

submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 26, 2010.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 2010-22339 Filed 9-8-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2010-0715; FRL-9200-3]

#### Approval and Promulgation of Implementation Plans—Maricopa County (Phoenix) PM-10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour PM-10 Standard; Clean Air Act Section 189(d)

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

**ACTION:** Proposed rule.

EPA is proposing to approve in part and disapprove in part State implementation plan (SIP) revisions submitted by the State of Arizona to meet the Clean Air Act (CAA) requirements applicable to the serious Maricopa County (Phoenix) nonattainment area (Maricopa area). These requirements apply to the Maricopa area following EPA's June 6, 2007 finding that the area failed to meet its December 31, 2006 serious area deadline to attain the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM-10). Under CAA section 189(d), Arizona was required to submit a plan by December 31, 2007 providing for expeditious attainment of the PM-10

NAAQS and for an annual emission reduction in PM-10 or PM-10 precursors of not less than five percent per year until attainment (189(d) plan). EPA is proposing to disapprove provisions of the 189(d) plan for the Maricopa area because they do not meet applicable CAA requirements for emissions inventories as well as for attainment, five percent annual emission reductions, reasonable further progress and milestones, and contingency measures. EPA is also proposing to disapprove the 2010 motor vehicle emission budget in the 189(d) plan as not meeting the requirements of CAA section 176(c) and 40 CFR 93.118(e)(4). EPA is also proposing a limited approval and limited disapproval of State regulations for the control of PM-10 from agricultural sources. Finally, EPA is proposing to approve various provisions of State statutes relating to the control of PM-10 emissions in the Maricopa area.

**DATES:** Any comments must arrive by October 12, 2010.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2010-0715, by one of the following methods:

1. *Federal eRulemaking Portal:*

<http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* [nudd.gregory@epa.gov](mailto:nudd.gregory@epa.gov).

3. *Mail or deliver:* Gregory Nudd (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard

copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:**

Gregory Nudd, U.S. EPA Region 9, 415-947-4107, [nudd.gregory@epa.gov](mailto:nudd.gregory@epa.gov) or <http://www.epa.gov/region09/air/actions>.

**SUPPLEMENTARY INFORMATION:**

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

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#### I. PM-10 Air Quality Planning in the Maricopa Area

The NAAQS are standards for certain ambient air pollutants set by EPA to protect public health and welfare. PM-10 is among the ambient air pollutants for which EPA has established health-based standards. PM-10 causes adverse health effects by penetrating deep in the lungs, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 EPA revised the health-based national ambient air quality standards (52 FR 24672), replacing the standards for total suspended particulates with new standards applying only to particulate matter up to ten microns in diameter (PM-10). At that time, EPA established two PM-10 standards, annual standards and 24-hour standards. Effective December 18, 2006, EPA revoked the annual PM-10 standards but retained the 24-hour PM-10 standards. 71 FR 61144 (October 17, 2006). The 24-hour PM-10 standards of 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) are attained when the expected number of days per calendar year with a 24-hour average concentration above  $150 \mu\text{g}/\text{m}^3$ , as determined in accordance with appendix K to 40 CFR part 50, is equal to or less than one. 40 CFR 50.6 and 40 CFR part 50, appendix K.

On the date of enactment of the 1990 Clean Air Act Amendments (CAA or the

Act), many areas, including the Maricopa area, meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. 56 FR 11101 (March 15, 1991). The Maricopa area is located in the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale, as well as 17 other jurisdictions and unincorporated County lands. The nonattainment area also includes the town of Apache Junction in Pinal County. EPA codified the boundaries of the Maricopa area at 40 CFR 81.303.

Once an area is designated nonattainment for PM-10, section 188 of the CAA outlines the process for classifying the area as moderate or serious and establishes the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM-10 nonattainment areas, including the Maricopa area, were initially classified as moderate.

A moderate PM-10 nonattainment area must be reclassified to serious PM-10 nonattainment by operation of law if EPA determines after the applicable attainment date that, based on air quality, the area failed to attain by that date. CAA sections 179(c) and 188(b)(2). On May 10, 1996, EPA reclassified the Maricopa area as a serious PM-10 nonattainment area. 61 FR 21372.

As a serious PM-10 nonattainment area, the Maricopa area acquired a new attainment deadline of no later than December 31, 2001. CAA section 188(c)(2). However CAA section 188(e) allows states to apply for up to a 5-year extension of that deadline if certain conditions are met. In order to obtain the extension, there must be a showing that: (1) Attainment by the applicable attainment date would be impracticable; (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area; and (3) the state demonstrates that the plan for the area includes the most stringent measures (MSM) that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the specific area. Arizona requested an attainment date extension under CAA section 188(e) from December 31, 2001 to December 31, 2006.

On July 25, 2002, EPA approved the serious PM-10 plan for the Maricopa area as meeting the requirements for such areas in CAA sections 189(b) and (c), including the requirements for implementation of best available control measures (BACM) in section

189(b)(1)(B) and MSM in section 188(e). In the same action, EPA granted Arizona's request to extend the attainment date for the area to December 31, 2006. 67 FR 48718. This final action, as well as the two proposals preceding it, provide a more detailed discussion of the history of PM-10 planning in the Maricopa area. See 65 FR 19964 (April 13, 2000) and 66 FR 50252 (October 2, 2001).

On June 6, 2007, EPA found that the Maricopa area failed to attain the 24-hour PM-10 NAAQS by December 31, 2006 (72 FR 31183) and required the submittal of a new plan meeting the requirements of section 189(d) by December 31, 2007.

On December 19, 2007, the Maricopa Association of Governments (MAG) adopted the "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area." In this proposal, we refer to this plan as the "189(d) plan." On December 21, 2007 the Arizona Department of Environmental Quality (ADEQ) submitted the 189(d) plan and two Pinal County resolutions.<sup>1</sup> MAG adopted and ADEQ submitted this SIP revision in order to address the CAA requirements in section 189(d).

CAA section 110(k)(1) requires EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that has not been affirmatively determined to be complete or incomplete shall become complete within 6 months by operation of law. EPA's completeness criteria are found in 40 CFR part 51, appendix V. The 189(d) plan submittal became complete by operation of law on June 21, 2008.

## II. Overview of Applicable CAA Requirements

As a serious PM-10 nonattainment area that failed to meet its applicable attainment date, December 31, 2006, the Maricopa area is subject to CAA section 189(d) which provides that the state shall "submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM-10 air quality standard and, from the date of such submission until attainment, for an annual reduction of PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for the area."

<sup>1</sup> Subsequently, in June 4, 2008 and February 23, 2009 letters from Nancy C. Wrona, ADEQ, to Deborah Jordan, EPA, the State submitted "Supplemental Information to Section 189(d) 5% Reasonable Further Progress PM-10 SIP Revisions for the Maricopa County and Apache Junction (Metropolitan Phoenix) Nonattainment Area."

The general planning and control requirements for all nonattainment plans are found in CAA sections 110 and 172. EPA has issued a General Preamble<sup>2</sup> and Addendum to the General Preamble<sup>3</sup> describing our preliminary views on how the Agency intends to review SIPs submitted to meet the CAA's requirements for the PM-10 NAAQS. The General Preamble mainly addresses the requirements for moderate nonattainment areas and the Addendum, the requirements for serious nonattainment areas. EPA has also issued other guidance documents related to PM-10 plans which are cited as necessary below. In addition, EPA addresses the adequacy of the motor vehicle budget for transportation conformity (CAA section 176(c)) in this proposed plan action. The PM-10 plan requirements addressed by this proposed action are summarized below.

### A. Emissions Inventories

CAA section 172(c)(3) requires that an attainment plan include a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutants.

### B. Attainment Demonstration

The attainment deadline applicable to an area that misses the serious area attainment date is as soon as practicable, but no later than 5 years from the publication date of the nonattainment finding notice. EPA may, however, extend the attainment deadline to the extent it deems appropriate for a period no greater than 10 years from the publication date, "considering the severity of nonattainment and the availability and feasibility of pollution control measures." CAA sections 179(d)(3) and 189(d).

### C. Five Percent (5%) Requirement

A 189(d) plan must provide for an annual reduction of PM-10 or PM-10 precursor emissions within the area of not less than 5% of the amount of such emissions as reported in the most recent inventory prepared for the area.

<sup>2</sup> "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (General Preamble) and 57 FR 18070 (April 28, 1992).

<sup>3</sup> "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994) (Addendum).

#### D. Reasonable Further Progress and Quantitative Milestones

CAA section 172(c)(2) requires that implementation plans demonstrate reasonable further progress (RFP) as defined in section 171(1). Section 171(1) defines RFP as “such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.”

Section 189(c)(1) requires the plan to contain quantitative milestones which will be achieved every 3 years and which will demonstrate that RFP is being met.

#### E. Contingency Measures

CAA section 172(c)(9) requires that implementation plans provide for “the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part [part D of title I]. Such measures are to take effect in any such case without further action by the State or the Administrator.”

#### F. Transportation Conformity and Motor Vehicle Emissions Budgets

Transportation conformity is required by CAA section 176(c). Our conformity rule (40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestone. Once a SIP that contains motor vehicle emissions budgets (MVEBs) has been submitted to EPA, and EPA has found it adequate, these budgets are used for determining conformity: emissions from planned transportation activities must be less than or equal to the budgets.

#### G. Adequate Legal Authority and Resources

CAA section 110(a)(2)(E)(i) requires that implementation plans provide necessary assurances that the state (or the general purpose local government) will have adequate personnel, funding and authority under state law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (51.230–51.232) and for resources in 40 CFR 51.280. States and

responsible local agencies must also demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal of the SIP.

### III. Evaluation of the 189(d) Plan's Compliance With CAA Requirements

#### A. Emissions Inventories

CAA section 172(c)(3) requires all nonattainment area plans to contain a comprehensive, accurate, and current inventory of emissions from all sources of the relevant pollutants in the geographic area encompassed in the plan. EPA believes that the inventories submitted by Arizona as part of the 189(d) plan for the Maricopa area are comprehensive and current, but are not sufficiently accurate as discussed below.

