### Unfunded Mandates Reform Act and Enhancing the Intergovernmental Partnership

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This final rule will not impose an unfunded mandate.

### Taking of Private Property

This final rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this final rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

### Environment

We considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lC, the rule is categorically excluded from further environmental documentation. The rule merely adjusts the fees charged to owners of undocumented vessels for issuing vessel's numbers and validation stickers. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 173

Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 173 as follows:

## PART 173–VESSEL NUMBERING AND CASUALTY AND ACCIDENT REPORTING

1. Revise the citation of authority for Part 173 to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2110, 6101, 12301, 12302; OMB Circular A–25; 49 CFR 1.46.

2. Revise § 173.85 to read as follows:

**§ 173.85 Fees levied by the Coast Guard.**

a. In a State where the Coast Guard is the issuing authority, the fees for issuing certificates of number are:

(1) Original or transferred certificate of number and two validation stickers—$24.

(2) Renewed certificate of number and two validation stickers—$16.

(3) Duplicate certificate of number—$9.

(4) Replacement of lost or destroyed validation stickers—$9.

(b) Fees are payable by check or money-order made payable to the ''U.S. Coast Guard''; by major credit card (MasterCard or Visa); or, when the owner applies in person, in cash.

Dated: June 24, 1999.

**Ernest R. Riutta,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.*

[FR Doc. 99–17053 Filed 7–2–99; 8:45 am]

BILLING CODE 4910–15–U

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[AZ–005–ROP; FRL–6371–2]**

## Approval and Promulgation of Implementation Plans; Phoenix, Arizona Ozone Nonattainment Area, Revision to the 15 Percent Rate of Progress Plan

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

**ACTION:** Final rule.

**SUMMARY:** EPA is making minor changes to its 1998 15 percent rate of progress federal implementation plan (1998 FIP) for the metropolitan Phoenix (Arizona) ozone nonattainment area. The 1998 FIP contains a demonstration that the Phoenix metropolitan area has in place sufficient measures to meet the 15 percent rate of progress (ROP) requirement in the Clean Air Act. This action does not alter the basic conclusion in the 1998 FIP that the Phoenix metropolitan area has met the 15 percent ROP requirement as soon as practicable.

**EFFECTIVE DATE:** August 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 744–1248, wicher.frances@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction and Background Information

EPA is making minor changes to its 1998 15 percent rate of progress federal implementation plan (1998 15 percent ROP FIP or 1998 FIP) for the metropolitan Phoenix (Arizona) ozone nonattainment area. We proposed this action on March 26, 1999 at 64 FR 14659 (Reference 1).

Specifically, we are changing the control strategy (that is, the list of control measures) that makes up the basis for the 15 percent ROP demonstration for the Phoenix area by deleting the National Architectural Coatings Rule and adding phase II of Arizona's Clean Burning Gasoline (CBG) program to the control strategy in the 1998 FIP. Neither of these changes affects our basic conclusion in the 1998 15 percent ROP FIP that the Phoenix metropolitan area has in place sufficient measures to meet the 15 percent rate of progress requirement in CAA section 182(b)(1) as soon as practicable. Therefore, we are not making any changes to the language in the Code of Federal Regulations noting that we have determined that the Phoenix area has demonstrated the 15 percent ROP. See 40 CFR 52.123(g). We are making these changes under our federal planning authority in CAA section 110(c).

We are also clarifying that the transportation conformity budget for the Phoenix ozone nonattainment area is 87.1 metric tons of VOC per ozone season average day.

We describe in detail the Clean Air Act's 15 percent ROP requirement, the 1998 FIP, and our proposed revisions to the 15 percent plan and the transportation conformity budget in the proposal and in the Technical Support Document (TSD) for this action (Reference 2). We also discuss in the proposal and the TSD our interpretation of the CAA section 172(c)(9) requirement for contingency measures and our policies for implementing this requirement. We will not repeat this information here. Readers interested in this information should consult the proposal and the TSD. We devote the majority of this preamble to summarizing our responses to the most significant comments received on the proposal.

