their analysis to simple acceptance/rejection decisions based on whether full application of a measure to all sources in a particular category is feasible. Rather, a State should consider implementing a control measure on a more limited basis, *e.g.,* for a percentage of the sources in a category if it is determined that 100 percent implementation of the measure is infeasible. This would mean, for example, that an area should consider the feasibility of paving 75 percent of the unpaved roadways even though paving all of the roads may be infeasible.

Contrary to ACLPI's assertion, this guidance does not demand states implement a measure 100 percent unless 100 percent implementation is infeasible. Rather, it suggests that states not consider ''full implementation on all sources in the nonattainment area'' as the only possible implementation scenario for evaluating a measure's economic feasibility and that, before it rejects a measure as economically infeasible, it should first consider less extensive implementation.

The CAA's requirements to implement BACM and include MSM apply to the nonattainment area as a whole and not to each individual jurisdiction within that nonattainment area.[12] Consequently, we have reviewed whether the combined effect of all controls adopted in the metropolitan Phoenix area for a particular source category results in the implementation of BACM and the inclusion of MSM for that source category. Because BACM and MSM are nonattainment area-wide requirements, the actions of one jurisdiction within the nonattainment area cannot set a standard for BACM and/or MSM that must either be implemented by all other jurisdictions within the area or demonstrated to be infeasible.

Comment: Several times in its comment letter, ACLPI states that some jurisdictions in the nonattainment area have not made commitments to adopt certain measures when other jurisdictions have. In this context, ACLPI asserts that CAA section 110(a)(2)(E) requires that plans provide assurances of adequate personnel, funding and authority to implement control measures.

Response: ACLPI is incorrectly applying CAA section 110(a)(2)(E). Under this section, a state needs to provide assurances of adequate personnel, funding and authority only for those control measures that it has included in its submitted implementation plan. It does not need to provide such assurances for control measures that are not included in its submitted implementation plan, whether or not an argument could be made that such measures should have been included to meet another CAA provision. This is clear from the language of the section: ''[e]ach implementation plan *submitted by a State* * * * shall * * * provide (i) necessary assurances that the State * * * will have adequate personnel, funding, and authority under State * * * law to carry out *such* implementation plan.'' (emphasis added). Therefore, where a jurisdiction has not committed to implement a measure, it is not required to provide assurances of adequate resources as part of its submittal in order to have it approved under CAA section 110(a)(2)(E).

Comment: For a number of reasons, ACLPI asserts that Rule 310.01 weakens the FIP rule requirements for disturbed vacant lots and unpaved roads. ACLPI further asserts that EPA's conclusion that the differences between the FIP rule

[12] This is clear from the language of the applicable CAA sections. CAA section 189(b)(1)(b) requires that ''a state in which all or part of a serious area is located shall submit an implementation plan for such area that includes * * * provisions to assure that [BACM] * * * shall be implemented * * * '' CAA section 188(e) requires that ''the State [requesting an extension of the attainment date] demonstrates * * * that the plan for that [serious] area includes the most stringent measures * * * '' The requirements in both sections apply to the serious area and not to the individual jurisdictions within the serious area.

and Rule 310.01 will not have a significant impact on emission reductions is unsupported by quantification or analysis of the relative emission reductions and thus EPA's approval of the rule change as sufficient to provide the same level of control as the FIP rule is therefore arbitrary and capricious and violates the Act and EPA guidance that require BACM to go beyond existing RACM-level controls.

Response: We are not withdrawing or modifying the FIP fugitive dust rule in this action. Therefore, comments regarding the effect of approving Rule 310.01 on the FIP rule are not germane.

Neither the CAA nor EPA guidance mandates that a BACM-level control measure always go beyond the existing RACM-level control measure. While both the CAA and EPA guidance intend a greater level of stringency to apply in areas that are required to implement BACM than in those areas required only to implement RACM, the intent is that the *overall* PM–10 control strategy for a category should, in general, be more stringent rather than that every individual control measure in that strategy be more stringent.

A state can show that it has implemented BACM in more than one way. It can show it by demonstrating that its BACM-level control measures for a source category collectively go beyond existing RACM-level measures for that category. Addendum at 42013. It can also show it by demonstrating that its adopted measures meet the definition of BACM. Addendum at 42010. Thus, if a state has already adopted measures to meet the RACM requirement that are collectively the ''maximum degree of emissions reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts'' then it need not strengthen the measures further to meet the BACM requirement.

We also emphasize that a BACM demonstration is done source category by source category and not measure by measure. In determining whether a state has provided for the implementation of BACM on a particular source category, we need to look at all the control measures for that category. In this particular instance, Rule 310.01 alone does not constitute the entire BACM-level control strategy for vacant lots and unpaved roads. Rather, it is the combination of Rule 310.01, Rule 310, and city and town commitments that constitute the BACM strategy for this category. See annual standard proposal at 19977 and 19978 and 24-hour standard proposal at 50263 and 50264.

Comment: ACLPI comments that EPA's approval of the BACM/MSM demonstration for construction sites is contingent upon commitments by MCESD to add additional control requirements for dust suppression and to make other changes to MCESD Rule 310. While ACLPI agrees that Rule 310 needs strengthening, it asserts that a commitment to make unspecified changes to the rule to achieve a BACM/MSM level of control is inadequate because it does not meet the requirements of the Act for enforceable measures no later than June 10, 2000 (BACM) or as expeditiously as practicable (MSM) and offers no assurances that adequate changes will ever be adopted. ACLPI claims that the techniques for controlling emissions from construction activities and sites are well known.

ACLPI further asserts that EPA may only approve a plan based on a commitment pursuant to CAA section 110(k)(4) and then only if the state commits to adopt specific enforceable measures by a date certain but not later than 1 year after the date of approval of the plan revisions. ACLPI claims that MCESD's commitments to improve Rule 310 do not meet the requirements of CAA section 110(k)(4) because it does not commit to adopt specific enforceable measures but only to ''research, develop and incorporate'' additional unspecified measures for dust suppression practices/equipment into Rule 310 or the dust control plans required under that rule. Finally, ACLPI states that the serious area plan must include the BACM/MSM measures identified from South Coast, Clark County and Imperial County or provide a reasoned justification for their rejection and it is not enough for Maricopa County to commit to studying these measures.

Response: We are approving MCESD's commitments under CAA section 110(k)(3) and not section 110(k)(4). We believe—consistent with past practice—that the Act allows approval of enforceable commitments under section 110(k)(3) that are limited in scope where circumstances exist that warrant the use of commitments in place of adopted measures. These commitments are enforceable by EPA and citizens under, respectively, CAA sections 113 and 304 of the Act.[13]

Section 110(k)(4) provides for the conditional approval of State commitments; however, these commitments do not need to be enforceable. Commitments approved under section 110(k)(3) are not enforceable by either EPA or citizens, rather the Act provides that the conditional approval will convert to a disapproval if ''the State fails to comply with such commitment.''

MCESD's commitments have been adopted by the Maricopa County Board of Supervisors after appropriate public notice and hearing and meet Arizona state requirements for the adoption of enforceable SIP commitments by local jurisdictions. See A.R.S. 49–406 G. and Maricopa County Resolutions. Once we have approved them into the SIP under CAA section 110(k)(3), the commitments are fully enforceable against MCESD and the Board under CAA sections 113 and 304.

We are allowing the use of these enforceable commitment here because it is the only approach available at this time to assure the needed improvements to Rule 310. The information needed to make these improvements and to specify the details of these improvements does not currently exist and must be developed through additional research and investigation.

While the general techniques for controlling dust from construction activities are well known (*e.g.* watering), the most effective applications of these general techniques for controlling emissions from any particular construction site in Maricopa County (*e.g.,* how much water and when to apply it) are not well known. Construction sites differ in soils (affecting the quantity of water needed for effective control), meteorological conditions (affecting the frequency with which water must be applied), equipment size/use (affecting quantity and plume characteristics of dust generated), project phase (affecting quantity and time period of dust generated), and level of activity (affecting quantity of dust generated). The specifics of how controls should be applied to meet the 20 percent opacity standard and other applicable Rule 310 standards will vary depending on these and other site and activity parameters.