MAG developed the 189(d) plan using the “2005 Periodic Emissions Inventory for the Maricopa County, Arizona Nonattainment Area,” May 2007 (2005 Periodic Inventory). 189(d) plan, appendices, volume one, appendix B, exhibit 1. This inventory was developed by the Maricopa County Air Quality Department (MCAQD) as the baseline inventory for the area. 189(d) plan, p. 3–2.

MAG used economic growth estimates to project 2007, 2008, 2009 and 2010 emissions inventories for the area from the 2005 Periodic Inventory baseline. MAG then used these projected inventories to calculate the 5% reduction target required by section 189(d) and as the baseline for the RFP demonstration required by section 189(c).<sup>4</sup> See 189(d) plan, appendices, volume three, “Technical Document in Support of the MAG 2007 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area,” (189(d) plan TSD), chapter II.

The 2005 Periodic Inventory prepared for the Maricopa area describes and quantifies the annual and daily emissions of PM–10 from point, area, nonroad, on-road, and nonanthropogenic sources in the 2,880 square mile nonattainment area.<sup>5</sup> The

<sup>4</sup> The 189(d) plan projects that the Maricopa area will attain the PM–10 standard by December 31, 2010. For the 5% demonstration, the plan projects emission reductions in 2008, 2009 and 2010. The RFP demonstration shows annual emission reductions in a downward linear trend from 2007 to 2010. See 189(d) plan, chapters 7 and 8, and discussions of these demonstrations below.

<sup>5</sup> The 2005 Periodic Inventory in the 189(d) plan also includes data on PM–10 precursors. However,

2005 Periodic Inventory indicates that the dominant sources of PM–10 emissions in the Maricopa area are construction-related fugitive dust, including residential, commercial, road and other land clearing (38 percent); paved road dust, including trackout (16 percent); unpaved roads (10 percent); and windblown dust (9 percent). 2005 Periodic Inventory, table 1.6–11.

EPA has evaluated the base year inventory relied on by MAG in light of the three criteria in section 172(c)(3) and our conclusions follow.

*Current:* The base year, 2005, is a reasonably current year, considering the length of time needed to develop an inventory and thereafter to develop a plan based on it. The 2005 Periodic Inventory was the most recent inventory available when the 189(d) plan was developed.

*Comprehensive:* The 189(d) plan's inventories are sufficiently complete. All of the relevant source categories are quantified.

*Accurate:* The 2005 Periodic Inventory is not sufficiently accurate for the purposes of the 189(d) plan. As discussed below, this inventory and the subsequent year inventories that MAG derived from it overestimate the baseline emissions for construction and other sources. The accuracy of the baseline inventory is particularly important for this plan because it relies heavily on reductions from improving the effectiveness of existing rules<sup>6</sup> for construction and other sources in order to meet the CAA's 5%, RFP and attainment requirements. See 189(d) plan, chapters 7 and 8.

MCAQD Rule 310 requires control measures for dust generating activities such as excavation, construction, demolition and bulk material handling. According to the 2005 Periodic Inventory, the majority of emissions subject to control under Rule 310 are from residential, commercial and road

a scientific analysis of the particulate matter found on filters on exceedance days indicates that the vast majority of PM–10 on these days is directly emitted PM–10 such as soil dust. See attachment, “On speciated PM in the Salt River industrial area in 2002,” dated January 22, 2010, to E-mail from Peter Hyde, Arizona State University, to Gregory Nudd, EPA, July 30, 2010. Therefore, the 189(d) plan appropriately focuses on directly emitted PM–10.

<sup>6</sup> Rule effectiveness is an estimate of the ability of a regulatory program to achieve all of the emission reductions that could have been achieved by full compliance with the applicable regulations at all sources at all times. EPA requires a state to account for rule effectiveness when estimating emissions from source categories that are subject to regulations that reduce emissions. See “Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,” EPA-454/R-05-001, November 2005 (2005 Emissions Inventory Guidance), p. B–3.

construction. Measure #8 in the 189(d) plan is a commitment to implement proactive and complaint based inspections during night-time and on weekends and is a telling example of how the 189(d) plan depends primarily on improving Rule 310 effectiveness to demonstrate the required annual 5% reductions and RFP. The plan asserts that Measure #8 will reduce PM-10 emissions by 1,884 tons per year (tpy). 189(d) plan, p. 7-3. Of that, 1,694 tpy are attributed to increases in compliance, and therefore in the effectiveness, of Rule 310. 189(d) plan TSD, p. III-5. This pattern is repeated in Measures #2, #3, #9, #10, #16, and #44, with a large majority of the 189(d) plan's

total emissions reductions derived from increased compliance with Rule 310. This pattern is further detailed in table 2 below.  
 For the 2005 Periodic Inventory, MCAQD used a set of 63 sample inspections of sources subject to Rule 310 in order to estimate its effectiveness.<sup>7</sup> An analysis of these inspections yielded an estimated rule effectiveness of 51 percent. However, an analysis conducted by MCAQD of the entire database of over 11,000 relevant inspections during the time period of the sample inspections yielded an estimated rule effectiveness of 64.5 percent. In other words, examination of the larger database suggests that a significantly higher percentage of

sources were in compliance, and accordingly the aggregate emissions inventory for this source category could be proportionately smaller than that suggested by the smaller set of sample inspections. While MCAQD conducted this analysis in 2010, after the development of the 189(d) plan, the data and the method were available at the time it produced the 2005 Periodic Inventory.<sup>8</sup> Table 1 below shows the impact of these two different rule effectiveness values on the estimate of fugitive dust emissions from construction sources in the Maricopa area. The data in table 1 are from the emission rate back-casting analysis conducted by MCAQD in 2010.<sup>9</sup>

TABLE 1—IMPACT OF RULE 310 EFFECTIVENESS METHODOLOGY ON ESTIMATED EMISSIONS FROM CONSTRUCTION ACTIVITY

Estimation method	Rule effectiveness (percent)	Estimated 2005 emissions for construction activity (tons per year)
Sample Rule 310 inspections (63 total inspections between July and December 2006) .....	51	32,130
All Rule 310 inspections (over 11,000 between July 2006 and June 2007) .....	64.5	24,968
Difference in emissions .....		7,162 (-22%)

EPA believes that analysis of the full database of 11,000 Rule 310 inspections provides a more accurate measure of rule effectiveness than using a sample of 63 inspections. This is because the 63 inspections may not be representative of the entire population of sources covered by the rule. The larger data set is much more likely to be free of sample biases. Therefore, based on this analysis of the larger data set, EPA has determined that

the initial estimate of rule effectiveness for Rule 310 was not accurate. There is a similar inaccuracy in the rule effectiveness calculations for MCAQD Rule 310.01<sup>10</sup> for unpaved parking lots, unpaved roads and similar sources of fugitive dust emissions. For the 2005 Periodic Inventory, MCAQD used a set of 124 sample inspections to estimate the effectiveness of Rule 310.01. 2005 Periodic Inventory, appendix 2.2. An analysis of these

inspections yielded an estimated rule effectiveness of 68 percent. However, an analysis conducted by MCAQD of the entire database of over 4,500 relevant inspections during the time period of the sample inspections yielded an estimated rule effectiveness of 90 percent. See Poppen Email.  
 The significance of the inventory inaccuracies discussed above is graphically depicted in table 2:

TABLE 2<sup>11</sup>—MEASURES TO IMPROVE COMPLIANCE WITH RULES 310 AND 310.01 COMPARED TO ALL MEASURES SUPPORTING THE ATTAINMENT, 5% AND RFP DEMONSTRATIONS

	2008	2009	2010
Total reductions from attainment, 5% and RFP measures [tpy] .....	6,603	15,422	19,840
Reductions from measures to improve rule effectiveness of Rule 310 .....	4,658	11,292	15,244
Reductions from measures to improve rule effectiveness of Rule 310.01 .....	360	1,061	1,063
% of reductions from such measures .....	76%	80%	82%

As shown in table 2, the 189(d) plan is designed to achieve the additional

reductions in emissions required for the attainment, 5% and RFP demonstrations

primarily through improvements in rule effectiveness for the sources regulated

<sup>7</sup> 2005 Periodic Inventory, appendix 2.2, "Rule Effectiveness Study for the Maricopa County Rules 310, 310.01, and 316."

<sup>8</sup> The data from the 2010 analysis were from inspections conducted at the time the original rule effectiveness calculation was being developed, so that information should have been in the MCAQD's database. The analytical method was a hybrid of a

simple average of the results in the inspection database and the 2005 Emissions Inventory Guidance.

<sup>9</sup> E-mail from Matthew Poppen, MCAQD, to Gregory Nudd, EPA, "Back-casting of RE rates," April 19, 2010 (Poppen E-mail).

<sup>10</sup> EPA is also concerned that the method MCAQD used to estimate rule effectiveness for non-metallic

mineral processing and other sources subject to Rule 316 is dependent on qualitative factors rather than compliance data.

<sup>11</sup> This data summary was compiled from the emission reduction calculations found in the 189(d) plan TSD, chapter III.

by Rules 310 and 310.01. The inaccuracies in the baseline emissions inventory were carried through into the future year emission inventories and the calculations of emission reductions for those demonstrations.

Moreover, the underestimation of the effectiveness of Rules 310 and 310.01 resulted in a control strategy with a high probability of failure because the over-

emphasis on achieving emission reductions from the sources regulated by these rules likely resulted in a corresponding de-emphasis on emission reductions from other sources contributing to the nonattainment problem in the Maricopa area. In table 3 below we compare the projected percentage of 2010 emissions attributable to certain source categories

before implementation of the 189(d) plan's controls to the projected percentage of emission reductions attributed to controls for these categories in 2010. The source categories are those contributing more than 5% to the projected 2010 inventory of annual PM-10 emissions. See 189(d) TSD, pp. II-17 and chapter III.

