

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 June 14, 2005. 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. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 15, 2005. 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 7, 2005.

J.I. Palmer, Jr.,
Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, *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.*

■ 2. Section 52.570(e) is amended by adding a new entry in numerical order for "20. Severe Area Vehicle Miles Traveled (VMT SIP) for the Atlanta 1-hour severe ozone nonattainment area." to read as follows:

§ 52.570 Identification of Plan.

* * * * *

(e) EPA Approved Georgia Nonregulatory Provisions.

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approval date |
|--|--|-------------------------------------|---|
| 20. Severe Area Vehicle Miles Traveled (VMT SIP) for the Atlanta 1-hour severe ozone nonattainment area. | Atlanta 1-hour ozone severe non-attainment area. | June 30, 2004 | June 14, 2005. [Insert first page number of publication]. |

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ131-0088; FRL-7901-6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arizona; Redesignation of Phoenix to Attainment for the 1-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the Arizona Department of Environmental Quality's submittals of revisions to the Arizona state implementation plan that include substitution of the clean fuel fleet program requirement with the cleaner burning gasoline program, adoption of the 1-hour serious area ozone plan and adoption of the 1-hour ozone maintenance plan for the Phoenix metropolitan 1-hour ozone nonattainment area. We are also approving Arizona's request to redesignate the Phoenix metropolitan 1-

hour ozone nonattainment area from nonattainment to attainment. EPA is taking these actions pursuant to those provisions of the Clean Air Act that obligate the agency to take action on submittals of revisions to state implementation plans and requests for redesignation.

DATES: *Effective Date:* This rule is effective on June 14, 2005.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at EPA Region 9's Air Planning Office (AIR-2), 75 Hawthorne Street, San Francisco, CA 94105-3901. Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you.

Electronic Availability

This document and our proposed rule which was published in the **Federal Register** on March 21, 2005 are also available as electronic files on EPA's Region 9 Web Page at <http://www.epa.gov/region09/air/phoenixoz/index.html>.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (520) 622-1622, e-mail:

tax.wienke@epa.gov, or refer to <http://www.epa.gov/region09/air/phoenixoz/index.html>.

SUPPLEMENTARY INFORMATION:

Throughout this document, the terms "we," "us," and "our" mean U.S. EPA.

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I. Background

On March 21, 2005 (70 FR 13425), we published a notice of proposed rulemaking for the State of Arizona. The notice proposed approval of the State's submittals of revisions to the Arizona state implementation plan (SIP) for the Phoenix metropolitan 1-hour ozone nonattainment area and the State's redesignation request for this area from "nonattainment" to "attainment".

Specifically, we proposed approval of three sets of SIP revisions adopted and submitted to us by the Arizona Department of Environmental Quality (ADEQ). First, under sections 182(c)(4)(B) and 110(k)(3) of the Clean Air Act (CAA or "the Act"), we proposed to approve the State of Arizona's 1998 request to "opt-out" of the clean fuel fleet (CFF) program and to approve the cleaner burning gasoline

(CBG) program as a substitute measure. Second, we proposed to approve, under section 110(k)(3) of the Act, the State's 2000 submittal of the *Final Serious Area Ozone State Implementation Plan for Maricopa County* ("Serious Area Ozone Plan"), which provides a demonstration of compliance with the requirements under the CAA for the Phoenix metropolitan "serious" 1-hour ozone nonattainment area. Third, we proposed to approve, under sections 107(d)(3)(D) and 110(k)(3), the State's 2004 submittal of the *One-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area* ("Redesignation Request and Maintenance Plan"), which was developed and adopted locally by the Maricopa Association of Governments (MAG), as meeting CAA requirements for redesignation requests and maintenance plans.

Our proposed approval of these three sets of SIP revisions provided us the basis upon which to propose a finding that the Phoenix metropolitan nonattainment area has fully met the requirements for redesignation found at section 107(d)(3)(E) of the CAA for redesignation of an area from nonattainment to attainment for the 1-hour ozone national ambient air quality standard (NAAQS).¹

We have previously approved the principal control measures relied on in the Serious Area Ozone Plan and the Redesignation Request and Maintenance Plan for attainment and maintenance of the 1-hour ozone NAAQS in the Phoenix metropolitan nonattainment area, including various Maricopa County Volatile Organic Compound (VOC) Reasonable Available Control Technology (RACT) rules (see Table 3 in our proposed rule and footnote 1 in this notice), stage II vapor recovery

requirements (see 59 FR 54521, November 1, 1994), the area's enhanced inspection and maintenance program (see 68 FR 2912, January 22, 2003), and cleaner burning gasoline program (see 69 FR 10161, March 4, 2004).

In addition, under section 107(d)(3)(A) of the Act, we proposed a revision of the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area to exclude the Gila River Indian Reservation. Upon reconsideration, we have decided to withdraw the March 21, 2005 proposal as it relates to the revision of the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area and will instead address this issue in a separate rulemaking. We are withdrawing the boundary change part of the proposal because, as a result of certain errors made at the time of initial designation, we have decided to consider the boundary change pursuant to the error correction provisions of CAA section 110(k)(6), rather than pursuant to CAA section 107(d)(3)(A) as we had proposed.

A more complete description of Arizona's SIP revisions and redesignation request and the rationale for our related approvals was presented in our March 21, 2005 proposed rule and will not be restated here. The reader is referred to the proposed rule for more details.