[13] In the past, we have approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. See, for example, *American Lung Association of New Jersey* v. *Kean,* 670 F. Supp. 1285 (D.N.J. 1987), affirmed, 871 F.2d 319 (3rd Cir. 1989); *NRDC* v. *N.Y. State Dept. 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 for Clean Air, et al.* v. *South Coast Air Quality Management District, CARB, and EPA,* No. CV 97–6916 HLH, (C.D. Cal. August 27, 1999). Further, if a state fails to meet its commitments, we can make a finding of failure to implement the SIP under Section 179(a), which would start an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

One of the enforceable commitments by MCESD is to develop parameters that address various site conditions and are sufficient to ensure that Rule 310's performance standards are met more consistently. The concern captured in this enforceable commitment is that, while it is important for sites to have some flexibility in selecting which control measure(s) to implement, there are field circumstances where the technique must be implemented in a certain manner to be effective. For example, where hydrophobic soils exist under dry meteorological conditions, it may be necessary to water several days prior to ground disturbance to allow water to penetrate to the depth of cut. In some other situations, a tackifyer or surfactant needs to be added to the water for better penetration. However, these approaches may be needed only under certain field conditions. MCESD needs additional time to investigate when and where it would be appropriate to require more specific controls and what those controls should be.

Another one of MCESD's commitments is to modify Rule 310's existing opacity standard/test method or add an additional opacity standard(s)/test method(s), so that they better characterize fugitive dust sources that create intermittent plumes. Information on how to do this most effectively is currently lacking. While derivations on EPA Reference Method 9 (the standard opacity test method) observations have been adopted in Rules 310 and 310.01 for unpaved roads and unpaved parking areas to better accommodate the temporal nature of plumes from vehicle passes, additional field research is needed to determine how observation intervals and other aspects of opacity readings can be better tailored to the variety of intermittent plumes generated by construction equipment and activities.

Once we determine that circumstances warrant the use of an enforceable commitment, we believe that three factors should be considered in determining whether to approve the enforceable commitments: (1) whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.[14]

First, MCESD's commitments address a very limited portion of the CAA's requirements for the implementation of BACM and the inclusion of MSM. In this case, MCESD's commitments are improvements to aspects of the already-adopted and implemented Rule 310; improvements that, we again emphasize, cannot be made at this time because additional research is needed.[15] Second, MCESD has committed resources adequate to fulfill its commitments and has provided information on its work plan for completing the necessary technical work. *See* Maricopa County commitments as revised December 19, 2001.

The final factor is whether the commitment is for a reasonable and appropriate period. All but one of the commitments have deadlines of December 2002, less than a year after their approval. The other commitment is the implementation of a second level of dust control education that will begin in the March to June 2003 time frame. *See* Maricopa County commitments as revised December 19, 2001. Given the complexity of the tasks required by the commitments, we believe that these schedules are expeditious. Moreover, they are consistent with the attainment and RFP demonstrations in the plan.

Our approach here of accepting enforceable commitments that are limited in scope is not new. We have historically recognized that under certain circumstances, issuing a full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See e.g.,* 62 FR 1150, 1187 (January 8, 1997) (ozone attainment demonstration for the South Coast Air Basin); 65 FR 18903 (April 10, 2000) (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326 (August 3, 1998) (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (State Implementation Plan for New Jersey).

Nothing in the Act speaks directly to the approvability of enforceable commitments. However, we believe that our interpretation is consistent with its provisions. For example, CAA section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques * * * *as well as schedules and timetables for compliance,* as may be necessary or appropriate to meet the applicable requirement of the Act.'' (Emphasis added.) The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to be fully adopted to meet the Act's applicable requirements for the implementation of BACM and inclusion of MSM. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments we are approving today—as long as the entire package of measures and rules provides for BACM and MSM.[16]

Comment: ACLPI comments that the CAA requires that SIPs must provide for the implementation of all RACM and that the Governor's Agricultural Best Management Practices Committee identified a variety of available and feasible control measures which are included in the agricultural general permit rule as BMPs. ACLPI asserts that the Rule does not meet the CAA requirement for all RACM because it only requires the implementation of one BMP from each of three categories of farm activities even if the implementation of more than one BMP would be technologically and economically feasible.

Response: This comment is neither germane to today's action nor timely. In today's action, we have addressed only whether Arizona's BMP general permit rule provides for the implementation of BACM and the inclusion of MSM. We have not addressed whether it also provided for the implementation of RACM because we have already done so in an earlier rulemaking that was finalized on October 11, 2001. The appropriate time for ACLPI to raise issues regarding whether the general permit rule meets the CAA's RACM requirement for agricultural sources in the Phoenix area was during the comment period on this earlier rulemaking. ACLPI made comments on this earlier rulemaking, and we fully addressed those comments in the final

[14] In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow States to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA,* 22 F.3d 1125 (D.C. Cir. 1994). While we do not believe that case is directly applicable here, we agree with the Court that other provisions in the Act contemplate that a SIP submission will consist of more than a mere commitment. See *NRDC,* 22 F.3d at 1134.

[15] As we will discuss later, MCESD has also committed to adopt a rule for certain types of charbroilers. This commitment does not change our analysis here because, even when combined with the commitments to improve Rule 310, it is a very small part of the demonstration that the plan includes MSM.

[16] Our interpretation that the Act allows for an approval of limited enforceable commitments has been upheld by the Ninth Circuit Court of Appeals, as well as by other circuits. See *Kamp* v. *Hernandez,* 752 F.2d 1444 (9th Cir. 1985); *City of Seabrook* v. *EPA,* 659 F.2d 1349 (5th Cir. 1981); *Connecticut Fund for the Environment* v. *EPA,* 672 F.2d 998 (2d Cir.), cert. denied 459 U.S. 1035 (1982); *Friends of the Earth* v. *EPA,* 499 F.2d 1118 (2d Cir. 1974).

action. See 66 FR 51869, 51871. See also, 66 FR 34598 (June 29, 2001).

Comment: ACLPI asserts that the metropolitan Phoenix area plan fails to include the most stringent measures as required by CAA section 188(e) because it does not uniformly require the cessation of tilling on high wind days as South Coast Rule 403 rule does but rather includes it as one measure among several that a farmer may choose to implement. ACLPI further asserts that ADEQ's attempt to justify this deviation by stating that ''no research currently exists which demonstrates that cessation of high wind tilling when gusty winds exceed 25 mph in the Maricopa County area is more effective at reducing PM–10 then the agricultural PM–10 general permit * * *'' is irrelevant because the appropriate inquiry is whether the cessation of tilling on high wind days combined with the implementation of at least one other BMP would be more effective at reducing PM–10 which ACLPI claims, without support, it would be.

Response: South Coast Rule 403 does not require cessation of tilling on high wind days. Rule 403 includes a list of optional measures an affected source can use to reduce PM–10. For agricultural sources affected by Rule 403, the South Coast AQMD developed a series of farming practices that can be used by a grower as alternative means to comply with the requirements of Rule 403. These practices are listed in ''Rule 403 Agricultural Handbook: Measures to Reduce Dust from Agricultural Operations in the South Coast Air Basin'' (''Handbook''). If a grower decides to opt for compliance with the Rule by utilizing the dust control practices in the Handbook, the grower must cease tilling and soil preparation operations when winds are over 25 mph.

The requirement to cease tilling on high wind days is found in Rule 403.1 (''Wind Entrainment of Fugitive Dust''). The requirement is applicable only to the Coachella Valley (Palm Springs area) of the South Coast air basin and has a number of exemptions. *See* South Coast Rule 403.1, sections (a), (d)(4), and (h)(4).

The BMP general permit includes ''limited activity during high wind events'' among the list of BMPs from which a grower can select. The BMP Committee and Arizona decided not to require cessation of tilling on high wind days as a provision in the general permit for a number of technical and practical reasons, the main ones being the infrequency of high wind events in the Phoenix area, especially in comparison to the frequency of high wind events in the Coachella Valley.

Based on local meteorological data, MAG estimated that there were 11 days in 1995 with winds greater than 15 mph. In the Phoenix nonattainment area, the State determined that a small percentage (*i.e.,* 15 percent) of tilling occurs during the high wind season (*i.e.,* March through September). Within the high wind season, only 4 percent of days have wind speeds greater than 15 mph.[17] The Coachella Valley is much more windy, typically experiencing high wind greater than 25 mph on 47 days per year.[18] Based on this information, the BMP Committee and the State determined that an agricultural requirement developed specifically for Coachella Valley high wind conditions was not appropriate for the Phoenix area and that requiring cessation of tilling on high wind days would not be reasonable because since it would impact a small number of growers and provide minimal reductions.