TABLE 3—COMPARISON OF THE 2010 EMISSIONS REDUCTIONS EXPECTED FROM THE CONTROL MEASURES TO THE PROPORTION OF 2010 EMISSIONS FOR PRINCIPAL SOURCES OF PM-10 IN THE NONATTAINMENT AREA

Source category	Percentage of pre-control 2010 emissions	Percentage of estimated 2010 emission reductions
Construction .....	33.1	82.5
Paved Roads (including trackout) .....	19.1	5.1
Unpaved Roads .....	17.4	0.0
Fuel Combustion and Fires .....	5.6	0.2
Windblown dust from vacant land .....	5.4	7.7
Other Sources (<5% each) .....	19.4	4.5

As can be seen from this comparison, the plan's emphasis on reducing emissions from the construction industry is out of proportion to that source category's relative contribution to the projected 2010 inventory.

For the reasons discussed above, EPA is proposing to disapprove under CAA section 110(k)(3) the 2005 baseline emissions inventory in the 189(d) plan and all of the projected inventories as not meeting the requirements of section 172(c)(3).

*B. Measures in the 189(d) Plan*

1. Introduction

The 189(d) plan contains 53 measures designed to reduce emissions of PM-10. A detailed description and implementation schedule for each measure is provided in chapter 6 of the plan. Of the 53 measures, 25 measures are intended to support the attainment, RFP and 5% demonstrations provided in the plan, and 9 are contingency measures. These measures incorporate differing strategies to target emissions from a variety of activities within the Maricopa area. The remaining measures are included to represent additional efforts by the State and local jurisdictions to reduce emissions beyond those quantified in the plan. As those measures are implemented, the 189(d) plan provides that a more detailed assessment of the air quality benefits may be developed and reported in the future.

EPA is proposing action on the measures in the 189(d) plan that constitute mandatory directives to the

regulated community or to various local jurisdictions to adopt certain legislative requirements. These measures typically involve emissions reductions that can be reasonably quantified, and/or regulatory components that are enforceable. The 189(d) plan does not take specific emission reduction credits for the additional measures referred to above where the ability to quantify emission reductions was considered to be limited.

In reviewing a statute, regulation, or rule for SIP approval, EPA looks to ensure that the provision is enforceable as required by CAA section 110(a), is consistent with all applicable EPA guidance, and does not relax existing SIP requirements as required by CAA sections 110(l) and 193. Guidance and policy documents that we use to evaluate enforceability and PM-10 rules include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

3. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (General Preamble); 57 FR 18070 (April 28, 1992).

4. "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994) (Addendum).

5. "PM-10 Guideline Document," EPA 452/R-93-008, April 1993.

2. Measures Proposed for Approval

EPA has identified the State statutory provisions submitted with the 189(d) plan that implement the directives in each measure for which we are proposing action. Many of the 189(d) plan measures refer to Arizona Senate Bill 1552 (SB 1552). In 2007, the Arizona Legislature passed SB 1552, which includes several air quality provisions designed to reduce PM-10. SB 1552 adds new and amends existing provisions of the Arizona Revised Statutes (ARS) and is included in the 189(d) plan submittal. 189(d) plan, chapter 10, "Commitments for Implementation," volume two. We are proposing to approve the sections of the ARS that implement the plan measures identified in table 4 below. For ease of discussion, the statutory provisions that we are proposing to approve are associated with measures that can be generally grouped into seven categories: on-site dust management, certification programs, vehicle use, leaf blowers, unpaved areas, burning and agriculture. A brief discussion of each category is provided after the table.

TABLE 4—189(d) PLAN MEASURE CATEGORIES AND ASSOCIATED STATUTORY PROVISIONS

Category	Measure numbers from 189(d) plan	Associated statutory provisions
On-site management .....	2, 3, 16 .....	ARS 49–474.05.
Certification programs .....	5*, 24* .....	ARS 9–500.04, ARS 49–457.02, ARS 49–474.01.
Vehicle Use .....	19*, 23, 31, 46 .....	ARS 9–500.04, ARS 9–500.27, ARS 49–457.03, ARS 49–457.04, ARS 49–474.01.
Leaf blowers .....	18, 21, 22, 45 .....	ARS 9–500.04, ARS 11–877, ARS 49–457.01.
Unpaved areas .....	25, 26*, 28, 33 .....	ARS 9–500.04, ARS 28–6705, ARS 49–474.01.
Burning .....	35, 47 .....	ARS 49–501.
Agriculture .....	50* .....	ARS 49–457. <sup>12</sup>

\* The State submitted these measures as contingency measures pursuant to CAA section 172(c)(9). See section III.F below for further discussion.

With the exception of ARS 49–457, discussed in section III.B.3 below, and ARS 49–474.01, the ARS sections listed above are not currently in the Arizona SIP. On August 10, 1988, we approved an earlier version of ARS 49–474.01 that was submitted by the State to EPA on May 22, 1987. 53 FR 30224. In comparison to this previously approved version, the newly submitted version of ARS 49–474.01 contains several additional requirements regarding unstabilized areas and vehicle use that make the statutory provision more stringent. Therefore, we believe the current submitted version of ARS 49–474.01 represents a strengthening of the SIP and is consistent with the relevant policy and guidance regarding SIP relaxations.

#### On-Site Management

Many of the 189(d) plan measures are related to the reduction of PM–10 emissions through dust control training and on-site management by trained personnel. Measures #2 and #3 address development of basic and comprehensive training programs for the suppression of emissions. The program requires completion of dust control training for water truck and water pull drivers, and on-site representatives of sites with more than one acre of disturbed surface area subject to a permit requiring control of PM–10 emissions. Any site with five or more acres of disturbed surface area subject to a permit requiring control of PM–10 emissions will be required to

have a trained dust control coordinator on site. Measure #16 involves the requirement for subcontractors engaged in dust generating operations to be registered with the control officer. These measures are implemented through ARS 49–474.05. See 189(d) plan, pp. 6–20, 6–24, 6–42, and 6–46.

#### Certification Programs

Some of the 189(d) plan measures seek to achieve emissions reductions through certification of equipment or personnel. In certain cases, the certification program is intended to provide an incentive for voluntary emission reductions and good operating practices. In other cases, the certification program seeks to maintain an appropriate level of emissions control from regularly used equipment. Measure #5 directs ADEQ to establish the Dust-Free Developments Program. The purpose of this program is to certify persons and entities that demonstrate exceptional commitment to the reduction of airborne dust. See ARS 49–457.02 and 189(d) plan, p. 6–29. Measure #24 directs cities and towns to require that new or renewed contracts for sweeping of city streets must be conducted with certified street sweepers. Street sweepers must meet the certification specifications contained in South Coast Air Quality Management District (SCAQMD) Rule 1186. See ARS 9–500.04, ARS 49–474.01, and 189(d) plan, p. 6–72.

#### Vehicle Use

Because vehicle use often generates PM–10 emissions, the 189(d) plan addresses several different activities related to vehicle use. Measures #19, #23, and #46 restrict off-road vehicle use in certain areas and on high pollution advisory days, and prescribe outreach to off-road vehicle purchasers to inform them of methods for reducing generation of dust. See ARS 9–500.27, ARS 49–457.03, ARS 49–457.04, and 189(d) plan, pp. 6–53, 6–71 and 6–190.

Measure #31 restricts vehicle use and parking on unpaved or unstabilized vacant lots. See ARS 9–500.04, ARS 49–474.01 and 189(d) plan, p. 6–141.

#### Leaf Blowers

The 189(d) plan seeks to reduce PM–10 emissions from the operation of leaf blowers. Measures #18 and #45 restrict the use of leaf blowers on high pollution advisory days or on unstabilized surfaces. Measure #21 involves the banning of leaf blowers from blowing landscape debris into public roadways. Measure #22 requires outreach to buyers and sellers of leaf blowing equipment to inform them of safe and efficient use, methods for reducing generation of dust, and dust control ordinances and restrictions. See ARS 9–500.04, ARS 11–877, ARS 49–457.01 and 189(d) plan, pp. 6–50, 6–69, 6–70 and 6–189.

#### Unpaved Areas

The 189(d) plan contains several measures that seek to reduce PM–10 emissions by reducing the number of unpaved or unstabilized areas. Measures #25, #26, and #28 direct cities and towns to pave or stabilize parking lots, dirt roads, alleys, and shoulders. Measure #33 allows counties the ability to assess fines to recover the cost of stabilizing lots. See ARS 9–500.04, ARS 49–474.01, ARS 28–6705 and 189(d) plan, pp. 6–86, 6–103, 6–124, and 6–169.

#### Burning

Several measures are designed to regulate burning activities. Measure #35 bans the use of outdoor fireplaces in the hospitality industry on “no burn” days. Measure #47 bans open burning during the ozone season. See ARS 49–501 and 189(d) plan, pp. 6–174 and 6–190.

#### 3. Measure Proposed for Limited Approval/Disapproval

Measure #50 is included in the 189(d) plan as a contingency measure and is designed to achieve emission reductions

<sup>12</sup> Measure #50 concerns the State statutory and regulatory program for the control of PM–10 from agricultural sources in the Maricopa area. The program is codified in ARS 49–457 and Arizona Administrative Code (AsAC) R18–2–610 and R18–2–611. ARS 49–457 established the program and authorized a committee to adopt implementing regulations. While we are proposing to fully approve the amendment to ARS–457 which was submitted with the 189(d) plan, we do not describe it further in this section because we address the agricultural program in detail in section III.B.3 below.

from agricultural sources of PM-10. 189(d) plan, pp. 6–191 and 8–73. Measure #50 is implemented through SB 1552 which amended ARS 49–457 and requires in section 20 that the best management practices (BMP) committee for regulated agricultural activities adopt revised rules. These rules, AAC R18–2–610 and R18–2–611, were revised pursuant to amended ARS 49–457 and submitted with the 189(d) plan. 189(d) plan, chapter 10, “Commitments for Implementation,” volume two. See also 189(d) plan, Measure #41, p. 6–185. On May 6, 2010, Arizona again submitted the revised versions of AAC R18–2–610 and R18–2–611 with additional documentation and the “Agricultural Best Management Practices Guidance Booklet and Pocket Guide” (Handbook). Letter from Benjamin Grumbles, ADEQ, to Jared Blumenfeld, EPA, with enclosures, May 6, 2010. The Handbook provides regulated sources with guidance on how to implement BMPs and provides information to the public and farm organizations about AAC R18–2–610 and R18–2–611 (Handbook, p. 5).