II. Response to Comments

EPA received one comment letter during the 30-day comment period. This letter, dated April 20, 2005, was submitted by the Arizona Center for Law in the Public Interest (ACLPI) on behalf of a private citizen and the Grand Canyon Chapter of the Sierra Club. The comments and EPA responses are as follows:

Comment 1

While we do not dispute that the Phoenix area has not officially violated the 1-hour ozone standard for the past six years, and has not had an exceedance since 1996, we note that several of the monitoring sites continue to record some very high values. Over the past two summers, for example, Maricopa County issued a significant number of ozone alerts. Thus, while the Valley has officially "attained" the one-hour standard, it has not attained the 8-hour standard and ozone continues to be a serious problem that requires vigilant attention.

Response 1

EPA agrees that, while the Phoenix area has attained the 1-hour ozone standard, the Phoenix area continues to

be designated "nonattainment" for the 8-hour ozone NAAQS, which is more stringent than the 1-hour ozone NAAQS. See 69 FR 23858, at 23860, 23878–23879 (April 30, 2004). The 8-hour ozone NAAQS is not relevant to redesignation for the 1-hour standard, and this redesignation will not affect the continued nonattainment designation with respect to the 8-hour standard. The State of Arizona will be obligated to submit further SIP revisions for the purpose of attaining and maintaining the 8-hour ozone NAAQS within the Phoenix-Mesa 8-hour ozone nonattainment area, notwithstanding this redesignation for the 1-hour standard. We intend to identify the specific additional planning and control requirements for 8-hour ozone nonattainment areas in our upcoming Phase 2 implementation rule. The action we are taking today relates only to the 1-hour standard and does not affect the area's designation for the 8-hour ozone standard nor the obligations that will flow from that designation.

Comment 2

In the past, we have expressed concern about the adequacy of the Phoenix area ozone monitoring network. (See Letter dated June 19, 2000 from Jennifer Anderson to Frances Wicher re determination of attainment of the one-hour standard). Thus, we were interested to learn in the proposed rule that changes had been made to the network. In the proposed rule, EPA refers to the description of the monitoring network in the Redesignation Request and Maintenance Plan, but then notes that in recent years, the network has changed and that the current monitoring network is comprised of fewer and different sites that presumably meet EPA regulations. (70 FR 13428). We were unable to locate anything in the rulemaking materials that described which monitor sites were discontinued or which sites were relocated. We are informed only that the number of sites has been reduced from 21 to 18 and that locations have changed. *Id.*

This is of particular concern for a couple of reasons. First, as noted in the proposed rule, one of the control measures implemented by the State as part of the Redesignation Request and Maintenance Plan is the expansion of the nonattainment area. Common sense suggests that an expansion of the nonattainment area should lead to an increase in the number of monitors, not a decrease. Second, as EPA is well aware, the Phoenix metropolitan area continues to experience significant growth, both in population and

¹ In our proposed rule, we also noted that we would not take final action on the redesignation request until certain other separate rulemakings needed for redesignation were finalized. These included a direct final rule approving Maricopa County's emissions statement rule and a negative declaration (related to the RACT requirement) for fiberglass boat manufacturing (70 FR 7038, Feb. 10, 2005), a proposed rule approving local permit conditions for W.R. Meadows, Inc. as meeting the RACT requirement (70 FR 13125, March 18, 2005), and a proposed rule approving Maricopa County Rule 358 as meeting the RACT requirement for polystyrene foam molding operations (70 FR 14616, March 23, 2005). EPA received no adverse comments on the direct final rule and thus our approval of Maricopa County's emissions statement rule and a negative declaration for fiberglass boat manufacturing is now in effect. The Regional Administrator signed the final rule approving the source-specific RACT requirements at W.R. Meadows, Inc. on April 27, 2005 and signed the final rule approving Maricopa County Rule 358 on May 5, 2005. Thus, the three separate rulemakings that were referred to in our March 21, 2005 proposed rule have now been finalized.

footprint. In particular, there are huge residential developments planning for the West Valley in the Buckeye area. These developments, some of which represent the largest master-planned communities in the country, will convert thousands of acres of vacant desert to commercial and residential development, resulting in a significant increase in the mobile source emissions in that area. Consequently, having sufficient sites that will adequately monitor the ozone in this area is critical. However, the information provided in the proposed rule is insufficient to allow us to evaluate the adequacy of the system with respect to this concern. We do not believe it is appropriate for EPA to approve the Redesignation Request and Maintenance Plan if it does not accurately describe the current monitoring network.

Response 2

The commenter incorrectly states that expansion of the nonattainment area is one of the control measures implemented by the State as part of the Redesignation Request and Maintenance Plan. We want to clarify that the State does not intend to expand the 1-hour ozone nonattainment area itself but rather to extend the applicability of certain control measures beyond the boundaries of the 1-hour ozone nonattainment area to areas designated as "unclassifiable/attainment." These expanded control measures will provide additional support for continued maintenance of the 1-hour ozone NAAQS in the Phoenix metropolitan area.

With respect to monitoring networks in general, we note that there are ongoing considerations that affect the design of any network (*i.e.*, number, capabilities and locations of stations that comprise the network) in any given year, and thus, a net decrease in the overall number of monitoring stations does not in itself call into question the utility or reliability of the monitoring network or the data it generates. These considerations include, among others, the existence of redundant monitors, the persistent measurement of low concentrations at a given site, and lost access to site locations. These are practical issues that are considered annually by air monitoring agencies as they conduct the Annual Monitoring Network Reviews required by EPA regulations at 40 CFR 58.20 and 58.25. Maricopa County has published its last four monitoring network reviews (2001 to 2004) on the Web at <http://www.maricopa.gov/air/AIRDAY/airmon.asp>. The monitoring network reviews explain anticipated changes in

the network and record actual changes in the network.