Arizona has provided a reasonable justification for not requiring cessation of tilling during high wind events. In the Microscale plan, the State shows that it was windblown dust from an already tilled agricultural field and not the active tilling of that field that contributed to the 24-hour exceedance at West Chandler. *See* Microscale plan, pp. 16. In the serious area plan, the State demonstrates that the BMP general permit rule as adopted in combination with other adopted measures provides for expeditious attainment of the 24-hour PM–10 standard in the Phoenix area and is not necessary for expeditious attainment of the annual standard in the area. Finally, the State through its BMP committee has determined that the requirement for one BMP per category is the most effective economically and technologically feasible control measure for agricultural sources in the Phoenix area. Given all of this, the State has reasonably declined to mandate the cessation of tilling during high winds when faced with an absence of data that it would make the BMP rule more effective.[19]

Comment: ACLPI asserts that because Arizona is seeking an extension of the PM–10 nonattainment date to December 31, 2006, it must show that its plan includes the most stringent measure for each source category, including agriculture, citing CAA section 188(e). It then contends that South Coast Rule 403 is significantly more stringent than the general permit rule, noting that Rule 403 establishes six categories of management practices and requires operators to implement at least one of the listed practices in 5 of 6 categories (*i.e.,* Active, Farm Yard Area, Track-Out, Unpaved Roads, and Storage Pile) and three measures in the ''Inactive'' category. ACLPI claims that when the cessation of tilling on high wind days is included, each commercial farmer is required to implement a minimum of nine control measures and that Arizona's program only requires a total of three control measures. To qualify and obtain an extension of the attainment date, the Arizona SIP must include agricultural measures that are at least as stringent as Rule 403.

Response: Neither the CAA nor EPA policy requires that areas seeking attainment date extensions include without exception the most stringent measures for each source category. The CAA requires only that the plan include the most stringent measures found in the implementation plan of other States or used in practice that are feasible in the area. *See* CAA section 188(e). We interpret the MSM provision to not require any measure that is infeasible on technological or economic grounds, any measure for insignificant source categories, and any measure or group of measures that would not contribute to expeditious attainment. See 24-hour standard proposal at 50282–84.

ACLPI is not correctly characterizing the requirements of the South Coast's agricultural control measures (which are found in Rules 403 and 403.1). Agricultural operations are required to comply with the provisions of Rule 403 unless the person responsible for such

[17] In fact, when using mean hourly wind speed observations averaged over all monitoring sites in the Maricopa County nonattainment area for 1995, it was estimated that there 29 hours with wind speeds between 15 and 19.9 mph, 7 hours with wind speeds between 20 and 24.9 hours, and only one hour with wind speeds over 25 mph. MAG TSD, Appendix II, Exhibit 7 ''Wind Criteria and Associated Emissions for Regional Particulate Matter Modeling,'' Updated April 13, 1999, p. 3.

[18] The Coachella Valley is not the only agricultural area in the South Coast district. Riverside (outside of the Coachella Valley) and San Bernardino Counties are the predominant agricultural areas in the region. These areas experience winds greater than 25 mph approximately 25 and 23 days per year, respectively, yet the South Coast does not impose the cessation of tilling requirement in these areas unless a grower opts to use the practices listed in the Handbook as the means of complying with Rule 403.

[19] We note that one exemption from Rule 403.1's cessation of tilling requirement is when tilling activities result in a net reduction of wind blown fugitive dust, an exemption that is applicable only if wind blown fugitive dust is not visible from tilled soil, but is visible from untilled soil within the same agricultural parcel. Rule 403.1 (h)(4)(B). This exemption shows that there are some situations when cessation of tilling during a high wind event is actually counter-productive and thus it is not always more effective to combine it with another BMP.

operations voluntarily implements the conservation practices contained in the most recent Rule 403 Handbook. See Rule 403 (h)(1)(B). The Handbook, and not the rule itself, has the requirement to implement at least one of the listed practices in 5 of 6 categories and three measures in the Inactive category. A grower, however, only has to implement practices for those categories of agricultural operations that they actually have; thus if s/he does not have one of the activity categories and/or inactive fields then the number of practices s/he must implement is fewer. As we have noted above, the requirement for cessation of tilling on high wind days applies only in the Coachella Valley portion of the South Coast district and is a requirement on all agricultural operations in the other portion of the district only when a grower opts for using the Handbook to comply with Rule 403. Therefore, ACLPI exaggerates the requirements of the South Coast agricultural control program when it claims the program requires each commercial farmer to implement a minimum of nine management practices.[20]

We agree that in general Rule 403 (or the Handbook) is likely to be more stringent than the general permit rule. We, however, also agree, as discussed below, with the State's assessment that the South Coast requirements are infeasible for the Phoenix area and that the general permit rule represents the most stringent economically and technologically feasible agricultural control program for the area.

In assessing South Coast's requirements, the BMP Committee and ADEQ determined that because of the lack of adequate technical information concerning BMP costs and effectiveness, requiring at least one BMP for the three agricultural categories adequately addressed agricultural sources of PM–10 in the Maricopa County nonattainment area. ADEQ concluded that:

> The agricultural general permit cannot mirror South Coast Rule 403 for a variety of reasons. One main reason is that agriculture in Maricopa area is primarily flood irrigated. The South Coast has dryland, irrigated, and sprinkler irrigated agriculture. The actual amount of irrigation water and frequency of irrigation can effect wind erosion estimates and the effectiveness of different control measures under different conditions. Therefore, the BMPs for Maricopa County were based on practical applications during those times when the fields were not flooded. Also, because the application of more than one BMP at a time for a selected category would only provide incremental PM–10 reductions, sometimes at an uneconomical cost, flexibility was provided in the rule to allow the expert (the farmer) to decide what BMP should be applied when and where.

As we discussed in the proposal for the 24-hour standard (see 24-hour standard proposal at 50268) and as we concluded in our original FIP measure for the agricultural sector (63 FR 41332), the BMP Committee found that agricultural PM–10 strategies must be based on local factors because of the variety, complexity, and uniqueness of farming operations and because agricultural sources vary by factors such as regional climate, soil type, growing season, crop type, water availability, and relation to urban centers.

While the Committee surveyed measures adopted in other geographic areas, including South Coast, these measures were of limited utility in determining what measures are available for the Maricopa County area. Given the limited scientific information available and the myriad factors that affect farming operations, the BMP Committee concluded that requiring more than one BMP could not be considered technologically justified and could cause an unnecessary economic burden to farmers. BMP TSD, p. 18.

Adding to concerns about the economic feasibility of requiring more BMPs per farming activity is the general uncertainty regarding the cost of the BMPs and continued viability of agriculture in Maricopa County. Between 1987 and 1997, the number of farms operating in Maricopa County declined by approximately 30 percent and the amount of land farmed declined by approximately 50 percent. This trend is expected to continue. Finally, in order to justify additional requirements for farming operations in the area beyond those in the general permit rule, the BMP Committee determined that a significant influx of money and additional research would be needed.

Based on all of these factors, the BMP Committee concluded that the Handbook's control requirements were neither technologically nor economically feasible for agricultural sources in Maricopa County and therefore are not feasible for the Phoenix area. BMP TSD, p. 18.

We agree with the analysis of the BMP Committee. As noted previously, the development of the general permit rule was a multi-year endeavor involving an array of agricultural experts familiar with Maricopa County agriculture. Maricopa County is only the second area in the country where formal regulation of PM–10 emissions from the agricultural sector has ever been attempted. We conclude that the Rule 403's and the Handbook's requirements are neither technologically nor economically feasible for Maricopa County and thus Arizona need not include them in the Phoenix serious area plan in order for us to grant an attainment date extension under CAA section 188(e).

Comment: ACLPI claims that there is no justification for relaxing the stringency of Rule 403 because virtually all of the control measures listed in Rule 403 are in the Arizona rule and so it is clear that their implementation is feasible. ACLPI asserts that Arizona's contention that ''the application of more than one BMP at a time for a selected category would only provide for incremental PM–10 reductions sometimes at an uneconomical cost,'' is not supported by any competent data, improperly delegates regulatory discretion to the regulated community, and ignores the clear mandates of the Act.