We describe the history of agricultural PM-10 controls in the Maricopa area and we evaluate amended ARS 49–457 and revised AAC R18–2–610 and R18–2–611 below.

#### a. History

The analysis done for the “Plan for Attainment of the 24-hour PM-10 Standard—Maricopa County PM-10 Nonattainment Area,” May 1997—(Microscale Plan)—revealed the contribution agricultural sources make to exceedances of the 24-hour PM-10 standard in the Maricopa area. See Microscale plan, pp. 18–19. In order to develop adequate controls for this source category, Arizona passed legislation, the original version of ARS 49–457, in 1997 establishing the agricultural BMP committee and directing the committee to adopt by rule by June 10, 2000, an agricultural general permit specifying best management practices for reducing PM-10 from agricultural activities. The legislation also required that implementation of the agricultural controls begin by June 10, 2000, with an education program and full compliance with the rule to be achieved by December 31, 2001.

In September 1998, the State submitted ARS 49–457 and on June 29, 1999 we approved the statute as meeting the reasonably available control measure (RACM) requirements of the CAA.<sup>13</sup> 64 FR 34726.

After a series of meetings during 1999 and 2000, the agricultural BMP committee in 2000 adopted the original versions of AAC R18–2–610, “Definitions for R18–2–611,” and AAC R18–2–611, “Agricultural PM-10 General Permit; Maricopa PM10 Nonattainment Area” (collectively, general permit rule). 66 FR 34598. The BMPs are defined in AAC R18–2–610. AAC R18–2–611 groups the BMPs into three categories (tilling and harvest, noncropland, and cropland). The original version of AAC R18–2–611 required that commercial farmers select one practice from each of these categories. AAC R18–2–611 also requires that commercial farmers maintain records demonstrating compliance with the general permit rule.

In July 2000, the State submitted the general permit rule. The State also submitted an analysis quantifying the emission reductions expected from the rule and the demonstration that the rule meets the CAA’s RACM, BACM and MSM requirements. We approved the general permit rule as meeting the RACM requirement in CAA section 189(a)(1)(C) on October 11, 2001. 66 FR 51869. We approved the general permit rule as meeting the requirements for BACM and MSM in CAA sections 189(b)(1)(B) and 188(e) on July 25, 2002. 67 FR 48718.

#### b. Amendments to ARS 49–457 and Revisions to the General Permit Rule

SB 1552 amended ARS 49–457 to increase the number of required BMPs from one to two in the general permit rule by December 31, 2007. SB 1552 also expanded the scope of the applicability of the general permit rule by amending the definition of regulated area to include any portion of Area A<sup>14</sup> that is located in a county with a population of two million or more persons.

The agricultural BMP committee added definitions for the following terms to AAC R18–2–610: “Area A,” “cessation of night tilling,” “forage crop,” “genetically modified,” “genetically modified organism,” “global position satellite system,” “green chop,” “high pollution advisory,” “integrated pest management,” “night tilling,” “organic

area, was required to implement RACM pursuant to CAA section 189(a)(1)(C).

<sup>14</sup> Area A is defined in ARS 49–541. The 189(d) plan does not take any credit for emission reductions from the general permit rule’s expansion to Area A because it extends beyond the boundaries of the Maricopa area. 189(d) plan, p. 8–73. ARS 49–451 was not submitted for inclusion into the SIP. While not a basis for our proposed action here, we recommend that ADEQ either insert the definition from ARS 49–451 into the general permit rule or submit ARS 49–451 to EPA.

farming practices,” “precision farming,” and “transgenic crops.” The definitions for “commercial farm” and “regulated agricultural activity” were amended to include Area A.

The agricultural BMP committee also amended AAC R18–2–611. Section C of AAC R18–2–611 was amended to require commercial farmers to implement two BMPs each from the categories of tillage and harvest, noncropland, and cropland. The following additional BMPs were added to the tillage and harvest category in Section E of AAC R18–2–611: Green chop, integrated pest management, cessation of night tilling, precision farming, and transgenic crops. The cropland category in Section G was augmented with the following additional options: Integrated pest management and precision farming.

#### c. Evaluation of Amendments to ARS 49–457 and Revisions to the General Permit Rule

As stated above, in reviewing a statute, regulation, or rule for SIP approval, EPA looks to ensure that the provision is enforceable as required by CAA section 110(a), is consistent with all applicable EPA guidance, and does not relax existing SIP requirements as required by CAA sections 110(l) and 193. ARS 49–457 and the general permit rule generally meet the applicable requirements and guidance. We are proposing to approve amended ARS 49–457 because it strengthens the SIP by requiring an increase in the number of required BMPs and expanding the geographical scope of the agricultural BMP program. With regard to the general permit rule, we are proposing a limited approval and limited disapproval and we discuss the bases for that proposal below.

As stated above, we approved the general permit rule as meeting the CAA requirements for BACM in 2002. Since then, several air pollution control agencies in California, including the San Joaquin Valley Unified Air Pollution Control District (SJVAPCD) and the Imperial County Air Pollution Control District (ICAPCD), have adopted analogous rules for controlling PM-10 emissions from agricultural sources. The relevant State and local rules in Arizona, California and Nevada are summarized in our recent action on ICAPCD’s Rule 806. 75 FR 39366, 39383 (July 8, 2010).

Since the adoption of controls for agricultural sources in the Maricopa area, other State and local agencies which have adopted such controls, as well as EPA, have acquired additional expertise about how to control

<sup>13</sup> Prior to its classification as serious, the Maricopa area, as a moderate PM-10 nonattainment

emissions from these sources and implement regulations for them. As a result, we no longer believe that the requirements in the general permit rule that we approved in 2002 for the Maricopa area fully meet CAA requirements.

AAC R18–2–611 Sections E, F and G list BMPs intended to control emissions from tillage and harvest, noncropland and cropland, and the BMPs on these lists are defined in AAC R18–2–610. However, as discussed below, the definitions in AAC R18–2–610 are overly broad. Moreover, there is no mechanism in the rule to provide sufficient specificity to ensure a BACM level of control.<sup>15</sup>

As an example of the breadth of the BMPs, one of the BMPs in AAC R18–2–611 Section E, the tillage and harvest category, is “equipment modification.” This term is defined in AAC R18–2–610 Section 18 as “modifying agricultural equipment to prevent or reduce particulate matter generation from cropland.” The types of equipment modification are not specified in the rule, and according to the Handbook, examples of this practice include using shields to redirect the fan exhaust of the equipment or using spray bars that emit a mist to knock down PM–10. Handbook, p. 10. Because most of the PM–10 generated during active agricultural operations is due to disturbance from parts of agricultural equipment that come into direct contact with the soil, we expect that using appropriately designed spray bars would be far more effective at reducing PM–10 than redirecting a machine’s fan exhaust. However, there is no provision in the general permit rule that requires a source or regulatory agency to evaluate whether the more effective version of this BMP is economically and technologically feasible. Moreover, while AAC R18–2–611 Section I requires that a farmer record that he has selected the “equipment modification” BMP, it does not require the farmer to record what type of equipment modification he will be implementing. Hence, neither ADEQ nor the public can verify whether what is being implemented is a best available control measure.

<sup>15</sup> For example, SJVAPCD’s Rule 4550 has an application submittal and approval process. Great Basin Unified Air Pollution Control District’s (GBUAPCD) Rule 502 has a similar application submittal and approval process. SJVAPCD’s and GBUAPCD’s application forms require sources to select conservation management practices (CMPs), the analogue to Arizona’s BMPs, and to describe the specifics of the practices chosen. Such an application submittal and approval process provides a mechanism to ensure that controls are implemented at a BACM level.

An example from AAC R18–2–611 Section F, the category for noncropland, is the “watering” BMP. AAC R18–2–610 Section 52 defines watering as “applying water to noncropland.” The level of control achieved would depend on the amount of water that was applied, the frequency with which it was applied, as well as the size and conditions of the area to which it was applied. However, the rule does not specify the frequency or amount of water application or otherwise ensure that watering under this measure is effective. Moreover, the definition for “noncropland” in Section 31 of AAC R18–2–611 states that it “includes a private farm road, ditch, ditch bank, equipment yard, storage yard, or well head.” It is not clear which of these areas a farmer would need to control upon selecting the “watering” BMP. As written, the rule allows regulated sources to implement the “watering” BMP in a manner that may not be as effective as best available controls. Furthermore, while AAC R18–2–611 Section I requires that a farmer record that he has selected the “watering” BMP, it does not require the farmer to record how he will be implementing this BMP. Hence, neither ADEQ nor the public can verify whether the BMP that is being implemented is in fact a best available control measure.

An example from AAC R18–2–611 Section G, the category for cropland, is the “artificial wind barrier” BMP. AAC R18–2–610 Section 4 defines “artificial wind barrier” as “a physical barrier to the wind.” The control effectiveness of the barrier will depend on what the barrier is constructed of, the size of the barrier, as well as the placement of the barrier. In fact, the Handbook suggests that certain materials (e.g., board fences, burlap fences, crate walls, and bales of hay) be used, notes that the distance of 10 times the barrier height is considered the protected area downwind of a barrier, and states that the barrier should be aligned across the prevailing wind direction. Handbook, p. 20. However, the general permit rule does not specify any parameters that need to be met for the implementation of the “artificial wind barrier” BMP. Hence a source can construct a barrier that is not a best available control and still be in compliance with the general permit rule.

The absence of sufficiently defined requirements makes it difficult for regulated parties to understand and ensure compliance with the requirements, and makes it difficult for ADEQ or others to verify compliance with the general permit rule. The general permit rule needs to be revised to ensure that the BMPs are enforceable

as required by CAA section 110(a) and are implemented at a BACM level as required by section 189(b)(1)(B).