With respect to the ozone monitoring network in the Phoenix area, changes reflect an effort undertaken several years ago by ADEQ, Maricopa County, Pinal County, and the tribes in the Phoenix area to take a more holistic view of the ozone monitoring network, in part due to concerns about 8-hour ozone concentrations. EPA supported this effort to reassess the ozone network in light of the new 8-hour ozone NAAQS and encouraged other areas to conduct the same type of assessment. The designation of the Phoenix area as an 8-hour ozone nonattainment area caused Maricopa County Environmental Services Department (MCESD), ADEQ, Pinal County and the tribes to make changes to the monitoring network to better track ozone concentrations in the 8-hour ozone nonattainment area, which is larger than the 1-hour ozone nonattainment and which includes the West Valley area.

Specifically, the commenter notes that, in our proposal, we indicate that the number of ozone monitoring sites in the Phoenix metropolitan area had been reduced from 21 in 2002 to 18 in 2004 and that some locations had changed but provide no further information describing these changes to the monitoring network. As discussed below, the actual net change in the number of ozone monitoring stations from 2002 to 2004 was from 21 stations to 20 stations. In our proposal, we inadvertently did not include one of the stations (*i.e.*, the Tonto National Monument station) that had been listed for 2002 in our 2004 data table, and one of the other stations that had been listed in 2002 was in the process of being relocated during 2004 and thus was not included in the 2004 data table either. We note that these network changes are documented on an annual basis in the Annual Monitoring Network Reviews prepared by Maricopa County and made available to the public through the Web link cited above.

With respect to the changes in the ozone monitoring network between 2002 and 2004, we should have included the Tonto National Monument site in our summary of ozone data in table 1 of the proposed rule (70 FR 13429).² In that table, we did not include either the Maryvale station (closed in March 2004) that had been

²The Tonto National Monument ozone monitoring site is located in Gila County and is operated by ADEQ. No exceedances were measured there during the 2002 to 2004 period (*i.e.*, the period for which data is available through AQS). The highest maximum hourly reading over that period was 0.112 ppm.

part of the 2002 network or the Buckeye station (to which the Maryvale station was re-located) in the fast-growing West Valley area because no data was gathered at either site for much of the 2004 ozone season (the Buckeye station opened in August 2004).³ Thus, the reduction in the number of stations from 21 to 18 that was cited in the proposed rule was actually a reduction from 21 to 20. Other changes in the network between 2002 and 2004 included: (1) In mid-2003, the "Surprise" station was relocated due to power and access problems to another site within the City of Surprise referred to as the "Dysart" site; and (2) the ozone monitor at the Mesa site was permanently shut down in November 2002 to conserve personnel and equipment resources but also in recognition of the redundancy of ozone data from that particular site given that the Tempe station, which is merely three miles away, also monitors ozone. The relocation of the monitoring sites within the City of Surprise resulted in no net change in the number of ozone monitoring stations while the closing of the Mesa ozone site accounts for the net decrease of one station between 2002 and 2004 in the ozone monitoring network in the Phoenix area. We believe that the closing of a single monitoring station that was deemed redundant where there are still 20 monitoring stations remaining in operation does nothing to undermine our conclusion that the Phoenix area ozone monitoring network and the data it generates are adequate for the purposes of SIP development and redesignation under the Clean Air Act. Given that the data from the remaining 20 monitors supports a finding of attainment, EPA concludes that the monitoring network fully supports this redesignation.

Comment 3

Although, in principle, we do not object to the substitution of the CBG program for the clean fuel fleet requirement (provided the requirement that the substitute program will result in at least equivalent reductions in ozone), recent actions by the Governor's office call into question the State's commitment to the CBG program in the long term. Just last week, the *Arizona Republic* reported that Governor Janet Napolitano intends to seek a waiver of the CBG requirement this coming summer due to high gas prices. See "Napolitano May Seek Gas Price Relief," *Arizona Republic*, April 11, 2005. We do not believe that high gas

³In 88 days of full operation in 2004, the Buckeye station recorded a highest maximum daily 1-hour ozone concentration of 0.088 ppm.

prices are a proper basis for such a waiver and fully anticipate the EPA will reject the request; however, in the article, the Governor's spokeswoman was quoted as saying "[t]he governor will continue to hammer on the Federal Government that we need to figure this out." *Id.* Clearly, these comments call into question any commitments the State has made with respect to the CBG program and suggest that given the high price of gasoline (which is only expected to increase), approval of the State's request to opt out of the CFF requirement at this time may be ill-advised and short sighted. Rather than approving the CBG program only to field repeated waiver requests, it may be more appropriate for EPA to encourage the State to pursue the use of alternative fuels by implementing a clean fuel fleet program.

Response 3

The commenter has not objected to the substitution of the CBG program for the Clean Fuel Fleet requirement, provided there is at least an equivalent reduction in ozone. EPA's proposed approval of the substitution made a demonstration of equivalency, as required by the CAA, and the commenter does not dispute this demonstration.

The commenter does, however, express concern about the State's commitment to the CBG program, given recent publicity that the State has considered requesting a waiver of the CBG requirements due to rising gasoline prices. We note that the CBG program is a control measure which EPA has approved into the Arizona SIP (in a **Federal Register** notice dated February 10, 1998 and a subsequent approval notice dated March 4, 2004), making it a federally enforceable measure. There are no waiver provisions under the SIP-approved CBG program for the summertime (*i.e.*, ozone season) gasoline formulation nor are any such waiver provisions being approved as part of this action. Thus, if the State wants to make revisions to, or to temporarily suspend, the summertime gasoline formulation requirements of the CBG program, the State must follow CAA requirements applicable to any SIP revision, including provisions of section 110(l) regarding interference with attainment and applicable requirements, and requirements for public notice and comment, and EPA must follow similar notice and comment requirements for its action on such a SIP revision request.