Response: We agree that the many of the individual best management practices in the Rule 403 Agricultural Handbook are also feasible practices for the Phoenix area. Arizona, through the BMP committee, also agreed and incorporated many of them into the general permit rule. However, the feasibility and adoption of any one BMP has little relevance here because neither Rule 403, the Handbook, nor the general permit rule requires the implementation of any specific BMP, rather they require the implementation of at least one BMP from a list of possible BMPs for each of several categories of farm operations.

As has been noted many times before, little data is available on the cost of implementing specific BMPs in the Phoenix area. Using what little data was available and the technical expertise of local farmers, state and federal agricultural agencies,[21] and agricultural experts from the University of Arizona, Arizona determined that requiring the implementation at least one BMP for each of the three categories of

[20] We also note that for inactive fields, the Handbook allows agricultural operators to comply with local jurisdiction requirements in lieu of implementing three practices (Handbook, section II, p. 4.) and that a field which has been withdrawn from agricultural use in the Phoenix area becomes subject to MCESD Rule 310.01's BACM/MSM-level requirements for open areas and vacant lots. All these control options demonstrate that the six categories/nine practices versus three categories/three practices comparison is misleading.

[21] The BMP Committee is composed of five local farmers, the Director of ADEQ, the Director of the Arizona Department of Agriculture, the State Conservationist for the United States Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) state office, the Dean of the University of Arizona's College of Agriculture, and a soil scientist from the University of Arizona.

agricultural activities is the most stringent level of control that is economically and technologically feasible for the Phoenix area. This conclusion was arrived at only after a lengthy and open process and only after taking into consideration South Coast's approach to agricultural control. See 66 FR 3458, 34601.

We do not agree that the general permit rule improperly delegates regulatory discretion to the regulated community. The general permit rule follows the same general control format as Rules 310 and 310.01. This format allows the regulated entity (e.g., construction site operator, vacant lot owner, unpaved parking lot owner, etc.) to choose from a list of options for controlling its source.[22] For example, an unpaved parking lot owner may pave, gravel, or apply a chemical stabilizer. See Rule 310.01, section 303.1. This control format is the standard model for fugitive dust rules and has developed over time because of the need to impose effective but reasonable and feasible controls on a large number of similar but distinct sources. For the Phoenix serious area plan, we have found that the control measures using this format provide for the implementation of BACM and the inclusion of MSM for a number of significant source categories. As much as (if not more so than) an unpaved parking lot owner or a vacant lot owner, a grower is in the best position to determine which BMPs are best and most effective for the conditions on his/her farm.

Comment: ACLPI asserts that because the general permit rule fails to require any specific control requirements, there is no way that the State can know or meaningfully predict what the effect of the rule will be and thus any estimated emissions reduction is entirely speculative and thus inadequate under the CAA.

Response: As we noted in a previous comment, the general permit rule follows the same standard control format used by many fugitive dust rules, such as Rules 310 and 310.01 (and Rule 403 and the Rule 403 Agricultural Handbook). This format allows the regulated entity to choose from a list of options for controlling its source.

Emission reductions from these types of rules need to be quantified because they often constitute the primary control strategy needed to demonstrate attainment and/or RFP. The accepted methodology for quantifying them is to assume that some fraction of the regulated sources will choose a particular control option. For example, the assumption used in the Phoenix plan to quantify emission reductions from the unpaved parking lot measure is that one third of the regulated lots will be paved, one-third will be graveled, and one-third will be chemically stabilized. See MAG TSD, p. V–17. Provided that the assumptions are reasonable, we accept the resulting emission reductions estimate.

To prepare the emission reductions estimates for the general permit rule, ADEQ hired URS. To estimate the reductions, URS determined the most likely implementation scenario. This scenario was based on available data on the crops grown and their acreage in the Phoenix area as well as on interviews of growers in the Phoenix area about which BMPs they would most likely use in certain situations. The growers, having intimate knowledge of the crops and growing conditions in the area, are the technical experts on how the BMP rule will be implemented. By going to the technical experts, URS and Arizona reduced the level of uncertainty in the emission reduction estimates to the extent practicable.

We believe that their approach is reasonable given the situation. Most of the BMPs have never been applied in Maricopa County or elsewhere, and until the BMPs are fully implemented and ADEQ has had adequate time to evaluate their effectiveness, there will always be some degree of uncertainty regarding actual emission reductions. While it is possible that the reductions could be less than expected, it is equally plausible that the reductions will be greater than expected.

We note that no matter how specifically a rule is written, no one can ever know for certain what the future emission reductions from it will be. Estimates of future emission reductions require assumptions about future activities that are always speculative to a degree. In making emission reduction estimates, we attempt to reduce the uncertainties to the extent possible, but we can never totally eliminate them.

Quantification of emission reductions from rules is a necessary part of meeting the Act's requirements for reasonable further progress and attainment demonstrations and quantitative milestones. Beyond setting the requirements (and requiring attainment demonstrations be based on air quality modeling, see, for example, CAA section 189(b)(1)(A)), the Act leaves it to EPA's expertise to determine what constitutes technically acceptable demonstrations. As we have discussed above, Arizona followed standard and accepted procedures for quantifying emission reductions from the BMP general permit rule and as a result we find the resulting estimates acceptable for the serious area plan.

Comment: ACLPI disagrees with EPA's conclusion that the metropolitan Phoenix serious area plan adequately demonstrates that attainment by December 31, 2001 is impracticable because the plan fails to adopt all BACM for significant sources, fails to implement some measures in a timely manner or relies on mere commitments and improperly excludes BACM for de minimis sources. ACLPI asserts that the plan improperly fails to analyze whether the area would be in attainment by the 2001 deadline if all BACM were adopted and implemented on time.

Response: We have carefully reviewed the plan and have found that it provides for the implementation of BACM, assures timely implementation of measures, and relies on enforceable commitments only where they are the only feasible means of providing for the implementation of BACM as required by CAA section 189(b)(1)(B). *See* annual standard proposal at 19984 and the 24-hour standard proposal at 50273.

As we have discussed previously, neither the CAA or EPA guidance requires the implementation of all BACM. Both only require that a state provide for the implementation of best available control measures on its significant source categories. Both also allow the de minimis sources to be exempted from the BACM requirement. See CAA section 189(b)(1)(B) and the Addendum at 42014.

Contrary to ACLPI's assertion, the plan does provide a clear demonstration that even with the implementation of BACM on all source categories including de minimis categories, the Phoenix area would not be in attainment of either PM–10 standard by the end of 2001. This demonstration is a necessary part of showing that the plan correctly determines which source categories are de minimis and which are significant. *See* MAG plan, pp. 9–9 to 9–15 and the section ''BACM Analysis—Step 2, Model to Identify Significant Sources'' in the EPA TSD.

Comment: ACLPI disagrees with EPA's conclusion that the metropolitan Phoenix serious area plan adequately demonstrates attainment by the earliest date practicable after December 31, 2001 because the plan fails to adopt all feasible MSM, fails to implement some measures in a timely manner or relies on mere commitments and improperly excludes MSM for de minimis sources. ACLPI asserts that the plan improperly

[22] This control format is also used in South Coast's fugitive dust rules, including Rules 403, 403.1, and 1186. We approved these rules on December 9, 1998 (63 FR 67784).

fails to analyze whether the area would be in attainment earlier if all MSM were adopted and implemented in a timely manner.

Response: We have carefully reviewed the plan and have found that it includes all feasible MSM to our satisfaction, assures timely implementation of measures, and relies on enforceable commitments only where they are the only feasible means of providing for the implementation of MSM or other measures necessary for timely attainment. See annual standard proposal at 19984 and the 24-hour standard proposal at 50274. We note again that the Phoenix serious area plan did not exclude any MSM on the basis of de minimis source categories.

Comment: ACLPI comments that the plan fails to include contingency measures, noting the purpose of contingency measures is to assure continued progress toward attainment while the SIP is being revised if a state fails to make RFP or attain by the applicable attainment date. ACLPI asserts that if a state fails to make RFP or timely attain, the obvious conclusion is that the currently implemented control measures are insufficient and additional measures are needed and that this is true regardless of whether the implemented measures were relied upon in the RFP and attainment demonstrations and for this reason, EPA's suggestion that the contingency measure requirement can be satisfied by committed measures that are implemented but not relied upon in the demonstrations defeats the purpose. ACLPI contends that the proposed SIP must include contingency measures that will take effect without further action by the State or Administrator and the SIP does not include any such measures.