## II. Summary of EPA's Response to Comments Received on the Proposal

We received three comment letters on the proposal. The Arizona Department of Environmental Quality (ADEQ) supported the revisions to the 15 percent ROP FIP as well as our interpretation of the Clean Air Act's contingency measure requirement. No response to ADEQ's letter is necessary.

The Maricopa Association of Governments (MAG) requested that we clarify certain issues regarding the revised transportation conformity budget. We have made the requested clarifications in the section on the conformity budget later in this preamble and discuss them more fully in section VI.B. of the TSD.

Finally, the Arizona Center for Law in the Public Interest (ACLPI) commented on the proposed revisions to the 15 percent ROP demonstration and our interpretation of the contingency measure requirement. A summary of our responses to ACLPI's most significant comments follows. We provide our complete responses to all of ACLPI's comments in section VI.A. of the TSD.

### *A. Comments on the Revisions to the 15 Percent ROP Demonstration*

*Comment:* ACLPI contends that we have failed to propose additional control measures to make up the shortfall in the 15 percent ROP demonstration as we said we would do in our motion for voluntary remand in *Aspegren* v. *Browner,* No. 98–70824, a petition to review certain aspects of the 1998 FIP. ACLPI filed the petition on behalf of several Phoenix area residents in the U.S. Court of Appeals for the Ninth Circuit.

*Response:* The control strategy in the 1998 FIP included three proposed national rules for various categories of consumer and commercial products. When issued in September, 1998, the final rules resulted in slightly fewer emission reductions than we had estimated in the 1998 FIP.

In our motion for voluntary remand we stated that we would consider the effect of the final national rules on the 15 percent ROP demonstration for Phoenix, determine if additional control measures are needed to assure expeditious attainment of the 15 percent ROP goal in the area, and promulgate additional measures only if we determined that additional measures were needed. See *Aspegren,* paragraph 10, Motion for Voluntary Remand, October 29, 1998. As discussed below, we have done exactly that. Furthermore, the statement in our motion merely restates our Clean Air Act obligation under section 110(c) of the Act to demonstrate that the Phoenix area continues to meet, as expeditiously as practicable, the requirements of section 182(b)(1)(a) for a 15 percent ROP. That obligation, and moreover our authority, for this action are limited to making this demonstration and are not affected by statements of intent in our motion for voluntary remand.

We have evaluated the effect of the final national rules on the 15 percent ROP demonstration for the Phoenix area and determined that these rules result in a loss of 1 metric ton per day from the 15 percent ROP plan as of April 1, 1999. We have replaced these lost emission reductions in the ROP analysis by revising the control strategy in the 15 percent ROP plan to include emission reductions from the second phase of Arizona's Cleaner Burning Gasoline (CBG) program. The second phase of the CBG program did not go into effect until May 1, 1999, one month after the demonstration date in the 1998 FIP. Thus, with this revision, the demonstration date for the 15 percent ROP goal moves from April 1 to the CBG-phase II start date of May 1, 1999.

Even though there is now a shortfall as of the old April 1 demonstration date, the Clean Air Act does not require us to promulgate additional measures if we can still show that the 15 percent ROP goal is being met as expeditiously as practicable. We have, in fact, shown that May 1, 1999 is the most expeditious date by which the 15 percent ROP goal can now be met in the Phoenix area and that all the control measures necessary to meet this goal are already in place. See the proposal at page 14661. We, therefore, have met our Clean Air Act obligation.

*Comment:* ACLPI notes that in our revised FIP proposal we are giving additional credit to Arizona's CBG rule and claims that we stated in our 1998 FIP proposal that if we approved the CBG program in lieu of the federal reformulated gasoline program (RFG) we would give it the same amount of credit. ACLPI quotes language from the proposal (at page 3690) in which we stated that emission reductions from an approved CBG program that exceeded those from federal RFG ''may be used by the State in any future rate-of-progress demonstrations.'' ACLPI claims that we do not explain this policy reversal to credit the CBG program with more emission reductions and that failure to provide an explanation is arbitrary, capricious and an abuse of discretion.