In the past two years, the State has on several occasions requested and in two cases received from EPA a grant of enforcement discretion notifying CBG

suppliers that EPA would not enforce the CBG requirements due to serious supply problems. In cases where EPA has granted such enforcement discretion, the discretion was of a temporary nature (*i.e.*, 30 days or less) and was granted due to emergency situations such as a pipeline break, which resulted in legitimate problems with getting supplies of CBG to the Phoenix area, and not solely due to high gasoline prices. Thus, the commenter's objection does not relate to the justification for the proposed substitution of the CBG program and does not undermine EPA's belief in the future validity of the program as a viable component of the maintenance demonstration. EPA concludes that the justification for approving the substitution of emissions reductions from the CBG program for the Clean Fuel Fleet program is still sound.

Comment 4

Finally, we disagree that the Redesignation Request and Maintenance Plan properly includes contingency measures. As EPA acknowledges in the proposed rule, the measures designated as "contingency measures" in the Redesignation Request and Maintenance Plan are already implemented. According to CAA section 175A(d), the purpose of contingency provisions is to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Obviously, if the so called "contingency measures" are already being implemented when a violation occurs, there is nothing to suggest that their continued implementation would ensure that the situation will be corrected. Rather, the Act clearly envisions *additional* measures which are automatically and immediately implemented if and when a violation occurs. If and when a violation occurs, the fact that the State did not rely upon these measures in its maintenance demonstration is meaningless. If a violation occurs, protection of the public health is paramount and the Clean Air Act contemplates and requires an immediate response that does not require additional EPA or State action. The State's commitment to adopt nonspecific additional contingency measures over a 15 to 21 month period if the "trigger" of at least four 0.120 ppm readings is met falls far short of this requirement of the Act. We believe that EPA's approval of the Redesignation Request and Maintenance Plan without requiring meaningful and appropriate contingency provisions

would be arbitrary and capricious and contrary to law.

Response 4

The commenter is correct in that the contingency provisions of the Redesignation Request and Maintenance Plan rely on measures that have already been implemented; however, we disagree that such measures, together with an enforceable mechanism to identify, adopt and implement additional contingency measures, do not suffice for the purposes of a maintenance plan under CAA section 175A(d).

Section 175A(d) of the Act requires that each maintenance plan "contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area." (emphasis added). First, as a general matter, we note that the italicized language clearly indicates that Congress expressly delegated authority to EPA to determine what contingency provisions in maintenance plans are necessary. More specifically, we have consistently held that section 175A(d) does not require that the contingency provisions developed for maintenance plan purposes contain fully adopted measures that will take effect (upon the occurrence of a given event) without further action by the State or EPA. Memorandum from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. EPA, "Procedures for processing Requests to Redesignate Areas to Attainment" (September 4, 1992) ("Calcagni memo") at 12.⁴ In this regard, we distinguish the contingency provision requirements for maintenance plans from those for nonattainment plans. For the latter, the CAA requires fully adopted measures that will take effect (upon the occurrence of a given event) without further action by the

⁴ The commenter has misstated the standard set by Congress for implementing contingency measures under section 175A as requiring implementation "immediately" and "automatically" after a violation. On the contrary, section 175A(d) provides that "each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard * * * ." (emphasis added.) EPA has approved as "prompt" contingency measures under section 175A(d) that are implemented as soon as a year and as long as two years after being triggered. See, *e.g.*, 60 FR 12459, at 12470, 12472 (March 7, 1995); 68 FR 4847, 4859 (January 30, 2003) and 68 FR 25418 (May 12, 2003); and 66 FR 53094, at 53102-53103 (October 19, 2001).

State or EPA. See CAA sections 172(c)(9), 182(c)(9), and 187(a)(3).

However, we note that the contingency provisions in a maintenance plan do become an enforceable part of the SIP (upon approval by EPA) and that the provisions should ensure that contingency measures are adopted expeditiously once they are triggered. We believe that the contingency provisions in a maintenance plan should clearly identify measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. As a necessary part of the plan, the State should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented. Calcagni memo, page 12.

We reviewed the contingency provisions in the Redesignation Request and Maintenance Plan with the above considerations in mind and found them acceptable. The contingency provisions in the Redesignation Request and Maintenance Plan identify three specific measures for implementation: expansion of Area A boundaries, gross polluter option for vehicle inspection and maintenance (I/M) program waivers, and increased waiver repair limit options. See pages 3–17 and 3–18 of the Redesignation Request and Maintenance Plan and 70 FR 13425, at 13438–13439 (March 21, 2005). The Redesignation Request and Maintenance Plan anticipates that these measures would be implemented “early,”⁵ and in fact, all of these measures have been implemented and continue to provide emissions reductions within the Phoenix metropolitan 1-hour ozone nonattainment area. Although these measures have been implemented, they will continue to provide additional reductions in future years. The Redesignation Request and Maintenance Plan also describes when these measures were adopted and how they are being implemented. See pages VI–18 through VI–21 in MAG’s *Technical Support Document for Ozone Modeling in Support of the One-Hour Ozone Redesignation Request and Maintenance Plan for the Phoenix Metropolitan Nonattainment Area, November 2003* (included as Exhibit 2 of Appendix A of the Redesignation Request and Maintenance Plan). Because they were expected to be (and have been) implemented “early,” there