Response: The metropolitan Phoenix serious area plan does contain contingency measures. For the annual standard, the plan relies on the agricultural BMP general permit rule as a contingency measure. For the 24-hour standard, the plan relies on the paving or treatment of unpaved roads measure. Both measures are currently being implemented but the emission reductions from them are not necessary for demonstrating RFP and attainment for the annual standard (general permit rule) and 24-hour standard (unpaved road measures).

Failure to make RFP or attain does not necessarily mean that new controls must be adopted. Failure to make RFP or attain can be the result of the failure to implement already committed to or adopted controls, delays in the implementation of control measures, and noncompliance. In these cases, correcting the implementation problem or noncompliance corrects the RFP or attainment failure.

There are a number of benefits to allowing and even encouraging the early implementation of contingency measures. The chief benefit is that their emission reductions and thus their public health benefit are realized early. Another is that it allows states to build uncredited cushions into their attainment and RFP demonstrations, a cushion which makes actual failures to make progress or attain less likely.

Measures that have already been implemented clearly meet the section 172(c)(9) requirement that contingency measures take effect without further action by the State or Administrator.

Comment: ACLPI asserts that the Agricultural BMP general permit rule cannot be used as a contingency measure because it is not a ''specific measure[ ] to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] * * *'' and there is nothing in the rule that is triggered upon a showing of failure to make RFP. ACLPI quotes EPA guidance at 60 FR 56129 that ''[c]ontingency measures should consist of other control measures that are not part of the area's control strategy.''

Response: We note that the Agricultural BMP general permit rule is a contingency measure for the annual standard only. Emission reductions from the rule are not necessary to demonstrate RFP or expeditious attainment, and therefore, the rule is not part of Arizona's primary control strategy for attaining the annual standard. Emission reductions from the rule are necessary to demonstrate RFP and expeditious attainment of the 24-hour standard and the State chose a different measure, the unpaved road measure, to serve as the contingency measure for the 24-hour standard.

Nothing in CAA section 172(c)(9) requires that contingency measure be triggered only if there is a failure to make RFP or to attain. Contingency measure must be undertaken if there is a failure to make RFP or attain but the Act does not bar a state from using other triggers as a reason to implement them, *e.g.,* a determination that the measure is needed for attainment of another standard or to meet another CAA requirement. This is the case here; the BMP general permit rule is both needed for attainment of the 24-hour standard and to meet the CAA's BACM requirement.

Areas that must meet the BACM, MSM, and ''attainment by the earliest alternative date practicable'' requirement are in a difficult position when it comes to contingency measures. Adopted but unimplemented contingency measures are likely to be feasible BACM and/or MSM. We discussed this dilemma in the proposed approval for the 24-hour standard at 24-hour standard proposal at 50279:

> Certain core control measure requirements such as RACM, BACM, and MSM may result in a state adopting and expeditiously implementing more measures than are strictly necessary for expeditious attainment and/or RFP. Because of this and because these core requirements effectively require the implementation of all non-trivial measures that are technologically and economically feasible for the area, states are left with few, if any, substantive unimplemented control measures. In fact, under the Act's PM–10 planning provisions, if there were a measure or set of measures that were technologically and economically feasible and could collectively generate substantial emission reductions, *e.g.,* one year's worth of RFP, then a state would be hard pressed to justify withholding their implementation.
>
> If we read the CAA to demand that the only acceptable contingency measure are those that are adopted but not implemented, then states face a difficult choice: adopt the controls for immediate implementation and clearly meet the core control measure requirements but fail the contingency measure requirement or adopt the control measures but hold implementation in reserve to meet the contingency measure requirement but potentially fail the core control measure requirements.
>
> However, states do not need to face this difficult choice if we read the CAA to allow adopted and implemented measures to serve as contingency measures, provided that those measures' emission reductions are not needed to demonstrate expeditious attainment and/or RFP. There is nothing in the language of section 172(c)(9) that prohibits this interpretation.

ACLPI cites as EPA guidance, our 1995 proposed approval of the moderate area PM–10 SIP for the Yakima, Washington nonattainment area. This proposal, however, simply affirms our position here. In this case, Washington State used as a contingency measure for the Yakima area, a wood stove buy back program. At the time we proposed to approve it as a contingency measure, the program had been in operation for more than two years and had already replaced 70 wood stoves. We proposed to approve it as a contingency measure because the emission reductions from the program were ''100 percent overcontrol,'' that is, not necessary for attainment. *See* 60 FR 56129, 56132 (November 7, 1995). We finalized this approval at 63 FR 5269 (February 2, 1998).

V. Final Actions

A. Approval of the Serious Area Plan

We are taking final action to approve the following elements of the serious area PM–10 plan for the metropolitan Phoenix area.

For the annual standard:

CAA provision (cite)	SIP submittal and date	Cite for proposed approval
Base year emission inventory (section 172(c)(3)).	MAG plan, February 16, 2000	Annual standard proposal at 19970.
Demonstration that the plan provides for the implementation of RACM and BACM for each significant source category (sections 189(a)(1)(c) and 189(b)(1)(b)):		
• On-road motor vehicles	MAG plan, February 16, 2000	Annual standard proposal at 19973 and 24-hour standard proposal at 50258.
• Non-road motor vehicles	MAG plan, February 16, 2000	24-hour standard proposal at 20260.
• Paved road dust	MAG plan, February 16, 2000	Annual standard proposal at 50274.
• Unpaved parking lots	MAG plan, February 16, 2000	Annual standard proposal at 19976.
• Disturbed vacant lots	MAG plan, February 16, 2000	Annual standard proposal at 19977.
• Unpaved roads	MAG plan, February 16, 2000	Annual standard proposal at 19978.
• Construction activities and sites	MAG plan, February 16, 2000	24-hour standard proposal at 50265.
• Agriculture (BACM only)	BMP TSD, June 13, 2001	24-hour standard proposal at 50268.
• Residential wood combustion	MAG plan, February 16, 2000	Annual standard proposal at 19982.
• Secondary ammonium nitrate sources	MAG plan, February 16, 2000	Annual standard proposal at 19982.
Demonstration of the impracticability of attainment by 2001 where the State has applied for an attainment date extension under section 188(e) (section 189(b)(1)(A) (ii)).	MAG plan, February 16, 2000	Annual standard proposal 19984.
Demonstration of attainment by the most expeditious alternative date practicable (section 189(b)(1)(A) (ii)).	MAG plan, February 16, 2000	Annual standard proposal 19985.
Demonstration of reasonable further progress (section 172(c)(2)).	MAG plan, February 16, 2000	Annual standard proposal 19988.
Quantitative Milestones (section 189(c))	MAG plan, February 16, 2000	Annual standard proposal 19988.
Inclusion of the most stringent measures (section 188(e)).	MAG plan, February 16, 2000 (except for agricultural sources); BMP TSD, June 13, 2001 (agricultural sources).	Annual standard proposal at 19984 (except for agricultural sources); 24-hour standard proposal at 50268 (agricultural sources).
Demonstration that major sources of PM-10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations (section 189(e)).	MAG plan, February 16, 2000	Annual standard proposal 19971.
Contingency measures (section 172(c)(9))	MAG plan, February 16, 2000 as revised by BMP TSD, June 13, 2001.	24-hour standard proposal at 50279.
Transportation conformity budget (section 176(c)).	MAG plan, February 15, 2000	Annual standard proposal at 19970.
Provisions for assuring adequate resources, personnel, and legal authority to carry out the plan (section 110(a)(2)(E)(i)).	MAG plan, February 16, 2000 (for all categories for both standards except for agriculture sources).	Annual standard proposal at 19988 (except for agriculture sources), 24-hour standard proposal at 50280.
For the 24-hour standard:		
Base year emission inventory (section 172(c)(3)).	MAG plan, February 16, 2000	Annual standard proposal at 19970.
Demonstration that the plan provides for the implementation of RACM and BACM for each significant source category (sections 189(a)(1)(c) and 189(b)(1)(b)):		
• On-road motor vehicles	MAG plan, February 16, 2000	24-hour standard proposal at 50258 and 50259.
• Non-road motor vehicles	MAG plan, February 16, 2000	24-hour standard proposal at 50259.
• Paved road dust	MAG plan, February 16, 2000	24-hour standard proposal at 50260.
• Unpaved parking lots	MAG plan, February 16, 2000	24-hour standard proposal at 50263.
• Disturbed vacant lots	MAG plan, February 16, 2000	24-hour standard proposal at 50263.
• Unpaved roads	MAG plan, February 16, 2000	24-hour standard proposal at 50264.
• Construction activities and sites	MAG plan, February 16, 2000	24-hour standard proposal at 50265.
• Agriculture (BACM only)	BMP TSD, June 13, 2001	24-hour standard proposal at 50268.
• Residential wood combustion	MAG plan, February 16, 2000	24-hour standard proposal at 50271.
• Secondary ammonium nitrate sources	MAG plan, February 16, 2000	24-hour standard proposal at 50271.
Demonstration of the impracticability of attainment by 2001 where the State has applied for an attainment date extension under section 188(e) (section 189(b)(1)(A) (ii)).	MAG plan, February 16, 2000 (regional); BMP TSD, June 13, 2001 (Gilbert and West Chandler).	24-hour standard proposal at 50273.
Demonstration of attainment by the most expeditioius alternative date practicable (section 189(b)(1)(A)(ii)).	Mag plan, February 16, 2000 (regional); BMP TSD, June 13, 2001 (Gilbert and West Chandler).	24-hour standard proposal at 50275.