*Response:* We fully explain in the proposal for this rule the source of the additional reductions from the State's CBG program. See the proposal at page 14661. To summarize, in the 1998 FIP, we only credited phase I of the two-phased federal reformulated gasoline (RFG) program in the 15 percent ROP demonstration. See table 5 on page 3690 of the proposed 1998 FIP (Reference 3). Arizona's CBG program is also a two-phased program. Phase I of the State program was implemented last year, and for the purposes of the 1998 FIP, we considered it equivalent to phase I of the federal RFG program.

The second phase of the CBG program is similar to the more stringent phase II federal RFG program—a program we did not credit in the 1998 FIP. When phase II CBG went into effect on May 1, 1999, it generated an additional 2 metric tons per day (mtpd) in reductions over the reductions from phase I of the State program. Since we did not credit phase II of either the federal or State program in the 1998 FIP, this 2 mtpd reduction is new to the 15 percent ROP plan and does not duplicate reductions already accounted for in the plan. More simply, these are new reductions from a new program which first went into place in May, 1999.

The statement from the 1998 FIP proposal that ACLPI quotes was not a policy statement; rather it was simply intended to indicate to the State and others that any excess emission reduction credits could be used in future ROP demonstrations. As such, it is not a policy declaration from which we need to explain a deviation as required by the Court in the case cited by ACLPI (*Western States Petroleum Ass'n.* v. *EPA,* 87 F.3d 280 (9th Cir. 1996)). Further, it is still true that any excess reductions can be applied to future ROP demonstration.

*Comment:* ACLPI claims that we still fail to make the ''as soon as possible'' showing by refusing to consider other control measures that could be implemented to achieve the 15 percent milestone before May 1, 1999. ACLPI also notes that the issue will be moot by the time we finalize the proposed revisions to the FIP because May 1, 1999 will have passed.

*Response:* Contrary to ACLPI's claim, we did make the ''as soon as practicable'' demonstration in the proposed revision to the FIP. Our demonstration was simple because less than two months separated the proposal in mid-March, 1999 and the revised demonstration date of May 1, 1999. As we stated in the proposal at page 14661, ''[t]his time period is so short that we cannot complete this rulemaking prior to May 1, 1999 and still provide an adequate period for the public to comment and then for sources to comply with any new rules.'' Based on

this reasoning, we concluded that there are no other measures available for the Phoenix area that could meaningfully advance the date by which the 15 percent ROP is demonstrated. See the proposal at page 14662.

ACLPI fails to identify the ''other control measures that could be implemented to achieve the 15 percent milestone before May 1, 1999'' that it claims we are refusing to consider. Without this specific information, we are unable to determine the validity of their claim and cannot further respond to their comment. We believe, however, that we have considered all practicable and available controls and found none that could have advanced the May 1 demonstration date.

We agree with ACLPI that the issue is now moot because the May 1 date has passed.

*B. ACLPI's Comments on the Section 172(c)(9) Contingency Measures*

*Comment:* ACLPI disputes our position that the contingency measure requirement only pertains to nonattainment area plans as a whole and not specifically to the 15 percent ROP provision of the nonattainment plan. ACLPI states that our position ignores the plain language of the Act that section 172(c) applies to all nonattainment plan provisions.

*Response:* In the proposal and TSD, we respond to similar assertions made by ACLPI in its brief for the *Aspegren* petitioners. Please see page 14662 of the proposal and pages 20–22 of the TSD. We add the following to our previous response.

We do not agree that the contingency measure requirement in section 172(c)(9) pertains specifically to the 15 percent ROP requirement. We believe a better reading of the Act is that contingency measures are required as part of the overall nonattainment plan and not as a feature of each component part of that plan, such as the 15 percent ROP plan.