⁵ In this instance, “early” refers to measures that are implemented prior to occurrence of a triggering event, such as a NAAQS violation, during the maintenance period.

is no need to identify a triggering event for them. Further, we note that none of the three contingency measures was needed to attain the 1-hour ozone NAAQS nor are they relied upon for the purposes of the maintenance demonstration.⁶

The positive effects of these contingency measures are continuing in nature, and are surplus, permanent and federally enforceable. The continuing reduction credits from the contingency measures are, in effect, set aside to be applied in the event that maintenance is not achieved. EPA has historically allowed early reductions under section 172(c)(9)—that is, reductions achieved before the contingency measure is “triggered”—to be used as contingency measures, because if it did not do so it would discourage areas from implementing “all reasonably available control measures as expeditiously as practicable” as required by CAA section 172(c)(1). See also the August 13, 1993 memorandum: “Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas.” Were areas to hold such measures in reserve to serve as contingency measures, EPA would approve them. EPA sees only air quality benefits in allowing areas to implement such measures early and to get additional reductions in advance, potentially preventing any future violations.

We believe that it would be illogical to penalize maintenance areas that are taking extra steps (*i.e.*, through “early” implementation of contingency measures) to ensure maintenance of the NAAQS by requiring them to adopt yet additional contingency measures now to backfill for the early activation of contingency measures.⁷ Our interpretation of the contingency measure requirement and acceptance of “early” implementation of contingency measures in fulfillment of that requirement under section 172(c)(9) was recently upheld by the Fifth Circuit Court of Appeals. See *La. Env’tl. Action Network v. United States Env’tl. Protection Agency*, 382 F.3d 575 (5th Cir. 2004) (EPA approval of contingency

⁶ We also note that Arizona has not chosen to deactivate, and place in reserve, any SIP control measures as part of this redesignation request for the 1-hour ozone standard in the Phoenix metropolitan area.

⁷ In prior rulemakings, we have approved other maintenance plans that include contingency measures that will be implemented “early.” See the San Francisco Bay area 1-hour ozone maintenance plan [NPRM: 59 FR 49361 at 49368–49369 (September 28, 1994); FR: 60 FR 27028 (May 22, 1995)] and the Salt Lake City carbon monoxide maintenance plan [Direct Final Rule: 64 FR 3216, at 3221 (January 21, 1999)].

measures vacated on different grounds). In the *La. Env’tl. Action Network* case, the court stated, “Here, the EPA’s allowance of early reductions to be used as contingency measures comports with a primary purpose of the CAA—the aim of ensuring that nonattainment areas reach NAAQS compliance in an efficient manner—and necessary requirements of the CAA.” *Id.* at 581. While the *La. Env’tl. Action Network* case specifically addressed the nonattainment plan contingency measure requirements under section 172(c)(9), we would expect a court to apply similar logic in reviewing EPA’s acceptance of “early implementation” of contingency measures under section 175A(d) in support of the aim of ensuring that attainment areas continue to maintain the NAAQS as well.

Of course, if an area experiences a NAAQS violation despite early implementation of contingency measures, then additional contingency measures would be needed to promptly correct the violation, and the contingency provisions of the Redesignation Request and Maintenance Plan provide a mechanism under which such additional measures will be identified, adopted and implemented. This procedure is triggered by the occurrence of a fourth highest daily maximum hourly measurement exceeding 0.120 (at any given station over a three-year period) whereby additional measures (*i.e.*, in addition to those already implemented) will be considered.⁸ Once the triggering event occurs, the Redesignation Request and Maintenance Plan establishes that (1) verification of the monitoring data is to be completed within three months of the triggering event; (2) the additional measure is to be considered for adoption six months after verification of the data (nine months after the triggering event); and (3) the measure is to be implemented within six to 12 months after adoption, *i.e.*, 15 to 21 months after the triggering event. The Redesignation Request and Maintenance Plan does not identify the specific additional measures that would be adopted and implemented but notes that the existing contingency measures may be strengthened to provide additional

⁸ We note that the procedure established in the Redesignation Request and Maintenance Plan for developing additional contingency measures is triggered prior to the occurrence of either an exceedance or a violation and therefore is consistent with the principle of maintaining the NAAQS. Exceedances occur when the daily maximum value equals or exceeds 0.125 ppm, and a violation occurs when the expected number of exceedances-days per calendar year averaged over the past three calendar years is equal to or less than 1.0.

emissions reductions as needed. This mechanism provides further assurance that the 1-hour ozone NAAQS will not be violated after redesignation of the Phoenix metropolitan area to attainment (by establishing a triggering event short of a violation) but that, if such a violation were to occur, it will be promptly corrected. The selection of a triggering event short of a violation would allow the State "to take early action to address potential violations of the NAAQS before they occur." Calcagni memo, page 12.