CAA provision (cite)	SIP submittal and date	Cite for proposed approval
Demonstration of reasonable further progress (section 172(c)(2)).	BMP TSD, June 13, 2001	24-hour standard proposal at 50278.
Quantitative Milestones (section 189(c))	BMP TSD, June 13, 2001	24-hour standard proposal at 50279.
Inclusion of the most stringent measures (section 188(e)).	MAG plan, February 16, 2000 except for (agricultural sources) BMP TSD, June 13, 2001 (agricultural sources).	24-hour standard proposal at 50274.
Demonstration that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations (section 189(e)).	MAG plan, February 16, 2000	24-hour standard proposal at 50257.
Contingency measures (section 172(c)(9))	MAG plan, February 16, 2000 as revised by BMP TSD, June 13, 2001.	24-hour standard proposal at 50279.
Transportation conformity budget (section 176(c)).	MAG plan, February 15, 2000	24-hour standard proposal at 50256.
Provisions for assuring adequate resources, personnel, and legal authority to carry out the plan (section 110(a)(2)(E)(i)).	MAG plan, February 16, 2000 (except for agriculture sources).	24-hour standard proposal at 50280.

B. Extension of the Attainment Date

As authorized by CAA section 188(e), we are granting Arizona's request for a five-year extension of the date for attaining both the annual and 24-hour PM–10 standards. Our decision to grant the extension is based on our determination that the State has met the necessary requirements for granting an extension of the attainment date under CAA section 188(e). See annual standard proposal at 19988 and 24-hour standard proposal at 50278. The five-year extension means that the statutory attainment date for both standards in the Phoenix nonattainment area is now December 31, 2006.

C. Approvals of Rules and Commitments

We are also approving the following rules and commitments that we proposed for approval in the annual standard proposal at 65 FR 19964:

Rule/commitment (Date of adoption of revision)	Submittal date
MCESD Rule 310 (Revised February 16, 2000)	March 2, 2000.
MCESD Rule 310.01 (Adopted February 16, 2000)	March 2, 2000.
Maricopa County Residential Woodburning Ordinance (Revised November 17, 1999)	January 28, 2000.

We are also approving numerous resolutions adopted in 1997, 1998, and 1999 by the cities and town of the metropolitan Phoenix area as well as by the Arizona Department of Transportation, Regional Public Transportation Agency, and ADEQ. Finally, we are approving Maricopa County's commitments including the revised commitments adopted on December 19, 2001 and submitted on January 8, 2002.

CAA section 110(l) prohibits us from approving a revision to the applicable implementation plan if that revision would interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act. We interpret section 110(l) to mean, among other things, that we cannot approve a plan revision if that revision would mean that the state's plans would no longer provide for attainment or RFP as these are required by the CAA or if the revision would mean that the State's plans would no longer meet another applicable requirement of the Act.

We are revising the Arizona SIP to incorporate the amended Rule 310, Rule 310.01 and the Maricopa County Residential Woodburning Ordinance in place of the previous version of Rule 310 approved in August, 1997 and of the ordinance approved in November, 1999. In addition to the effect on attainment and RFP, the ''other applicable requirement of the Act'' that we are concerned with here are the Act's requirements for implementation of RACM and BACM and the inclusion in the plan of MSM.

We are approving the expeditious attainment and RFP demonstrations for both PM–10 standards in the Phoenix serious area plan. These demonstrations are in part dependent on approval of the revised Rule 310, Rule 310.01, and the woodburning ordinance.

We are also finding that the Phoenix serious area plan provides for the implementation of RACM and BACM and the inclusion of the MSM for the sources subject to these rules and ordinance (construction sites, unpaved roads, unpaved parking lots, and disturbed vacant lands, and residential wood burning). Again, these findings are in large part dependent on approval of the revised Rule 310 and Rule 310.01. We, therefore, find that the approval of the revised Rule 310, Rule 310.01, and the Residential Woodburning Restrictions Ordinance will not interfere with Arizona PM–10 applicable implementation plan's compliance with the Clean Air Act's requirements for attainment, RFP, implementation of RACM and BACM, and inclusion of MSM.[23]

D. Correction of Previous SIP Disapprovals

We are finding that Arizona has corrected the deficiencies that resulted in the following disapprovals:

[23] Because the woodburning restrictions ordinance is also a provision in the State's carbon monoxide SIP, we have also considered the impact on the CO plan of approving the revised version. The revision to the ordinance strengthens its PM–10 provisions but does not make changes to its CO provisions; therefore, its approval will not interfere CO SIP's provisions for attainment, RFP, or RACM.

Disapproved element	Date and cite of disapproval	Correction
Implementation of RACM and BACM for unpaved roads, unpaved parking lots, disturbed vacant lots, and agriculture (24-hour standard).	August 4, 1997 62 FR 41856, 41862.	Approved RACM and BACM demonstration for the affected categories.[1]
Demonstration of attainment and RFP for the West chandler site (24-hour standard).	August 4, 1997 62 FR 41856, 41862.	Approved attainment and RFP demonstration.
Demonstration of attainment and RFP for the Gilbert site (24-hour)	August 4, 1997 62 FR 41856, 41862.	Approved attainment and RFP demonstration.
Implementation of RACM (annual standard)	August 3, 1998 63 FR 41326, 41329.	Approved RACM demonstration.
Demonstration of attainment (moderate area deadline, annual standard).	August 3, 1998 63 FR 41326, 41329.	Approved attainment demonstration.

[1] We approved the RACM demonstration for agricultural sources on October 11, 2001 at 66 FR 51869.

The correction of the deficiencies that caused the last two listed disapprovals also permanently lifts the offset sanction currently imposed but stayed on the Phoenix area and ends the clock for imposition of the highway funding sanction.

The full approval of the metropolitan Phoenix serious area PM–10 plan also ends the FIP clock started by the February 6, 1998 finding that the State had failed to submit the plan by the required deadline. See 63 FR 9423 (February 23, 1998).

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This 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 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 approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This 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 approves a state plan and rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This 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 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.*).

The Congressional Review Act, 5 U.S.C. section 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

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 September 23, 2002. 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, Reporting and recordkeeping requirements.

Dated: January 14, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

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 paragraphs (c)(99), (100), (101), and (102) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(99) Plan revisions submitted on January 28, 2000 by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County, Arizona.

(*1*) Residential Woodburning Restriction Ordinance adopted on November 17, 1999.

(100) Plan revisions submitted on February 16, 2000 by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa Association of Governments, Maricopa County, Arizona.

(*1*) Resolution to Adopt the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area (including Exhibit A, 2 pages), adopted on February 14, 2000.

(B) City of Avondale, Arizona.