#### 4. Summary of Proposed Action on Measures in 189(d) Plan

EPA believes the statutory provisions associated with the 189(d) plan measures in table 4 in section III.B.2 above are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Therefore, we are proposing to fully approve under CAA section 110(k)(3) the following Arizona statutory provisions, as submitted with the 189(d) plan:

ARS 9–500.04  
ARS 9–500.27  
ARS 11–877  
ARS 28–6705  
ARS 49–457  
ARS 49–457.01  
ARS 49–457.02  
ARS 49–457.03  
ARS 49–457.04  
ARS 49–474.01  
ARS 49–474.05  
ARS 49–501

EPA is also proposing pursuant to CAA section 110(k)(3) to approve the “Agricultural Best Management Practices Guidance Booklet and Pocket Guide” as submitted on May 6, 2010.

EPA is also proposing pursuant to CAA section 110(k)(3) a limited approval and limited disapproval of AAC R18–2–610 and AAC R18–2–611, as submitted in the 189(d) plan. We are proposing a limited approval because AAC R18–2–610 and AAC R18–2–611 strengthen the SIP. We are proposing a limited disapproval because the general permit rule does not meet the enforceability requirements of CAA section 110(a) and no longer ensures that controls for agricultural sources in the Maricopa area are implemented at a BACM level as required by section 189(b)(1)(B).

#### C. Attainment Demonstration

CAA section 189(d) requires the submittal of plan revisions that provide for expeditious attainment of the PM–10 NAAQS. The attainment deadline applicable to an area that misses the serious area attainment date is as soon as practicable, but no later than five years from the publication date of the notice of a nonattainment finding unless extended by EPA as meeting certain specified requirements. CAA section 179(d)(3). Because, as stated previously, EPA published the nonattainment finding for the Maricopa area on June 6, 2007 (72 FR 31183), the attainment deadline for the area is as expeditiously

as practicable but no later than June 6, 2012.

The 189(d) plan projects through a modeled attainment demonstration that the Maricopa area will attain the PM-10 standard by December 31, 2010. 189(d) plan, chapter 8. According to the plan, modeling was conducted for the two areas, the Salt River area and the Higley monitor, that have the mix and density of sources that caused the highest 24-hour PM-10 monitor readings in the Maricopa area from 2004 through 2006. The Salt River area includes the three monitors (West 43rd Avenue, Durango Complex and Bethune Elementary) that recorded violations during those years. The Higley monitor did not violate the PM-10 standard for that period but had one exceedance in 2004 and one in 2006 and the surrounding area has a different mix of sources than the Salt River area. The plan also provides a modeled attainment demonstration for the remainder of the nonattainment area. AERMOD was used for the attainment demonstration for the Salt River area. Attainment for the Higley monitor area and the remainder of the nonattainment area was shown using a proportional rollback approach.

AERMOD is an EPA-approved model and was appropriately used in the 189(d) plan. The proportional rollback approach was also appropriate because of the lack of good models for PM-10 on large geographic scales. However, EPA cannot approve an attainment demonstration for PM-10 nonattainment areas based on modeled projections of attainment if actual ambient air quality monitoring data show that the area cannot attain by the projected date. Under 40 CFR 50.6(a), the 24-hour PM-10 standard is attained when the expected number of exceedances per year at each monitoring site is less than or equal to one. The number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year and then averaging them over the past 3 calendar years. 40 CFR part 50, appendix K. Thus, in order for the Maricopa area to attain the standard by December 31, 2010, there can be no more than one exceedance at any one monitor in the nonattainment area in calendar years 2008, 2009 and 2010.

There were 11 recorded exceedances of the PM-10 standard in 2008 in the Maricopa area. Five of these exceedances were recorded at the West 43rd Avenue monitor, two at the Durango Complex monitor, two at the South Phoenix monitor, and two at the Coyote Lakes monitor. In 2009, there were 22 exceedances recorded in the Maricopa Area. Seven of these

exceedances were recorded at the West 43rd Avenue monitor, three at the Durango Complex monitor, three at the South Phoenix monitor, two at the Higley monitor, two at the West Chandler monitor, one at the West Phoenix monitor, one at the Glendale monitor, one at Greenwood monitor, one at the Dysart monitor, and one at the Bethune Elementary School monitor.<sup>16</sup>

Of the eleven 2008 exceedances, ten were flagged by the State as due to exceptional events under EPA's Exceptional Events Rule (EER)<sup>17</sup> which allows the Agency to exclude air quality monitoring data from regulatory determinations related to exceedances or violations of the NAAQS if the requirements of the EER are met. All of the 2009 exceedances were flagged as exceptional events under the EER.<sup>18</sup>

Under the EER, EPA may exclude monitored exceedances of the NAAQS from regulatory determinations if a state adequately demonstrates that an exceptional event caused the exceedances. 40 CFR 50.14(a). Before EPA will exclude data from these regulatory determinations, the state must flag the data in EPA's Air Quality System (AQS) database and, after notice and an opportunity for public comment, submit a demonstration to justify the exclusion. After considering the weight of evidence provided in the demonstration, EPA will decide whether or not to concur on each flag.

EPA has evaluated four of the 2008 exceedances recorded at the West 43rd Avenue monitor in south-central Phoenix that the State claims to be due to exceptional events.<sup>19</sup> The exceedances were recorded on March 14, April 30, May 21, and June 4. On May 21, 2010 EPA determined that the events do not meet the requirements of

<sup>16</sup> "USEPA Quick Look Report for Maricopa County (01/01/2008-12/31/2010) Air Quality System database, run date: August 26, 2010" (AQS 2008-2010 Quick Look Report). The Air Quality System Identifier numbers for the monitors referenced in this section are as follows: West 43rd Avenue (04-013-4009), Durango Complex (04-013-9812), South Phoenix (04-013-4003), Coyote Lakes (04-013-4014), Higley (04-013-4006), West Chandler (04-013-4004), West Phoenix (04-013-0019), Glendale (04-013-2001), Greenwood (04-013-3010), Dysart (04-013-4010), Bethune Elementary School (04-013-8006).

<sup>17</sup> See "Treatment of Data Influenced by Exceptional Events," 72 FR 13560 (March 22, 2007). The EER is codified at 40 CFR 50.1 and 50.14. For the state flagging requirements, see 40 CFR 50.14(c)(2).

<sup>18</sup> AQS 2008-2010 Quick Look Report.

<sup>19</sup> EPA has not evaluated the remaining exceptional event claims for 2008 or those for 2009. As discussed below, such an evaluation was not necessary for us to determine that the Maricopa area cannot attain the PM-10 standard by December 31, 2010.

the EER and therefore do not qualify as exceptional events for regulatory purposes. Letter from Jared Blumenfeld, EPA, to Benjamin H. Grumbles, ADEQ, re: PM<sub>10</sub> National Ambient Air Quality Standard in Phoenix; Request for Concurrence for Treatment as "Exceptional Events," May 21, 2010, with enclosures. As a result, EPA is not excluding the exceedances recorded on these dates from regulatory determinations regarding NAAQS exceedances in the Maricopa area.

Under 40 CFR part 50, appendix K, because there have been four exceedances in 2008 at the West 43rd Avenue monitor, the area cannot attain the standard by December 31, 2010 as projected in the 189(d) plan. Therefore, EPA is proposing to disapprove under CAA section 110(k)(3) the attainment demonstration in the plan as not meeting the requirements of sections 189(d) and 179(d)(3).

Finally, we note here, as we address in more detail in section III.A above, that most of the emission reductions relied on in the 189(d) plan are projected to be achieved by increased compliance with MCAQD Rules 310, 310.01 and 316. This is the case for the attainment demonstration, as well as for the 5% and RFP demonstrations discussed in sections III.D and III.F below. The 189(d) plan provides little or no support for the emission reductions attributed to these increased compliance measures. See, e.g., Measure #8 (Conduct Nighttime and Weekend Inspections) which, with no explanation, estimates that compliance with MCAQD Rules 310 and 316 will increase by 4 percent in 2008, 6 percent in 2009 and 8 percent in 2010. 189(d) plan TSD, pp. III-4 through III-6. We recognize that calculating accurate emission reduction estimates for increased compliance measures is challenging. It is, however, important for such estimates to have a technical basis, especially when such measures are expected to achieve the majority of the emission reductions in a SIP. One way to begin to address this issue would be to initiate an ongoing process to verify that compliance rates are increasing as expected and that, as a result, the projected emission reductions are actually being realized.

#### D. 5% Requirement

The demonstration addressing the 5% requirement of CAA section 189(d) is presented in chapter 7 of the 189(d) plan. Chapter 7 shows the annual 5% emission reductions of PM-10<sup>20</sup> for

<sup>20</sup> While the 5% requirement of section 189(d) can be met by emission reductions of PM-10 or

2008 through 2010, the projected attainment year. The plan quantifies emission reductions attributable to 25 of the 53 measures in the plan to meet the annual 5% targets. Table 7–2 in the 189(d) plan shows the base case PM–10 emissions from the 2005 Periodic Inventory discussed in section III.A above. Table 7–3 presents the controlled emissions for 2007 through 2010, i.e., the emissions after the emission reductions from the 25 quantified measures have been applied. The plan explains that the annual target is obtained by multiplying the controlled 2007 emissions in table 7–3 by 5% and concludes that the 5% targets are met in 2008, 2009 and 2010 with a surplus margin of benefit in each year. 189(d) plan, table 7–4, p. 7–19.

EPA believes the methodology for determining the 5% targets for the years 2008, 2009 and 2010 is generally appropriate. However, because we have determined that the 2005 Periodic Inventory on which the State based these calculations is inaccurate, the emission reduction targets themselves are also necessarily inaccurate. Because the 189(d) plan projects emission reductions surplus to the 5% targets in each year, it is theoretically possible that creditable reductions from the 25 quantified measures would still achieve the 5% reductions when recalculated from an accurate base year inventory. However that could only be determined by an EPA review of a revised plan based on adjusted calculations.

Furthermore, the language of section 189(d) compels us to conclude that the 5% demonstration in the 189(d) plan does not meet that section's requirement. CAA section 189(d) requires that the plan provide for annual reductions of PM–10 or PM–10 precursors of not less than 5% each year from the date of submission of the plan until attainment. The 189(d) plan submitted by Arizona does not provide for reductions after 2010 because it projects attainment of the PM–10 standard by the end of that year. As discussed in section III.C above, the Maricopa area cannot attain by December 31, 2010.