The commenter appears to assert that it is possible that a violation could occur of such severity that the contingency provisions would be insufficient, and therefore inadequate. This interpretation of the statute is unreasonable. EPA cannot expect Arizona to provide contingency provisions that, by themselves, address every hypothetical violation of the NAAQS, no matter how severe. The State is not compelled to develop contingency provisions that are capable of addressing any imaginable violation, no matter how severe. EPA is applying a reasonable interpretation, considering the contingency provisions in the context of a reasonable range of possible violations. In the event that the specified contingency measures are less than is necessary to avoid a violation, Arizona has committed to adopt and implement additional measures. Moreover, it is evident in section 110(k)(5), as well as within section 175A(d) itself, that Congress contemplated that there may be situations in which the contingency provisions are insufficient to address a violation. Section 110(k)(5) authorizes EPA to require a State to revise its SIP where EPA finds that the SIP is substantially inadequate to maintain the NAAQS. The final sentence of section 175A(d) contemplates that EPA may, in its discretion, determine that a violation of the NAAQS requires a revision to the State SIP. Had Congress intended contingency provisions to successfully address every conceivable violation of the standard, additional revisions to the SIP in response to a violation of the NAAQS would be unnecessary. Thus, we continue to believe that the contingency provisions in the Redesignation Request and Maintenance Plan, including both specific contingency measures that have already been implemented as well as a mechanism for identifying, adopting and implementing additional contingency measures, fully comply with the statutory requirements of such

provisions under section 175A(d) of the Act.

III. EPA's Final Action

No comments were submitted that change our assessment that the State of Arizona's "opt-out" request, serious area plan, maintenance plan and redesignation request for the Phoenix metropolitan 1-hour ozone nonattainment area comply with the CAA and EPA regulations. Therefore, under the Clean Air Act, we are fully approving three sets of revisions to the Arizona SIP that have been submitted to us in connection with the Phoenix metropolitan 1-hour ozone nonattainment area and the State's redesignation request for this area from "nonattainment" to "attainment."

First, under sections 182(c)(4)(B) and 110(k)(3) of the CAA, we are approving the State of Arizona's 1998 submittal of a request to "opt-out" of the Clean Fuel Fleet program and to approve the cleaner burning gasoline (CBG) program as a substitute measure.

Second, under section 110(k)(3) of the Act, we are approving the State's 2000 submittal of the Serious Area Ozone Plan as meeting the applicable requirements for serious 1-hour ozone nonattainment areas. As part of our overall approval of the Serious Area Ozone Plan, we approve the following specific plan elements:

- Periodic (ozone season) inventory update for 1996 as required under section 182(a)(3)(A); and
- Enhanced monitoring as required under section 182(c)(1).

Third, under sections 107(d)(3)(D) and 110(k)(3), we are approving the State's 2004 submittal of the Redesignation Request and Maintenance Plan as meeting CAA requirements for redesignation requests and maintenance plans under sections 107(d)(3)(E) and 175A and are redesignating the Phoenix metropolitan area from nonattainment to attainment for the 1-hour ozone NAAQS. In this regard, we find that:

- The Phoenix metropolitan 1-hour ozone nonattainment area has continued to attain the 1-hour ozone NAAQS based on quality-assured data for the years 2002 through 2004 (thus, certain requirements of title I, part D, as set forth in the proposed notice at 70 FR 13431-13432 (March 21, 2005), including the attainment demonstration, non-RACT reasonably available control measures (RACT), reasonable further progress, contingency measures, and other related requirements, continue to be inapplicable to the area);⁹

⁹EPA has previously determined that the Phoenix metropolitan 1-hour ozone nonattainment area had

- The SIP for the Phoenix metropolitan 1-hour ozone nonattainment area has been fully approved by EPA under section 110(k);

- The improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP (principally, the VOC RACT rules, stage II vapor recovery rules, the enhanced vehicle inspection and maintenance program, and the cleaner burning gasoline program), and applicable Federal air pollution control regulations;

- The Redesignation Request and Maintenance Plan meets the requirements of section 175A of the CAA;

- The State of Arizona has met all requirements applicable to the Phoenix metropolitan 1-hour ozone nonattainment area under section 110 and part D of title I of the CAA; and

- For the reasons described in the proposal, the State has satisfied all of the requirements for redesignation under section 107(d)(3)(E).

As part of our overall approval of the Redesignation Request and Maintenance Plan, we approve the following specific plan elements:

- Periodic (ozone season) inventory update for 1999 as required under section 182(a)(3)(A);
- 1998 and 1999 base cases (episodic), 2006 interim year, and 2015 maintenance year emissions inventories and maintenance demonstration;
- Implementation of the following control measures for maintenance purposes: CARB Phase 2 and Federal Phase II Reformulated Gasoline with a maximum 7 psi vapor pressure requirement from May through September, coordination of traffic signal systems, tougher enforcement of vehicle registration and emission test compliance, one-time waiver from vehicle emissions test, development of intelligent transportation systems, phased-in emission test cutpoints, and Maricopa County Rule 348 (related to aerospace manufacturing and rework operations).

- Contingency provisions, including the following measures: expansion of Area A boundaries, gross polluter option for I/M program waivers, and increased waiver repair limit options, as well as a mechanism (based on ambient ozone concentration readings) for triggering consideration of additional (or strengthened) contingency measures;

attained the 1-hour NAAQS and, based on that determination, that certain CAA requirements would not be applicable so long as the area continued to attain. See 66 FR 29230 (May 30, 2001).

- Commitments by ADEQ and the Maricopa County Environmental Services Department (MCESD) to continue to operate an appropriate air quality monitoring network of National Air Monitoring Stations (NAMS) and State and Local Air Monitoring Stations (SLAMS) in accordance with 40 CFR part 58 to verify continued attainment of the 1-hour ozone standard;

- Commitment by Maricopa County to prepare periodic emission inventories every three years in coordination with ADEQ, the Arizona Department of Transportation, and MAG (this commitment extends to a review and evaluation of changes in the inventory through the regional air quality planning process to determine if additional measures should be considered);

- Commitment by MAG to prepare a revised maintenance plan eight years after redesignation to attainment; and

- VOC and NO_x motor vehicle emissions budgets (corresponding to a weekday in August) for transportation conformity purposes under CAA section 176(c): 71.9 metric tons per day (mtpd) for VOC and 104.8 mtpd for NO_x in 2006 and 48.7 mtpd for VOC and 53.6 mtpd for NO_x in 2015.