Under the CAA, a nonattainment plan is a compendium of elements that together provide for progress toward and expeditious attainment of the air quality standards in an area. Within an area's nonattainment plan, the section 172(c)(9) contingency measures serve as the first remedial step in addressing a failure of the area actually to make the required progress or to attain by the required date. Thus, we believe that a failure in any plan element that results in an area not making the required progress or not attaining triggers the contingency measures. In contrast, tying the contingency measures to a failure in a specific provision of the nonattainment plan—e.g., the 15 percent ROP provision—would too narrowly limit the conditions for their implementation, thereby weakening their remedial role in assuring an area's overall progress toward and expeditious attainment of the air quality standards.

A requirement for inclusion of contingency measures in the 15 percent ROP plan would make sense if a disapproval of the plan under section 182(b)(1)(A) for failure to provide for a 15 percent ROP triggered the contingency measures. It does not. The consequences of a 15 percent ROP plan disapproval are sanctions under section 179(a) and FIPs under section 110(c) unless the state revises the plan to make it approvable.

A requirement to include contingency measures in ROP plans would also make sense if the only way to ensure that states developed and submitted adequate contingency measures were to incorporate the requirement into another nonattainment area provision. Contingency measures, however, are a required submittal directly under the Act, and a state's failure to submit approvable contingency measures is by itself subject to the Act's sanctions and FIP provisions.

Contrary to ACLPI's contention, our position is supported by the plain language of section 172(c)(9). While the other subsections in section 172(c) begin with ''such *plan provisions* shall * * *'', section 172(c)(9) begins with ''such *plan* shall. * * *'' (emphasis added). ''Such plan'' refers to the overall nonattainment plan rather than an individual element or provision of it. This difference in language between the contingency measures requirement and the other requirements in section 172(c) emphasizes that the contingency measures serve to backstop the entire nonattainment plan and not just particular elements of it.

Moreover, our position is supported by the trigger for implementing contingency measures in section 172(c)(9) itself. The section 172(c)(9) contingency measures are not triggered by failures of the ROP or attainment plan to actually provide RFP or attainment; they are triggered by the failure of an area to actually make reasonable further progress or to attain by its required deadline.

This distinction between a plan's failure and an area's failure is not trivial. To determine if a plan succeeded or failed, one only reviews the current status of the measures and assumptions in that plan. In other words, the plan is evaluated in isolation without regard to other factors that may influence emissions and air quality in an area, such as economic and population growth and sources violating air quality rules.

In contrast, to determine if an area succeeded or failed to meet its ROP milestone, one determines if current emissions in the area are at or below the ROP target level. See *General Preamble* at page 13509. To do this, one looks at the current status of all in-place, real, permanent and enforceable controls—even those not relied on in or anticipated by the 15 percent ROP plan—and current socio-economic data to calculate a whole new inventory of actual emissions. In other words, all factors that influence emissions in an area are taken into account. The original ROP plan is referenced only to obtain the target emissions level. See the *General Preamble* at pages 13504 and 13518 (Reference 5).

The determination of whether an area attained or failed to attain is even more simple; only ambient air quality data is examined. The status of the attainment demonstration plan is not reviewed at all. See *General Preamble* at page 13506.

Because the trigger for implementing contingency measures in section 172(c)(9) is thus independent of the success or failure of any particular plan provision, it follows that the contingency measures are also independent of any particular plan provision. They are elements of the overall nonattainment plan, serving its purpose of ''eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of these standards.'' Section 176(c)(1)(A) of the Clean Air Act.

We emphasize that the above discussion addresses only the circumstances for triggering contingency measures. Under the Act, states are required to implement the non-contingent provisions of their SIPs regardless of whether they meet a milestone or attain. If a state determines that a SIP measure is no longer needed to meet the Act's requirements, it must request and EPA must approve a SIP revision, consistent with section 110(l), to remove the measure before the state is relieved of its statutory obligation to implement it.