For the above reasons, EPA is proposing to disapprove under section 110(k)(3) the demonstration of the 5% annual emission reductions in the 189(d) plan as not meeting the 5% requirement in CAA section 189(d).

PM–10 precursors, the 189(d) plan relies on PM–10 reductions. This reliance is consistent with the nature of the particulate matter problem in the Maricopa area. See footnote 5.

#### *E. Reasonable Further Progress and Quantitative Milestones*

Under section 189(c)(1), the 189(d) plan must demonstrate RFP. We have explained in guidance that for those areas, such as the Maricopa area, where “the nonattainment problem is attributed to area type sources (e.g., fugitive dust, residential wood combustion, etc.), RFP should be met by showing annual incremental emission reductions sufficient generally to maintain linear progress towards attainment. Total PM–10 emissions should not remain constant or increase from 1 year to the next in such an area.” Further, we stated that “in reviewing the SIP, EPA will determine whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective to ensure timely attainment of the PM–10 NAAQS.” Addendum at 42015–42016.

PM–10 nonattainment SIPs are required by section 189(c) to contain quantitative milestones to be achieved every three years and which are consistent with RFP for the area. These quantitative milestones should consist of elements which allow progress to be quantified or measured. Specifically, states should identify and submit quantitative milestones providing for the amount of emission reductions adequate to achieve the NAAQS by the applicable attainment date. *Id.* at 42016.

The 189(d) plan provides a graph showing a RFP line representing total emissions in the Maricopa area after emission reduction credit is applied for the 25 measures described in chapter 6 of the plan which are quantified for the purpose of meeting the section 189(c) requirements. 189(d) plan, figure 8–25; pp. 8–65 through 8–66. The graph shows an annual downward linear trend in emissions from 2007 through 2010, the modeled attainment date in the plan. The plan explains that the appropriate milestone year is 2010. *Id.*

The statutory purpose of RFP is to “ensure attainment” and the quantitative milestones are “to be achieved until the area is redesignated to attainment” under CAA sections 171(1) and 189(c) respectively. As discussed in section III.C above, we are proposing to disapprove the attainment demonstration in the 189(d) plan because, as a result of exceedances of the PM–10 standard recorded at the West 43rd Avenue monitor in 2008, the area cannot attain the standard by 2010 as projected in the plan. As a result, the RFP and milestone demonstrations in the plan do not achieve the statutory purposes of sections 171(1) and 189(c). We are therefore proposing to

disapprove these demonstrations under CAA section 110(k)(3) as not meeting the requirements of section 189(c).

#### *F. Contingency Measures*

CAA section 172(c)(9) requires that the 189(d) plan provide for the implementation of specific measures to be undertaken if the area fails to make RFP or to attain the PM–10 standard as projected in the plan. That section further requires that such measures are to take effect in any such case without further action by the state or EPA. The CAA does not specify how many contingency measures are necessary nor does it specify the level of emission reductions they must produce.

In guidance we have explained that the purpose of contingency measures is to ensure that additional emission reductions beyond those relied on in the attainment and RFP demonstrations are available if there is a failure to make RFP or to attain by the applicable statutory date. Addendum at 42014–42015. These additional emission reductions will ensure continued progress towards attainment while the SIP is being revised to fully correct the failure. To that end, we recommend that contingency measures for PM–10 nonattainment areas provide emission reductions equivalent to one year's average increment of RFP. *Id.*

In interpreting the requirement that the contingency measures must “take effect without further action by the State or the Administrator,” the General Preamble provides the following general guidance: “[s]tates must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.” General Preamble at 13512.<sup>21</sup> Further, “[i]n general, EPA will expect all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure.” *Id.* The Addendum at 42015 reiterates this interpretation.

We have also interpreted section 172(c)(9) to allow states to implement contingency measures before they are triggered by a failure of RFP or attainment as long as those measures are intended to achieve reductions over and beyond those relied on in the attainment and RFP demonstrations. *Id.*, and see

<sup>21</sup> EPA elaborated on its interpretation of this language in section 172(c)(9) in the General Preamble in the context of the ozone standard: “The EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., would probably be needed before a measure could be implemented effectively.” General Preamble at 13512.

*LEAN v. EPA*, 382 F.3d 575 (5th Cir. 2004).

The 189(d) plan addresses the section 172(c)(9) contingency measure requirement in chapter 8, pp. 8–65 through 8–74. Of the 53 measures in the plan, nine are designated and quantified as contingency measures: Measures #1, #5, #19, #24, #26, #27, #43, #50 and a measure identified as “multiple” which consists of Measures #14, #15 and #17. Chapter 8 of the 189(d) plan includes a discussion of each of these measures along with associated emission reductions for each of the years 2008, 2009 and 2010. Additional information

on the emission reductions claimed is in the 189(d) plan TSD, chapter IV. The measures are also individually discussed in chapter 6 of the 189(d) plan.

In calculating the target emission reductions that the contingency measures must meet, the 189(d) plan cites EPA’s recommendation that they provide reductions equivalent to one year’s average increment of RFP. The plan subtracts the total controlled emissions in 2010 from the total controlled emissions in 2007 and divides this sum by three years to produce an annual average of 4,869 tpy

as the target for the contingency measures to meet in each of the years 2008, 2009 and 2010. 189(d) plan, p. 8–67. Table 8–14 in the 189(d) plan lists the projected emission reductions for the nine contingency measures for each of these years and shows emission reductions in excess of the target for each of them. Table 5 below shows the contingency measures in the plan identified by number and reproduces the corresponding projected PM–10 reductions as depicted in table 8–14 in the plan:

TABLE 5—SUMMARY OF PM–10 EMISSIONS REDUCTIONS FOR CONTINGENCY MEASURES

No.	Contingency measures Measure title	PM–10 reductions [tons/year]		
		2008	2009	2010
1 .....	Public education and outreach program .....	47.6	47.5	48.5
5 .....	Certification program for dust free developments .....	28.9	21.5	17.6
19 .....	Reduce off-road vehicle use .....	140.3	174.6	179.1
24 .....	Sweep streets with certified PM–10 certified street sweepers .....	1,027.7	1,563.1	2,129.2
26 .....	Pave or stabilize existing public dirt roads and alleys .....	1,488.0	2,313.3	3,723.6
27 .....	Limit speeds to 15 mph on high traffic dirt roads .....	390.4	390.2	390.2
43 .....	Additional \$5M in FY07 MAG TIP for paving roads/shoulders .....	205.2	820.9	820.9
50 .....	Agricultural Best Management Practices .....	637.6	608.0	579.7
Multiple .....	Reduce trackout onto paved roads .....	1,256.9	1,273.4	1,270.0
Total for All Quantified Contingency Measures		5,222.5	7,212.6	9,158.9
Contingency Measure Reduction Target		4,869	4,869	4,869

As stated above, CAA section 172(c)(9) requires that the plan provide for the implementation of contingency measures to be undertaken if the area fails to attain the PM–10 standard by the applicable attainment date. The Maricopa area cannot attain the PM–10 standard by the projected date in the 189(d) plan because of monitored exceedances of the NAAQS in 2008.<sup>22</sup> As a result, any emission reductions from contingency measures in the 189(d) plan that are intended to take effect upon an EPA finding that the area failed to attain the standard cannot currently be determined to be surplus to the attainment demonstration as required by section 172(c)(9). Therefore we are proposing to disapprove the attainment contingency measures under CAA section 110(k)(3) as not meeting the requirements of section 172(c)(9).

As also stated above, contingency measures are required to be implemented upon a failure of the Maricopa area to meet RFP. The 189(d)

plan bases the emission reduction target for these measures on reductions between 2007 and 2010 calculated from the 2005 Periodic Inventory that we have determined to be inaccurate. See section III.A above. Thus the emission reduction target for the RFP contingency measures is necessarily also inaccurate.

In addition to the inaccurate emission reduction target for the RFP contingency measures, many of the measures themselves do not meet the requirements of section 172(c)(9). These deficiencies generally fall into three categories: (1) Measures in the form of commitments in resolutions adopted by local or State governmental entities to take legislative or other substantial future action; (2) commitments in such resolutions for which implementation is conditioned on good faith efforts and funding availability and are therefore unenforceable; and (3) measures for which no basis is provided for the emission reductions claimed. While we illustrate these individual deficiencies below by reference to one or more of the 189(d) plan’s designated contingency measures, it is important to note that many of the measures are deficient for multiple reasons.

1. Some of the commitments by local governments or State agencies to implement measures that are intended to achieve the required emission reductions in 2008, 2009 and 2010 do not meet the requirement of section 172(c)(9) that such measures are to take effect without further regulatory or legislative action.

For example, Measure #19 is intended to reduce off-road vehicle use in areas with high off-road vehicle activity. For this measure, the 189(d) plan assigns emission reduction credit to the requirement in ARS 9–500.27.A, as submitted in the 189(d) plan, that cities and towns in the Maricopa area adopt, implement and enforce ordinances no later than March 31, 2008 prohibiting the use of such vehicles on unpaved surfaces closed by the landowner. 189(d) plan, p. 8–69; 189(d) plan TSD, p. IV–3. The 189(d) plan includes a number of resolutions adopted by cities and towns committing to adopt such ordinances to address the vehicle use prohibition in the statute. However, because the 189(d) plan was submitted at the end of 2007, the contingency measure, *i.e.*, the vehicle use prohibition, could not be fully

<sup>22</sup> Note that because the modeled attainment demonstration projected attainment by the end of 2010, the 189(d) plan does not address the outside applicable statutory deadline under section 179(d)(3), June 6, 2012. See section III.B above.

implemented throughout the Maricopa area without additional future legislative action on the part of a number of governmental entities.<sup>23</sup>

Furthermore, not only do some of the contingency measure commitments fail to meet the requirement of section 172(c)(9) that such measures are to be implemented with minimal further action, but because they depend on future actions that may or may not occur, it is also impossible to accurately quantify emission reductions from them at the time of plan development and adoption. Thus it would not be possible to determine at the time of plan development and adoption whether in the aggregate the measures designated as contingency would meet or approximate the target of one year's average increment of RFP. This is the case with Measure #19, mentioned above. For that measure, the 189(d) plan claims emission reduction credit assuming that all jurisdictions subject to the 2008 statutory requirement will comply. 189(d) plan TSD, p. IV-3. However, there is no way to determine at the time of the 189(d) plan adoption which, if any, of the multiple jurisdictions would in fact implement such requirements by the statutory deadline.