(*1*) Resolution No. 1711–97; A Resolution of the City Council of the City of Avondale, Maricopa County, Arizona, To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 14 pages), adopted on September 15, 1997.

(*2*) Resolution No. 1949–99; A Resolution of the Council of the City of Avondale, Maricopa County, Arizona, Implementing Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 7 pages), adopted on February 16, 1999.

(C) Town of Buckeye, Arizona.

(*1*) Resolution No. 15–97; A Resolution of the Town Council of the Town of Buckeye, Maricopa County, Arizona, To Implement Measures in the MAG 1997 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 5 pages), adopted on October 7, 1997.

(D) Town of Carefree, Arizona.

(*1*) Town of Carefree Resolution No. 97–16; A Resolution of the Mayor and Common Council of the Town of Carefree, Arizona, To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 3 pages), adopted on September 2, 1997.

(*2*) Town of Carefree Resolution No. 98–24; A Resolution of the Mayor and Common Council of the Town of Carefree, Arizona, To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 4 pages), adopted on September 1, 1998.

(*3*) Town of Carefree Ordinance No. 98–14; An Ordinance of the Town of Carefree, Maricopa County, Arizona, Adding Section 10–4 to the Town Code Relating to Clean-Burning Fireplaces, Providing Penalties for Violations (3 pages), adopted on September 1, 1998.

(E) Town of Cave Creek, Arizona.

(*1*) Resolution R97–28; A Resolution of the Mayor and Town Council of the Town of Cave Creek, Maricopa County, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 4 pages), adopted on September 2, 1997.

(*2*) Resolution R98–14; A Resolution of the Mayor and Town Council of the Town of Cave Creek, Maricopa County, Arizona, To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 1 page), adopted on December 8, 1998.

(F) City of Chandler, Arizona.

(*1*) Resolution No. 2672; A Resolution of the City Council of the City of Chandler, Arizona To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 16 pages), adopted on August 14, 1997.

(*2*) Resolution No. 2929; A Resolution of the City Council of the City of Chandler, Arizona, To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 9 pages), adopted on October 8, 1998.

(G) City of El Mirage, Arizona.

(*1*) Resolution No. R97–08–20; Resolution To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 8 pages), adopted on August 28, 1997.

(*2*) Resolution No. R98–08–22; A Resolution of the Mayor and Common Council of the City of El Mirage, Arizona, Amending Resolution No. R98–02–04 To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 5 pages), adopted on August 27,1998.

(*3*) Resolution No. R98–02–04; A Resolution To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 5 pages), adopted on February 12,1998.

(H) Town of Fountain Hills, Arizona.

(*1*) Resolution No. 1997–49; A Resolution of the Common Council of the Town of Fountain Hills, Arizona, Adopting the MAG 1997 Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area and Committing to Certain Implementation Programs (including Exhibit B, 5 pages and cover), adopted on October 2, 1997.

(*2*) Town of Fountain Hills Resolution No. 1998–49; Resolution To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 7 pages), adopted on October 1, 1998. [**Incorporation Note:** Incorporated materials are pages 4 to 10 of the 11-page resolution package; pages 1 and 2 are cover sheets with no substantive content and page 11 is a summary of measures previously adopted by the Town of Fountain Hills.]

(I) Town of Gilbert, Arizona.

(*1*) Resolution No. 1817; A Resolution of the Common Council of the Town of Gilbert, Maricopa County, Arizona, Authorizing the Implementation of the MAG 1997 Serious Area Particulate Plan for PM–10 and the MAG Serious Area Carbon Monoxide Plan for the Maricopa County Area (including 15 pages of attached material), adopted on June 10, 1997.

(*2*) Resolution No. 1864; A Resolution of the Common Council of the Town of Gilbert, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Attachment A, 5 pages), adopted on November 25, 1997. [**Incorporation note:** Attachment A is referred to as Exhibit A in the text of the Resolution.]

(*3*) Ordinance 1066; An Ordinance of the Common Council of the Town of Gilbert, Arizona Amending the Code of Gilbert by Amending Chapter 30 *Environment*, by adding New Article II *Fireplace Restrictions* Prescribing Standards for Fireplaces, Woodstoves, and Other Solid-Fuel Burning Devices in New Construction; Providing for an Effective Date of January 1, 1999; Providing for Repeal of Conflicting Ordinances; Providing for Severability (3 pages), adopted on November 25, 1997.

(*4*) Resolution No. 1939: A Resolution of the Common Council of the Town of Gilbert, Arizona, Expressing its Commitment to Implement Measures in

the Maricopa Association of Governments (MAG) 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Attachment A, 5 pages), adopted on July 21, 1998. [**Incorporation note:** Attachment A is referred to as Exhibit A in the text of the Resolution.]

(J) City of Glendale, Arizona.

(*1*) Resolution No. 3123 New Series; A Resolution of the Council of the City of Glendale, Maricopa County, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 20 pages), adopted on June 10, 1997.

(*2*) Resolution No. 3161 New Series; A Resolution of the Council of the City of Glendale, Maricopa County, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 6 pages), adopted on October 28, 1997.

(*3*) Resolution No. 3225 New Series; A Resolution of the Council of the City of Glendale, Maricopa County, Arizona, Implementing Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 9 pages), adopted on July 28, 1998.

(K) City of Goodyear, Arizona.

(*1*) Resolution No. 97–604 Carbon Monoxide Plan; A Resolution of the Council of the City of Goodyear, Maricopa County, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 21 pages), adopted on September 9. [**Incorporation note:** Adoption year not given on the resolution but is understood to be 1997 based on resolution number.]

(*2*) Resolution No. 98–645; A Resolution of the Council of the City of Goodyear, Maricopa County, Arizona, Implementing Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Attachment III, 7 pages), adopted on July 27, 1998.

(L) City of Mesa, Arizona.

(*1*) Resolution No. 7061; A Resolution of the City Council of the City of Mesa, Maricopa County, Arizona, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 13 pages plus index page), adopted on June 23, 1997.

(*2*) Resolution No. 7123; A Resolution of the City Council of the City of Mesa, Maricopa County, Arizona, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 10 pages), adopted on December 1, 1997.

(*3*) Resolution No. 7360; A Resolution of the City Council of the City of Mesa, Maricopa County, Arizona, to Implement Measures in the MAG Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 8 pages), adopted on May 3, 1999.

(*4*) Ordinance No. 3434; An Ordinance of the City Council of the City of Mesa, Maricopa County, Arizona, Relating to Fireplace Restrictions Amending Title 4, Chapter 1, Section 2 Establishing a Delayed Effective Date; and Providing Penalties for Violations (3 pages), adopted on February 2, 1998.

(M) Town of Paradise Valley, Arizona.

(*1*) Resolution Number 913; A Resolution of the Town of Paradise Valley, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 9 pages), adopted on October 9, 1997.

(*2*) Resolution Number 945; A Resolution of the Mayor and Town Council of the Town of Paradise Valley, Arizona, to Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 5 pages), adopted on July 23, 1998.

(*3*) Ordinance Number 454; An Ordinance of the Town of Paradise Valley, Arizona, Relating to Grading and Dust Control, Amending Article 5–13 of the Town Code and Sections 5–13–1 Through 5–13–5, Providing Penalties for Violations and Severability (5 pages), adopted on January 22, 1998. [**Incorporation note:** There is an error in the ordinance's title, ordinance amended only sections 5–13–1 to 5–13–4; see section 1 of the ordinance.]

(*4*) Ordinance Number 450; An Ordinance of the Town of Paradise Valley, Arizona, Adding Section 5–1–7 to the Town Code Relating to Clean-Burning Fireplaces, Providing Penalties for Violations (3 pages), adopted on December 18, 1997.

(N) City of Peoria, Arizona.

(*1*) Resolution No. 97–37; A Resolution of the Mayor and Council of the City of Peoria, Arizona, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibits A, 5 pages, and B, 19 pages), adopted on June 17, 1997.

(*2*) Resolution No. 97–113; A Resolution of the Mayor and Council of the City of Peoria, Arizona, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area and Directing the Recording of This Resolution with the Maricopa County Recorder and Declaring an Emergency (including Exhibit A, 8 pages plus index page), adopted on October 21, 1997.

(*3*) Resolution No. 98–107; A Resolution of the Mayor and Council of the City of Peoria, Arizona, to Approve and Authorize the Acceptance to Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 7 pages), adopted on July 21, 1998.