*Comment:* ACLPI continues to claim that EPA's guidance documents clearly recognize that contingency measures must be included in a 15 percent ROP plan submittal and asserts that our ''attempt to reinterpret our guidance is unpersuasive.'' ACLPI provides, as an example, our explanation in the proposal that the term ''rate-of-progress plan'' in the EPA document *Guidance for Growth Factors* (Reference 4) is a

compact reference to all the submittals due on November 15, 1993 and not just the 15 percent ROP plans. ACLPI also claims that we have ignored that this guidance document specifically defines the term ''rate-of-progress plan'' as that part of the SIP revision due November 15, 1993 ''which describes * * * how the areas will achieve an actual [VOC] emissions reduction of at least 15 percent.''

*Response:* The first paragraph of the Executive Summary in the *Guidance for Growth Factors* contains a short definition of ''rate-of-progress plan.'' The full definition of the term is in Appendix A to the document. In Appendix A, the rate-of-progress plan is defined as ''the *portion of the SIP revision due by November 15, 1993,* that describes how moderate and above ozone nonattainment areas plan to achieve the 15 percent VOC emissions reduction.'' (Emphasis added). This definition goes on to note that ''[a]ll moderate intrastate areas that choose to utilize the EKMA [air quality model], are also required to include their attainment demonstration in this SIP revision.''

This definition makes clear that the ROP plan is only a portion of a larger SIP revision due by November 15, 1993. It is also clear that another part of that SIP revision, separate from the ROP plan, is the attainment demonstration for certain moderate nonattainment areas.

With this definition in mind, we return to the Executive Summary. As noted by ACLPI in its comments, the attainment demonstration is also distinguished here from the rate-of-progress plan. However, right after this distinction is made, the following statement is made:

> States must submit their fully adopted rate-of-progress plans to EPA by November, 1993. Moderate ozone nonattainment areas not using [the Urban Airshed Model] must include an attainment demonstration *in their fully adopted rate-of-progress plans.*

(Emphasis added).

As a distinct requirement, these attainment demonstrations, cannot logically be in the ROP plans. Therefore, the term ''rate-of-progress plan'' as used in this statement cannot have the meaning given to it just a few paragraphs before in the Executive Summary and in Appendix A. The only meaning that does make sense here is the one we have suggested: it is a compact reference to all the submittals due on November 15, 1993.

Knowing that the exact meaning of the term ''rate-of-progress plan'' in the *Guidance for Growth Factors* is dependent on the context, we now evaluate the statement that ACLPI claims proves we consider contingency measures as a required element of 15 percent ROP plans. This statement is from the last paragraph of the Executive Summary of the *Guidance for Growth Factors:*

> In addition, this document describes the requirements for contingency measures that must be included in the rate-of-progress plans for moderate and above ozone nonattainment areas, and provides examples of possible contingency measures.

Read together with the very similar statement on attainment demonstrations discussed above, the clause ''included in the rate-of-progress plans'' is clearly intended to mean ''a part of the overall set of plans submitted at the same time as the rate-of-progress plans'' that is, submitted by November 15, 1993. Given this reading, this statement becomes consistent with every other piece of EPA guidance on the section 172(c)(9) contingency measures for ozone nonattainment areas: they were a separate and distinct part of the overall SIP submittal due in November, 1993.

EPA's basic guidance on ozone contingency measures is found in the *General Preamble* at page 13510 and in Chapter 9 of *Guidance for Growth Factors.* A close reading of this guidance discloses that the primary connection made between the requirement in section 182(b)(1)(A) for 15 percent ROP plans and the requirement in section 172(c)(9) for contingency measures is the identical submittal date. This guidance is clear that we consider the contingency measures to be a separate statutory requirement that we can act on independently from the 15 percent ROP plan.

EPA's purpose in issuing guidance is to provide the states and the general public with advance notice of how it will generally interpret the Act's requirements. See General Preamble at 13498. We actually apply these interpretations at the time we act on SIP revisions (or promulgate FIPs). Therefore, if there is any question about the meaning of EPA's guidance on 15 percent ROP plans and contingency measures, it can best be answered by reviewing just how we have applied the guidance in actual rulemakings on 15 percent ROP plans.

Nationally, we have taken final action on 32 separate 15 percent ROP plans (including the Phoenix FIP) in 24 different rulemakings. See Appendix B to the TSD for a complete listing. In 16 of these rulemakings (two-thirds of the total), we acted on the 15 percent ROP plans without concurrently acting on the contingency measures. If we considered the 15 percent ROP plan and the contingency measures elements of the same requirement, then we could not have acted on either without acting on both.

In the other 8 rulemakings, we did act on the contingency measures concurrently with the 15 percent plan. In many of these instances, the State voluntarily chose to use the excess emission reductions in its 15 percent ROP plan to satisfy its contingency measure requirement. For these rulemakings, we did look at the merits of the ROP plan, most specifically, at the claim of excess emission reductions, to determine the approvability of the contingency measures. Conversely, we did not look at the approvability of the contingency measures to determine the approvability of the 15 percent ROP plan. In all the other cases, we treated the contingency measures and the 15 percent ROP plans as strictly separate requirements and did not link the approvability of one to the presence or approvability of the other.

ACLPI dismisses this rulemaking record as ''utterly irrelevant'' and not negating our previous actions with respect to Arizona or the clear import of our guidance. We have already discussed our guidance and the fact that it does not require contingency measures in complete and approvable 15 percent plans. Since the guidance at issue is guidance applicable to every 15 percent plan in the country, the fact that we have consistently applied it to the same effect is clearly relevant to determining the appropriate interpretation of our guidance. Equally, neither of our two final actions on Arizona's 15 percent ROP plans—the 1998 FIP and today's action—have included contingency measures.

## III. The New Transportation Conformity Budget For VOCS

Under EPA's conformity rule, we identify a transportation conformity budget whenever we approve any control strategy plan, such as the 15 percent ROP plan, into the SIP. See 40 CFR 93.118(e)(4)(iii). This requirement also applies when we promulgate a control strategy in a FIP as we are doing today.

We are identifying a transportation conformity budget for the Phoenix ozone nonattainment area of 87.1 metric tons of VOC per ozone season average day. The analysis supporting identification of this budget can be found in section V.B. of the TSD. This budget is for 1996 and reflects all on-road mobile source control measures that are included in the 15 percent ROP control strategy.

After the effective date of this action, all transportation actions taken in the Phoenix ozone nonattainment area that are required to show conformity to a budget under Clean Air Act section 176(c) and EPA's conformity rule in 40 CFR part 93 must conform to the budget established by this rule. This transportation conformity budget is based in part on a number of SIP-approved transportation control measures (TCMs)(including the Arizona's vehicle emission inspection program and the Cleaner Burning Gasoline program). Any future ozone conformity determinations must also demonstrate the expeditious implementation of these TCMs as well as any other SIP-approved TCMs for ozone.

Once effective, the transportation conformity budget established by this rule will be the only approved and applicable transportation conformity budget for ozone in the Phoenix nonattainment area. Previous ozone budgets, whether submitted by Arizona or promulgated by EPA in the 1998 FIP, will no longer be valid for transportation conformity determinations because we have not found any State-submitted budgets to be adequate for use under our conformity rule and because we are replacing the budget in the 1998 FIP.

## IV. Statement of Final Action

Under our authority in CAA section 110(c) and for the reasons discussed in the March 26, 1999 proposal, EPA determines that the Phoenix metropolitan area has in place sufficient control measures to meet the 15 percent rate of progress requirement in CAA section 182(b)(1)(A) as soon as practicable. This determination is based on our analysis of the effect of the control measures listed in Table 2 of the proposal on emissions in the Phoenix area.