Another example of this quantification issue is Measure #26 regarding the paving or stabilization of existing public dirt roads and alleys. 189(d) plan, pp. 6-103 and 8-72; 189(d) plan TSD, p. IV-9. This measure includes commitments in resolutions adopted by 11 cities and towns to pave roads from 2007 through 2010 and claims emission reduction credit assuming full compliance. See also Measure #5 which quantifies as a contingency measure a requirement in ARS 49-457.02 that ADEQ establish a dust-free development program by September 19, 2007.<sup>24</sup> 189(d) plan TSD, p. 8-69. However, a 2010 report prepared by MAG addressing the 2008 implementation status of the 53 measures in the 189(d) plan states that "[t]his measure was not implemented because ADEQ delayed the certification program indefinitely due to budgetary

constraints." Letter from Lindy Bauer, MAG to Jared Blumenfeld, EPA, March 9, 2010, enclosing "2008 Implementation Status of Committed Measures in the MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Areas," February 2010, MAG (2008 Status Report), table 1, p. 4.

See also Measure #24 which includes, among others, a commitment by the Arizona Department of Transportation (ADOT) to require in the contract awarded in January 2008 that contractors use PM-10 certified street sweepers on all State highways in the Maricopa area. 189(d) plan, p. 8-70; 189(d) plan TSD, p. IV-5; ADOT "Resolution to Implement Measures in the MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area." 189(d) plan, chapter 10, "Commitments for Implementation," volume two. The 2008, 2009 and 2010 emission reductions claimed for Measure #24 assume implementation of the ADOT component of the measure. However, the 2008 Status Report states that "ADOT's current contract \* \* \* does not require the use of PM-10 certified street sweepers \* \* \*." 2008 Status Report, p. 15.

2. In addition to the above issue regarding commitments to take future action, a number of the commitments quantified for credit in the 189(d) plan as contingency measures are in the form of city, town and county resolutions that specifically recognize that the funding or schedules for such actions may be modified depending on the availability of funding or other contingencies. These commitments are also qualified by the statement that the agency making the commitment "agrees to proceed with a good faith effort to implement the identified measures."<sup>25</sup> See, e.g., Measure #1 regarding public education and outreach, 189(d) plan, pp. 6-2 through 6-20 and related resolutions in chapter 10, "Commitments for Implementation," volumes one and two. See also *id.*, p. 8-67. See also Measure #26 regarding the paving or stabilization of existing public dirt roads and alleys, *id.*, pp. 6-103 and 8-72; 189(d) plan TSD, p. IV-7.

The language in the above commitments regarding good faith efforts and funding availability makes the measures that are intended to achieve the required emission reductions virtually impossible to enforce. Section 110(a)(2) of the Act

requires that SIPs include "enforceable emission limitations and other control measures" and "a program to provide for the enforcement of the measures" in the plan. As we have explained, "[m]easures are enforceable when they are duly adopted, and specify clear, unambiguous, and measurable requirements. Court decisions made clear that regulations must be enforceable in practice. A regulatory limit is not enforceable if, for example, it is impractical to determine compliance with the published limit." General Preamble at 13568. In the case of most of the contingency measure commitments in the 189(d) plan, the implementation of the underlying measure cannot be ensured because the entity making the commitment can avoid having to implement it by asserting that it made good faith efforts, but failed to do so and/or that implementation did not occur due to insufficient funds.

3. The 189(d) plan provides no methodology or support for the PM-10 emission reductions credited to a number of the contingency measures. For example, the group of Measures #14, #15 and #17 designated in the plan as "multiple" is intended to reduce trackout onto paved roads. 189(d) plan, p. 8-74. The 189(d) plan TSD, p. IV-13, states that "[t]he reduction in trackout emissions in the PM-10 nonattainment area due to the impact of these three committed measures is expected to be at least 15 percent in 2008-2010" and credits these measures with the following emission reductions: 1256.9 tpy in 2008, 1273.4 tpy in 2009 and 1270 tpy in 2010. No information is provided in the 189(d) plan regarding how the 15 percent was determined. Furthermore, the reductions from each measure are not disaggregated so it is impossible to determine the source of the claimed emission reductions or how they were calculated for each measure.

Similarly, for Measure #1, the plan identifies annual emission reductions from seven source categories resulting from public education and outreach in various local jurisdictions but does not explain how these reductions were calculated. 189(d) plan TSD, p. IV-1. See also Measure #5 which provides annual emission reduction credits without any supporting information. The 189(d) plan TSD merely states: "[d]ue to the implementation of this program [certification program for dust-free developments to serve as an industry standard], the construction emissions are expected to decline by 0.10% in 2008-2010." 189(d) plan TSD, p. IV-2.

<sup>23</sup> In some cases, e.g., the City of Goodyear, ordinances implementing the commitments in resolutions were also submitted with the 189(d) plan. In others, however, e.g., the City of Apache Junction and the Town of Buckeye, the submitted resolutions include a schedule for the future adoption and implementation of ordinances. ADEQ forwarded these ordinances to EPA in 2008 as supplemental information, but not as SIP submittals. See footnote 1. This distinction is significant because here the ordinances are the ultimate regulatory vehicle.

<sup>24</sup> While the 189(d) plan refers to a deadline in ARS 49-457.02 for the establishment of this program, that statutory provision, as submitted with the 189(d) plan, does not contain a deadline.

<sup>25</sup> While EPA has approved the commitments with this language into the Arizona SIP in past plan actions as strengthening the SIP, we did not approve specific emission reduction credits for them.

For the reasons discussed above we are proposing to disapprove under CAA section 110(k)(3) the contingency measures in the 189(d) plan as not meeting the requirements of section 172(c)(9).

#### G. Transportation Conformity and Motor Vehicle Emissions Budgets

Transportation conformity is required by CAA section 176(c). Our conformity rule (40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or the timely achievement of interim milestones.

The 189(d) plan specifies the maximum transportation-related PM<sub>10</sub> emissions allowed in the proposed attainment year, 2010, *i.e.*, the MVEB. 189(d) plan, p. 8–75. This budget includes emissions from road construction, vehicle exhaust, tire and brake wear, dust generated from unpaved roads and re-entrained dust from vehicles traveling on paved roads. This budget is based on the 2010 emissions inventory that was projected from the 2005 Periodic Inventory and reflects emission reductions that the plan expects will result from the control measures. The budget is consistent with the attainment, 5% and RFP demonstrations in the 189(d) plan. However, as explained elsewhere in this proposed rule, the area cannot attain by the end of 2010 as projected in the plan and we are, in addition to the attainment demonstration, proposing to disapprove the plan's emissions inventories, 5% and RFP demonstrations. Therefore we must also propose to disapprove the MVEB.

In order for us to find the emission level or "budget" in the 189(d) plan adequate and subsequently approvable, the plan must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). For more information on the transportation conformity requirement and applicable policies on MVEBs, please visit our transportation conformity Web site at: <http://www.epa.gov/otaq/stateresources/transconf/index.htm>. The 189(d) plan includes the PM<sub>10</sub> MVEB shown in table 6 below.

TABLE 6—189(d) PLAN, MOTOR VEHICLE EMISSIONS BUDGET  
(Annual-average emissions in metric tons per day (mtpd))

Year	MVEB
2010 .....	103.3

On March 13, 2008, we announced receipt of the 189(d) plan on the Internet and requested public comment on the adequacy of the motor vehicle emissions budget by April 14, 2008. We did not receive any comments during the comment period. During that time we reviewed the MVEB and preliminarily determined that it met the adequacy criteria in 40 CFR 93.118(e)(4) and (5). We sent a letter to ADEQ and MAG on May 30, 2008 stating that the 2010 motor vehicle PM<sub>10</sub> emissions budget for the Maricopa area in the submitted 189(d) plan was adequate. Our finding was published in the **Federal Register** on June 16, 2008 (73 FR 34013), effective on July 1, 2008.

As explained in the June 16, 2008 **Federal Register** notice, an adequacy review is separate from EPA's completeness and full plan review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP and the associated budget can later be disapproved for reasons beyond those in 40 CFR 93.118(e).

Because we are proposing to disapprove the emission inventories, and the attainment 5% and RFP demonstrations, we are also now proposing to disapprove the 189(d) plan's 2010 PM<sub>10</sub> MVEB. Under 40 CFR 93.118(e)(4)(iv), we review a submitted plan to determine whether the MVEB, when considered together with all other emissions sources, are consistent with applicable requirements for RFP, attainment, or maintenance (whichever is relevant to a given SIP submission). Because we have now concluded that the area cannot attain by 2010 as projected in the 189(d) plan, the MVEB cannot be consistent with the attainment requirement. In addition, because we are proposing to disapprove the 5% and RFP demonstrations, the MVEB is not consistent with the applicable requirements to show 5% annual reductions and RFP. Given the overemphasis in the plan on reducing emissions from construction activities, it is quite possible that more reductions in onroad emissions will be required to meet the applicable requirements. Consequently, we find that the plan and related budget do not meet the requirements for adequacy and approval.

The consequences of plan disapproval on transportation conformity are explained in 40 CFR 93.120. First, if a plan is disapproved by EPA, a conformity "freeze" takes effect once the action becomes effective (usually 30 days after publication of the final action in the **Federal Register**). A conformity freeze means that only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) can proceed. See 40 CFR 93.120(a). During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform. The conformity status of these plans would then lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. See 40 CFR 93.120(a)(1). Generally, highway sanctions are triggered 24 months after the effective date of the disapproval of a required SIP revision for a nonattainment area. During a conformity lapse, no new transportation plans, programs, or projects may be found to conform until another SIP revision fulfilling the same CAA requirements is submitted and conformity of this submission is determined.