Lastly, as noted above, we are withdrawing the March 21, 2005 proposal as it relates to the revision of the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area to exclude the Gila River Indian Reservation and will instead address this issue in a separate rulemaking.

EPA finds that there is good cause for approval of this redesignation to attainment and SIP revision to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment which relieves the area from certain Clean Air Act requirements that would otherwise apply to it. The immediate effective date for this redesignation is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction” and section 553(d)(3), which allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.”

IV. Statutory and Executive Order Reviews

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 13211, “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 redesignates the area to attainment for air quality planning purposes 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 (Pub. L. 104–4).

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” are defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.”

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

As indicated above, EPA had proposed to revise the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area to exclude the Gila River Indian Reservation, but has decided to withdraw that part of the

proposal and to address the boundary issue in a separate rulemaking. Consistent with EPA policy, EPA has communicated this change to representatives of the Gila River Indian Community and explained our rationale for withdrawing the proposal and conducting a separate rulemaking. EPA finds that this action, which no longer includes the boundary change, will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

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 rule implementing a Federal standard and redesignates the area to attainment for the purposes of air quality planning 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 as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this rule present a disproportionate risk to children.

In reviewing SIP submissions and redesignation requests, 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 or redesignation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission or redesignation request, 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. 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. 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 August 15, 2005. 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* CAA section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Ozone, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: May 20, 2005.

Alexis Strauss,

Acting Regional Administrator, Region 9.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are 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)(123), (c)(124), and (c)(125) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(123) The following plan was submitted on December 7, 1998, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) Letter and enclosures regarding Arizona's Intent to "Opt-out" of the Clean Fuel Fleet Program, adopted by the Arizona Department of Environmental Quality on December 7, 1998.

(124) The following plan was submitted on December 14, 2000, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) *Final Serious Area Ozone State Implementation Plan for Maricopa County*, dated December 2000, adopted by the Arizona Department of Environmental Quality on December 14, 2000.

(125) The following plan was submitted on April 21, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) *One-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area*, dated March 2004, adopted by the Maricopa Association of Governments Regional Council on March 26, 2004 and adopted by the Arizona Department of Environmental Quality on April 21, 2004.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—[Amended]

■ 2. In § 81.303, the table entitled "Arizona—Ozone (1-Hour Standard)" is amended by revising the entry for the Phoenix Area to read as follows:

§ 81.303 Arizona

* * * * *

ARIZONA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|-------------|------------|----------------|------|
| | Date | Type | Date | Type |
| Phoenix Area: Maricopa County (part) The Urban Planning Area of the Maricopa Association of Government is bounded as follows: 1. Commencing at a point which is the intersection of the eastern line of Range 7 East, Gila and Salt River Baseline and Meridian, and the southern line of Township 2 South, said point is the southeastern corner of the Maricopa Association of Governments Urban Planning Area, which is the point of beginning; 2. Thence, proceed northerly along the eastern line of Range 7 East which is the common boundary between Maricopa and Pinal Counties, as described in Arizona Revised Statute Section 11-109, to a point where the corner line of Range 7 East intersects the northern line of Township 1 North, said point is also the intersection of the Maricopa County Line and the Tonto National Forest Boundary, as established by Executive Order 869 dated July 1, 1908, as amended and shown on the U.S. Forest Service 1969 Planimetric Maps; 3. Thence, westerly along the northern line of Township 1 North to approximately the southwest corner of the southeast quarter of Section 35, Township 2 North, Range 7 East, said point being the boundary of the Tonto National Forest and Utery Mountain Semi-Retional Park; | 6/14/05 | Attainment | | |