Consistent with CAA section 176(c) and 40 CFR part 93 and under our authority in section 110(c), we are also identifying a transportation conformity budget for the Phoenix ozone nonattainment area of 87.1 metric tons of VOC per ozone season average day.

## V. Administrative Requirements

### *A. Executive Order 12866*

Under Executive Order 12866, (58 FR 51735; October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### *B. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure of $100 million or more in any one year by state, local, and tribal governments, in aggregate, or by the private sector. Section 203 requires EPA to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

This rule does not include a Federal mandate and will not result in any expenditures by State, local, and tribal governments or the private sector. Therefore, EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because it simply revises a demonstration based on previously established requirements and contains no additional requirements applicable to small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### *D. Paperwork Reduction Act*

This rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

### *E. Applicability of Executive Order 13045: Children's Health Protection*

This rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not economically significant under E.O. 12866 and it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

### *F. Executive Order 12875: Enhancing Intergovernmental Partnerships*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' This rule does not create a mandate on State, local or tribal governments nor impose any enforceable duties on these entities. Accordingly, the requirements of

section 1(a) of Executive Order 12875 do not apply to this rule.

*G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

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

This action neither creates a mandate nor imposes any enforceable duties on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*H. The National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This rule does not include any technical standards; therefore, EPA is not considering the use of any voluntary consensus standards.

*I. Submission to Congress and the General Accounting Office*

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

*J. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 7, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: June 28, 1999.

**Carol M. Browner,**

*Administrator.*

**References**

1. 64 FR 14659–14665 (March 26, 1999); *Approval and Promulgation of Implementation Plans; Phoenix, Arizona Ozone Nonattainment Area, Revisions to the 15 Percent Rate of Progress Plan;* Proposed rule.

2. Air Division, U.S. EPA, Region 9, ''Final Addendum to the Technical Support Document for the Notice of Final Rulemaking on the Clean Air Act Section 182(b)(1) 15 Percent Rate of Progress Requirement for the Phoenix Metropolitan Ozone Nonattainment Area,'' June 14, 1999.

3. 63 FR 3687–3693 (January 26, 1998); *Approval and Promulgation of Implementation Plans; Phoenix Arizona Ozone Nonattainment Area, 15 Percent Rate of Progress Plan and 1990 Base Year Emission Inventory;* Proposed rule.

4. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate of Progress Plans,* Office of Air Quality Planning and Standards, U.S. EPA. EPA–452/R–93–002, March 1993.

5. 57 FR 13498 (April 16, 1992). *State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.* General Preamble for future proposed rulemakings.

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[UT–001–0018; UT–001–0019; UT–001–0020; FRL–6368–8]**

## Approval and Promulgation of Air Quality Implementation Plans; Utah; Foreword and Definitions, Revision to Definition for Sole Source of Heat and Emissions Standards, Nonsubstantive Changes; General Requirements, Open Burning and Nonsubstantive Changes; and Foreword and Definitions, Addition of Definition for $PM_{10}$ Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** On March 26, 1999, EPA published a direct final and proposed rulemaking approving State Implementation Plan (SIP) revisions submitted by the Governor of the State of Utah. On July 11, 1994, the Governor submitted a SIP revision for the purpose of establishing a modification to the definition for ''Sole Source of Heat'' in UACR R307–1–1; this revision also made a change to UACR R307–1–4, ''Emissions Standards.'' On February 6, 1996, a SIP revision to UACR R307–1–2 was submitted by the Governor of Utah which contains changes to Utah's open burning rules, requiring that the local county fire marshal has to establish a 30-day open burning window in order for open burning to be allowed in areas outside of nonattainment areas. Other minor changes are made in this revision to UACR R307–1–2.4, ''General Burning'' and R307–1–2.5, ''Confidentiality of Information.'' In addition, on July 9, 1998, SIP revisions were submitted that would add a definition for ''$PM_{10}$ Nonattainment Area'' to UACR R307–1–1. This action is being taken under section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This final rule is effective August 5, 1999.