If EPA were proposing to disapprove the plan for administrative reasons unrelated to the attainment, 5% and RFP demonstrations, EPA could issue the disapproval with a protective finding. See 40 CFR 93.120(a)(3). This would avoid the conformity freeze. Because this is not the case, EPA does not believe that a protective finding should be proposed in connection with our proposed disapproval action on the 189(d) plan. Therefore, a conformity freeze will be in place upon the effective date of any final disapproval of the 189(d) plan.

#### H. Adequate Legal Authority and Resources

Section 110(a)(2)(E)(i) of the Clean Air Act requires that implementation plans provide necessary assurances that the state (or the general purpose local government) will have adequate personnel, funding and authority under state law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (section 51.230–232) and for resources in 40 CFR 51.280.

States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be

available to the state and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal. These requirements are addressed in chapter 10 of the 189(d) plan. We evaluate these requirements for the plan in general and for those measures for which we are proposing approval or limited approval.

MAG derives its authority to develop and adopt the 189(d) plan and other nonattainment area plans from ARS 49-406 and from a February 7, 1978 letter from the Governor of Arizona<sup>26</sup> designating MAG as responsible for those tasks. ADEQ is authorized to adopt and submit the 189(d) plan by ARS 49-404 and ARS 49-406.

We are proposing for full approval statutes that have been adopted by the Arizona legislature, signed by the Governor and incorporated into the Arizona Revised Statutes. We are also proposing a limited approval of regulations authorized and mandated by Arizona statute. See section III.B above. Because the requirements in these statutes and regulations are directly imposed by State law, no further demonstration of legal authority to adopt emission standards and limitations is needed under CAA section 110(a)(2)(E)(i) and 40 CFR part 51, subpart L.

Section 51.230 of 40 CFR also requires that the State have the authority to “[e]nforce applicable laws, regulations, and standards, and seek injunctive relief.” ARS 49-462, 49-463 and 49-464 provide the general authorities adequate to meet these requirements. We note that EPA, in undertaking enforcement actions under CAA section 113, is not constrained by provisions it approves into SIPs that circumscribe the enforcement authorities available to state and local governments.

Several of the State statutory provisions proposed for full approval and the regulations proposed for limited approval are direct mandates to the regulated community and require ADEQ to implement and enforce programs in whole or in part. See, e.g., ARS 49-457, 49-457.01, 49-457.03 and 49-457.04. There is no description in the 189(d) plan of the resources available to the State to implement and enforce these statutory and regulatory provisions. Thus it is not possible for EPA to ascertain whether the State has adequate personnel and funding under CAA section 110(a)(2)(E)(i) and EPA’s related

regulations to carry out these State statutes.

Many of the Arizona statutory provisions proposed for approval are directives to local governmental entities to take action. For example, ARS 49-474.05 requires specified local jurisdictions to develop extensive dust control programs. Developing such programs will require resources and legal authority at the local level. However, we are not proposing approval of such programs at this time. This action is merely proposing approval of the statutory mandate to develop the program. Therefore, for these statutory provisions, a demonstration that adequate authority and resources are available is not required.

Section 110(a)(2)(E)(iii) requires SIPs to include necessary assurances that where a state has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision. We have previously found that Arizona law provides such assurances. 60 FR 18010, 18019 (April 10, 1995).

For the reasons discussed above, we propose to find that the requirements of section 110(a)(2)(E) and related regulations have been met with respect to legal authority. However, we propose to find that the 189(d) plan does not demonstrate that ADEQ has adequate personnel and funding to implement the State statutes and regulations proposed for full or limited approval for which the State has implementation and enforcement responsibility and authority.

#### IV. Summary of Proposed Actions

EPA is proposing to approve in part and disapprove in part, the 189(d) plan for the Maricopa County (Phoenix) PM-10 nonattainment area as follows:

A. EPA is proposing to disapprove pursuant to CAA section 110(k)(3) the following elements of the “MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area”:

(1) The 2005 baseline emissions inventory and the projected emission inventories as not meeting the requirements of CAA sections 172(c)(3);

(2) The attainment demonstration as not meeting the requirements of CAA sections 189(d) and 179(d)(3);

(3) The 5% demonstration as not meeting the requirements of CAA sections 189(d);

(4) The reasonable further progress and milestone demonstrations as not meeting the requirements of CAA section 189(c);

(5) The contingency measures as not meeting the requirements of CAA sections 172(c)(9); and

(6) The 2010 MVEB as not meeting the requirements of CAA section 176(c) and 40 CFR 93.118(e)(4).

B. EPA is proposing a limited approval and disapproval of AAC R18-2-610 and AAC R18-2-611 as submitted in the “MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area” pursuant to CAA section 110(k)(3). EPA is proposing a limited approval because these regulations strengthen the SIP and a limited disapproval because they do not fully meet the requirements of CAA sections 110(a) and 189(b)(1)(B) for enforceable BACM for agricultural sources of PM-10 in the Maricopa area.

C. EPA is proposing to approve pursuant to CAA section 110(k)(3) the following sections of the Arizona Revised Statutes as submitted in the “MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area” as strengthening the SIP: ARS 9-500.04, ARS 9-500.27, ARS 11-877, ARS 28-6705, ARS 49-457, ARS 49-457.01, ARS 49-457.02, ARS 49-457.03, ARS 49-457.04, ARS 49-474.01, ARS 49-474.05, and ARS 49-501.

D. EPA is proposing to approve pursuant to CAA section 110(k)(3) the “Agricultural Best Management Practices Guidance Booklet and Pocket Guide” as submitted on May 6, 2010.

#### E. Effect of Finalizing the Proposed Disapproval Actions

If we finalize disapprovals of the emissions inventories, attainment demonstration, RFP and milestone demonstrations, 5% demonstration and contingency measures, the offset sanction in CAA section 179(b)(2) will be applied in the Maricopa area 18 months after the effective date of any final disapproval. The highway funding sanctions in CAA section 179(b)(1) will apply in the area 6 months after the offset sanction is imposed. Neither sanction will be imposed if Arizona submits and we approve prior to the implementation of the sanctions SIP revisions meeting the relevant requirements of the CAA. See 40 CFR 52.31 which sets forth in detail the sanctions consequences of a final disapproval.

If EPA takes final action on the 189(d) plan as proposed, Arizona will need to develop and submit a revised plan for the Maricopa area that again addresses applicable CAA requirements, including section 189(d). While EPA is proposing to approve many of the measures relied on in the submitted 189(d) plan,

<sup>26</sup> Letter from Wesley Bolin, Governor of Arizona, to Douglas M. Costle, Administrator of EPA, February 7, 1978, found in the 189(d) plan, chapter 10, “Commitments for Implementation,” Volume one, “Maricopa Association of Governments.”

additional emission reductions will be needed. In pursuing such reductions, we expect Arizona to investigate all potential additional controls for source categories in the Maricopa area that contribute to PM-10 exceedances. This investigation should include, but not be limited to, analysis of BACM controls in other geographic areas. We also note that CAA section 179(d)(2) provides EPA the authority to prescribe specific additional controls for areas, such as the Maricopa area, that have failed to attain the NAAQS.

If we finalize a limited disapproval of AAC R18-2-610 and 611, the offset sanction in CAA section 179(b)(2) will be applied in the Maricopa area 18 months after the effective date of the final limited disapproval. The highway funding sanctions in CAA section 179(b)(1) will apply in the area 6 months after the offset sanction is imposed. Neither sanction will be imposed if Arizona submits and we approve prior to the implementation of the sanctions a measure for the control of agricultural sources meeting the requirements of CAA sections 110(a) and 189(b)(1)(B).

In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a Federal implementation plan addressing any full or limited disapproved elements of the plan, as set forth above, two years after the effective date of a disapproval should we not be able to approve replacements submitted by the State.

Finally, if we take final action disapproving the 189(d) plan, a conformity freeze takes effect once the action becomes effective (usually 30 days after publication of the final action in the **Federal Register**). A conformity freeze means that only projects in the first four years of the most recent RTP and TIP can proceed. During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform.

## V. Statutory and Executive Order Reviews

### A. Executive Order 12866, Regulatory Planning and Review

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

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

### 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 SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the proposed Federal SIP partial approval/partial disapproval and limited approval/limited disapproval actions do not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

### D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the partial approval/partial disapproval and limited approval/limited disapproval actions proposed do not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal

governments in the aggregate, or to the private sector. This Federal action proposes to approve and disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve or disapprove a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 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." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

*H. Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States. The Executive Order has informed the development and implementation of EPA's environmental justice program and policies. Consistent with the Executive Order and the associated Presidential Memorandum, the Agency's environmental justice policies

promote environmental protection by focusing attention and Agency efforts on addressing the types of environmental harms and risks that are prevalent among minority, low-income and Tribal populations.

This action will not have disproportionately high and adverse human health or environmental effects on minority, low-income or Tribal populations because the partial approval/partial disapproval and limited approval/limited disapproval actions proposed increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

*I. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

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

*J. National Technology Transfer and Advancement Act*

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

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

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

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

Dated: September 3, 2010.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2010-22616 Filed 9-8-10; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[EPA-HQ-SFUND-1983-0002; FRL-9198-7]

**National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List; Intent for Partial Deletion of the Denver Radium Superfund Site**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete each of the 11 operable units, with the exception of groundwater contamination associated with Operable Unit 8, of the Denver Radium Superfund Site (Site), located in the City and County of Denver, Colorado, from the National Priorities List (NPL) and requests public comments on this proposed action. Groundwater associated with Operable Unit 8 will remain on the NPL. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an Appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Colorado, through the Colorado Department of Public Health and Environment, have determined that all appropriate response actions at these identified parcels under CERCLA, other than operations and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to each of the 11 operable units of the Denver Radium Superfund Site. Groundwater contamination associated with Operable Unit 8 will remain on the NPL and is not being considered for deletion at this time.

**DATES:** Comments must be received by October 12, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1983-0002, by one of the following methods:

- <http://www.regulations.gov>. Follow on-line instructions for submitting comments.
- *E-mail:* [dalton.john@epa.gov](mailto:dalton.john@epa.gov).
- *Fax:* 303-312-7110 (Attention: John Dalton, Public Affairs and Involvement).
- *Mail:* John Dalton, Public Affairs and Involvement (8OCPI), U.S. EPA