(O) City of Phoenix, Arizona.

(*1*) Resolution No. 18949; A Resolution Stating the City's Intent to Implement Measures to Reduce Air Pollution (including Exhibit A, 19 pages), adopted on July 2, 1997.

(*2*) Resolution No. 19006; A Resolution Stating the City's Intent to Implement Measures to Reduce Air Pollution (including Exhibit A, 13 pages), adopted on November 19, 1997.

(*3*) Ordinance No. G4037; An Ordinance Amending Chapter 39, Article 2, Section 39–7 of the Phoenix City Code by Adding Subsection G Relating to Dust Free Parking Areas; and Amending Chapter 36, Article XI, Division I, Section 36–145 of the Phoenix City Code Relating to Parking on Non-Dust Free Lots, adopted on July 2, 1997 (5 pages).

(*4*) Resolution No. 19141; A Resolution Stating the City's Intent to Implement Measures to Reduce Particulate Air Pollution (including Exhibit A, 10 pages), adopted on September 9, 1998.

(*5*) Ordinance No. G4062; An Ordinance Amending the Phoenix City Code By Adding A New Chapter 40 ''Environmental Protections,'' By Regulating Fireplaces, Wood Stoves and Other Solid-Fuel Burning Devices and Providing that the Provisions of this Ordinance Shall Take Effect on December 31, 1998 (5 pages), adopted on December 10, 1997.

(P) Town of Queen Creek, Arizona.

(*1*) Resolution 129–97; A Resolution of the Town Council of the Town of Queen Creek, Maricopa County, Arizona to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 3 pages), adopted on June 4, 1997.

(*2*) Resolution 145–97; A Resolution of the Town Council of the Town of

Queen Creek, Maricopa County, Arizona to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 1 page), adopted on November 5, 1997.

(*3*) Resolution 175–98; A Resolution of the Town Council of the Town of Queen Creek, Maricopa County, Arizona to Implement Measures in the MAG 1998 Serious Area Particulate Plan for the Maricopa County Area (including Exhibit A, 9 pages), adopted on September 16, 1998.

(Q) City of Scottsdale, Arizona.

(*1*) Resolution No. 4864; A Resolution of the City of Scottsdale, Maricopa County, Arizona, To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area: Stating the Council's Intent to Implement Certain Control Measures Contained in that Plan (including Exhibit A, 21 pages), adopted on August 4, 1997.

(*2*) Resolution No. 4942; Resolution of the Scottsdale City Council To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 13 pages), adopted on December 1, 1997.

(*3*) Resolution No. 5100; A Resolution of the City of Scottsdale, Maricopa County, Arizona, To Strengthen Particulate Dust Control and Air Pollution Measures in the Maricopa County Area (including Exhibit A, 10 pages), adopted on December 1, 1998.

(R) City of Surprise, Arizona.

(*1*) Resolution No. 97–29; A Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 4 pages), adopted on June 12, 1997.

(*2*) Resolution No. 97–67; A Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 3 pages), adopted on October 23, 1997.

(*3*) Resolution No. 98–51; A Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 6 pages), adopted on September 10, 1998.

(s) City of Tempe, Arizona.

(*1*) Resolution No. 97.39; Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 18 pages), adopted on June 12, 1997.

(*2*) Resolution No. 97.71, Resolution of the Council of the City of Tempe Stating Its Intent to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 6 pages), adopted on November 13, 1997.

(*3*) Resolution No. 98.42, Resolution of the Council of the City of Tempe Implementing Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 8 pages), adopted on September 10, 1998.

(T) City of Tolleson, Arizona.

(*1*) Resolution No. 788, A Resolution of the Mayor and City Council of the City of Tolleson, Maricopa County, Arizona, Implementing Measures in the Maricopa Association of Governments (MAG) 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 12 pages), adopted on June 10, 1997.

(*2*) Resolution No. 808, A Resolution of the Mayor and City Council of the City of Tolleson, Maricopa County, Arizona, Implementing Measures in the Maricopa Association of Governments (MAG) 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A), adopted on July 28, 1998.

(*3*) Ordinance No. 376, N.S., An Ordinance of the City of Tolleson, Maricopa County, Arizona, Amending Chapter 7 of the Tolleson City Code by Adding a New Section 7–9, Prohibiting the Installation or Construction of a Fireplace or Wood Stove Unless It Meets the Standards Set Forth Herein (including Exhibit A, 4 pages), adopted on December 8, 1998.

(U) Town of Wickenburg, Arizona.

(*1*) Resolution No. 1308, Resolution To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 4 pages), adopted on August 18, 1997.

(V) Town of Youngtown, Arizona.

(*1*) Resolution No. 97–15, Resolution To Implement Measures in the MAG 1997 Serious Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 4 pages), adopted on September 18, 1997.

(*2*) Resolution No. 98–15: Resolution To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 8 pages), adopted on August 20, 1998.

(*3*) Resolution No 98–05: Resolution Stating Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution (including Exhibit A, 2 pages), adopted February 19, 1998.

(W) Maricopa County, Arizona.

(*1*) Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1A998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 16 pages), adopted on June 25, 1997. [**Incorporation note:** ''1A998'' error in the original.]

(*2*) Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 9 pages), adopted on November 19, 1997.

(*3*) Resolution to Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 10 pages), adopted on February 17, 1999.

(*4*) Resolution to Implement Measures in the MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 10 pages), adopted on December 15, 1999.

(X) Arizona Department of Transportation, Phoenix, Arizona.

(*1*) Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 24 pages plus index page), adopted on June 20, 1997.

(*2*) Resolution to Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 8 pages), adopted on July 17, 1998.

(Y) Regional Public Transportation Authority, Phoenix, Arizona.

(*1*) Resolution #9701: Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 23 pages), adopted on June 12, 1997.

(Z) State of Arizona.

(*1*) Arizona Revised Statute Section 49–542(F)(7) as added in Section 31 of Arizona Senate Bill 1002, 42nd Legislative Session, 7th Special Session (1996), approved by the Governor July 18, 1996.

(101) Plan revisions submitted on March 2, 2000, by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 310 revised on February 16, 2000.

(*2*) Rule 310.01 adopted on February 16, 2000.

(*3*) Appendix C revised on February 16, 2000.

(102) Plan revisions submitted on January 8, 2002, by the Governor's designee.

(i) Incorporation by reference.

(1) Maricopa County, Arizona.

(*1*) Resolution to Update Control Measure 6 in the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 2 pages), adopted on December 19, 2001.

* * * * *

3. Section 52.123 is amended by removing and reserving paragraph (f)(1)(i)and adding paragraph (j) to read as follows:

§ 52.123 Approval status.

* * * * *

(j) The Administrator is approving the following elements of the Metropolitan Phoenix PM–10 Nonattainment Area Serious Area PM–10 Plan as contained in *Revised Maricopa Association of Governments 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area,* February 2000, submitted February 16, 2000 and *Maricopa County PM–10 Serious Area State Implementation Plan Revision, Agricultural Best Management Practices (BMP),* ADEQ, June 2000, submitted on June 13, 2001:

(1) 1994 Base year emission inventory pursuant to Clean Air Act section 172(c)(3).

(2) The Provisions for implementing on all significant source categories reasonably available control measures (except for agricultural sources) and best available control measures for the annual and 24-hour PM–10 NAAQS pursuant to section Clean Air Act sections 189(a)(1)(c) and 189(b)(1)(b)).

(3) The demonstration of the impracticability of attainment by December 31, 2001 for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 189(b)(1)(A)(ii).

(4) The demonstration of attainment by the most expeditious alternative date practicable for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 189(b)(1)(A)(ii).

(5) The demonstration of reasonable further progress for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 172(c)(2).

(6) The quantitative milestones for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 189(c).

(7) The inclusion of the most stringent measures for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 188(e).

(8) The demonstration that major sources of PM–10 precursors do not contribute significantly to violations for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 189(e).

(9) The contingency measures for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 172(c)(9).

(10) The transportation conformity budget for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 176(c).

(11) The provisions for assuring adequate resources, personnel, and legal authority to carry out the plan for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 110(a)(2)(E)(i).

§ 52.124 [Amended]

4. Section 52.124 is amended by removing and reserving paragraphs (b) and (c).

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