ARIZONA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|--|-------------|------|----------------|------|
| | Date | Type | Date | Type |
| <p>4. Thence, northerly along the Tonto National Forest Boundary, which is generally the western line of the east half of Sections 26 and 35 of Township 2 North, Range 7 East, to a point which is where the quarter section line intersects with the northern line of Section 26, Township 2 North, Range 7 East, said point also being the southeast corner of the Usery Mountain Semi-Regional Park;</p> <p>5. Thence, westerly along the Tonto National Forest Boundary, which is generally the south line of Sections 19, 20, 21 and 22 and the southern line of the west half of Section 23, Township 2 North, Range 7 East, to a point which is the southwest corner of Section 19, Township 2 North, Range 7 East;</p> <p>6. Thence, northerly along the Tonto National Forest Boundary to a point where the Tonto National Forest Boundary intersects with the eastern boundary of the Salt River Indian Reservation, generally described as the center line of the Salt River Channel;</p> <p>7. Thence, northeasterly and northerly along the common boundary of the Tonto National Forest and the Salt River Indian Reservation to a point which is the northeast corner of the Salt River Indian Reservation and the southeast corner of the Fort McDowell Indian Reservation, as shown on the plat dated July 22, 1902, and recorded with the U.S. Government on June 15, 1902;</p> <p>8. Thence, northeasterly along the common boundary between the Tonto National Forest and the Fort McDowell Indian Reservation to a point which is the northeast corner of the Fort McDowell Indian Reservation;</p> <p>9. Thence, southwesterly along the northern boundary of the Fort McDowell Indian Reservation, which line is a common boundary with the Tonto National Forest, to a point where the boundary intersects with the eastern line of Section 12, Township 4 North, Range 6 East;</p> <p>10. Thence, northerly along the eastern line of Range 6 East to a point where the eastern line of Range 6 East intersects with the southern line of Township 5 North, said line is the boundary between the Tonto National Forest and the east boundary of McDowell Mountain Regional Park;</p> <p>11. Thence, westerly along the southern line of Township 5 North to a point where the southern line intersects with the eastern line of Range 5 East which line is the boundary of Tonto National Forest and the north boundary of McDowell Mountain Regional Park;</p> <p>12. Thence, northerly along the eastern line of Range 5 East to a point where the eastern line of Range 5 East intersects with the northern line of Township 5 North, which line is the boundary of the Tonto National Forest;</p> <p>13. Thence, westerly along the northern line of Township 5 North to a point where the northern line of Township 5 North intersects with the easterly line of Range 4 East, said line is the boundary of Tonto National Forest;</p> <p>14. Thence, northerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects with the northern line of Township 6 North, which line is the boundary of the Tonto National Forest;</p> <p>15. Thence, westerly along the northern line of Township 6 North to a point of intersection with the Maricopa-Yavapai County line, which is generally described in Arizona Revised Statute Section 11-109 as the center line of the Aqua Fria River (Also the north end of Lake Pleasant);</p> <p>16. Thence, southwesterly and southerly along the Maricopa-Yavapai County line to a point which is described by Arizona Revised Statute Section 11-109 as being on the center line of the Aqua Fria River, two miles southerly and below the mouth of Humbug Creek;</p> <p>17. Thence, southerly along the center line of Aqua Fria River to the intersection of the center line of the Aqua Fria River and the center line of Beardsley Canal, said point is generally in the northeast quarter of Section 17, Township 5 North, Range 1 East, as shown on the U.S. Geological Survey's Baldy Mountain, Arizona Quadrangle Map, 7.5 Minute series (Topographic), dated 1964;</p> <p>18. Thence, southwesterly and southerly along the center line of Beardsley Canal to a point which is the center line of Beardsley Canal where it intersects with the center line of Indian School Road;</p> <p>19. Thence, westerly along the center line of West Indian School Road to a point where the center line of West Indian School Road intersects with the center line of North Jackrabbit Trail;</p> <p>20. Thence, southerly along the center line of Jackrabbit Trail approximately nine and three-quarter miles to a point where the center line of Jackrabbit Trail intersects with the Gila River, said point is generally on the north-south quarter section line of Section 8, Township 1 South, Range 2 West;</p> <p>21. Thence, northeasterly and easterly up the Gila River to a point where the Gila River intersects with the northern extension of the western boundary of Estrella Mountain Regional Park, which point is generally the quarter corner of the northern line of Section 31, Township 1 North, Range 1 West;</p> | | | | |

ARIZONA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|-------------|------|----------------|------|
| | Date | Type | Date | Type |
| 22. Thence, southerly along the extension of the western boundary and along the western boundary of Estrella Mountain Regional Park to a point where the southern extension of the western boundary of Estrella Mountain Regional Park intersects with the southern line of Township 1 South; 23. Thence, easterly along the southern line of Township 1 South to a point where the south line of Township 1 South intersects with the western line of Range 1 East, which line is generally the southern boundary of Estrella Mountain Regional Park; 24. Thence, southerly along the western line of Range 1 East to the southwest corner of Section 18, Township 2 South, Range 1 East, said line is the western boundary of the Gila River Indian Reservation; 25. Thence, easterly along the southern boundary of the Gila River Indian Reservation which is the southern line of Sections 13, 14, 15, 16, 17, and 18, Township 2 South, Range 1 East, to the boundary between Maricopa and Pinal Counties as described in Arizona Revised Statutes Section 11-109 and 11-113, which is the eastern line of Range 1 East; 26. Thence, northerly along the eastern boundary of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, to a point where the eastern line of Range 1 East intersects the Gila River; 27. Thence, southerly up the Gila River to a point where the Gila River intersects with the southern line of Township 2 South; and 28. Thence, easterly along the southern line of Township 2 South to the point of beginning which is a point where the southern line of Township 2 South intersects with the eastern line Range 7 East. | | | | |

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 [FR Doc. 05-10792 Filed 6-13-05; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271
[FRL-7924-1]

Texas: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The EPA is granting Texas final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a proposed rule on March 18, 2005, and provided for public comment. The public comment period ended on April 18, 2005. We received no comments. No further opportunity for comment will be provided. EPA has determined that Texas' program revisions satisfy all the requirements needed to qualify for final authorization, and is authorizing the State's changes through this final action.

DATES: This final authorization will be effective on June 14, 2005.

ADDRESSES: You can view and copy Texas's application and associated publicly available materials from 8:30

a.m. to 4 p.m. Monday through Friday at the following locations: Texas Commission on Environmental Quality (TCEQ), 12100 Park 35, Circle, Austin TX 78753-3087, (512) 239-1121 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6, Regional Authorization Coordinator, State /Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202-2733, patterson.alima@epa.gov, (214) 665-8533.

SUPPLEMENTARY INFORMATION: On March 18, 2005, U.S. EPA published a proposed rule (70 FR 13127) proposing to grant Texas authorization for changes to its Resource Conservation and Recovery Act program, listed in section D of that notice, which was subject to public comment. No comments were received. We hereby determine that Texas' hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization.

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from the EPA under RCRA

section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Texas' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Texas Final authorization to operate its hazardous waste program with the changes described in the authorization application. Texas has the responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal