based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn in the manner described here.

DATES: Comments must be received in writing by May 9, 1996.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III office or via e-mail at stahl.cynthia@epamail. epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: See the information, pertaining to this action (VOC and NO_X RACT approval, synthetic minor approval, and approval of 1990 emissions for one source in the Philadelphia 1990 baseyear emissions inventory) affecting 21 sources in Pennsylvania, provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 15, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 96–8431 Filed 4–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AZ033–0002 FRL–5456–7]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa Nonattainment Area; Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve contingency measures adopted pursuant to the Clean Air Act (CAA) and submitted to EPA as revisions to the Arizona State Implementation Plan (SIP) for the Maricopa (Phoenix) carbon monoxide (CO) nonattainment area. The intended effect of approving these contingency measures is to regulate emissions of CO in accordance with the requirements of the CAA. Based on the proposed approval of these measures, EPA is proposing to withdraw its Federal contingency process for the Maricopa area and its proposed list of highway projects subject to delay.

DATES: Written comments on this proposal must be submitted to EPA at the address below by May 9, 1996. A public hearing, if requested, will be held in Phoenix, Arizona. If such a hearing is requested, it will be held on April 23, 1996. If a hearing is requested, the comment period will be extended until May 24, 1996. The purpose of the extension of the comment period beyond May 9, 1996 is to provide an opportunity for the submission of rebuttal and supplementary information. Anyone who wishes to request a public hearing should call Wallace Woo at 415–744–1207 by April 16, 1996.

ADDRESSES: Written comments should be sent to: Wallace Woo, Chief, Plans Development Section, A–2–2, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105.

The rulemaking docket for this notice, Docket No. 96–AZ–PL–001, may be inspected and copied at the following location between 8 a.m. and 4:30 p.m. on weekdays. A reasonable fee may be charged for copying parts of the docket. U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, Plans Development Section, A–2–2, 75 Hawthorne Street, San Francisco, California 94105.

Copies of the docket are also available at the State office listed below:

Arizona Department of Environmental Quality, Library, 3033 North Central Avenue, Phoenix, Arizona 85012

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, A–2–2, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Background

A. 1991 Federal Implementation Plan

On February 11, 1991, EPA disapproved under the Clean Air Act (CAA) portions of the Arizona State implementation plan (SIP) and promulgated a limited Federal implementation plan (FIP) for the Maricopa County (Phoenix), Arizona carbon monoxide (CO) nonattainment area. EPA disapproved portions of the SIP and promulgated the FIP in response to an order of the Ninth Circuit Court of Appeals in *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990). For a discussion of *Delaney*, the SIP disapproval, and the FIP, see the notice of proposed rulemaking (NPRM) for the FIP, 55 FR 41204 (October 10, 1990) and the notice of final rulemaking (NFRM) for the FIP, 56 FR 5458 (February 11, 1991).

The *Delaney* order required EPA to promulgate, as part of the FIP, a two-part contingency process consistent with the Agency's 1982 ozone and CO SIP guidance (1982 guidance) regarding contingency procedures found at 46 FR 7187, 7192 (January 22, 1981). These two parts were a list of transportation projects that would be delayed while an inadequate plan was being revised and a procedure to adopt measures to compensate for unanticipated emission reduction shortfalls. The FIP contingency process is described in detail at 56 FR 5458, 5470–5472.[1]

[1] Implementation of the FIP contingency process was triggered by violations of the CO standard in Phoenix in December 1992. On June 28, 1993, EPA published a notice of proposed rulemaking proposing to find that the implementation plan was inadequate and that additional control measures were necessary to attain and maintain the CO NAAQS in the Maricopa area. In the same notice, EPA also proposed an updated list of highway projects subject to delay while the implementation plan was being revised. On August 9, 1993, EPA issued a SIP call under section 110(k)(5) of the CAA requiring that Arizona submit a new plan by July 19, 1994. Arizona submitted SIP revisions to EPA in November 1993, March 1994 and August 1995 that contained new control measures and a demonstration that the area would attain the CO NAAQS by December 31, 1995, the attainment deadline for Phoenix under the 1990 Clean Air Act Amendments. As a result, EPA took no final action on the June 28, 1993 proposal. Therefore, EPA is today withdrawing the proposed list of highway projects subject to delay because it is no longer current and would have to be updated and revised if the FIP contingency process were to be implemented again.

B. 1990 Clean Air Act Amendments

Following the FIP proposal, but before the final rulemaking, Congress passed and the President signed into law on November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA), 42 U.S.C. §§ 7401–7671q. These Amendments made significant changes to the pre-existing Act and established a new context in which the air quality goals of the nation are to be achieved. In particular, Congress completely revised the nonattainment provisions of the Act, Part D of Title I, repealing the generally applicable provisions of section 172 and adopting substantial new requirements and planning and attainment deadlines applicable to CO nonattainment SIPs. Sections 171–193.

The 1990 Amendments established two classifications of CO nonattainment areas, ''moderate'' and ''serious,'' depending on the severity of the problem, and set new deadlines for the attainment of the NAAQS for each classification. Pursuant to the 1990 Amendments, the Phoenix nonattainment area was classified as moderate by operation of law. 40 CFR Part 81.303. The 1990 Amendments set forth new and separate requirements for moderate CO nonattainment areas depending on whether their design value was below or above 12.7 ppm. The design value for Phoenix is below 12.7 ppm. 40 CFR Part 81.303. The attainment deadline for moderate CO areas, regardless of their design value, was as expeditiously as practicable but not later than December 31, 1995. See section 186(a)(1).

Under section 186(a)(4), EPA may, upon application by a state extend the attainment deadline if the state has complied with all requirements and commitments pertaining to the area in the applicable plan, and there has been no more than one exceedance of the CO NAAQS in the year preceding the extension year. Under this provision, EPA may grant up to two such extensions if these conditions have been met.

Under section 186(b)(2) of the amended Act, EPA is required to determine within six months following the attainment deadline whether the area has attained the CO standard. If the Agency determines that the area has not attained the standard, the area is reclassified to serious by operation of law and must comply with a new set of requirements applicable to that classification.

II. CAA Contingency Requirements and EPA Guidance

A. Section 172(c)(9)

Among the new requirements in the 1990 Amendments for moderate areas with design values below 12.7 ppm (low moderate areas) is a new provision relating to contingency measures.[2] Section 172(c)(9) requires that the plan for such an area ''shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national ambient air quality standard by the attainment date applicable under this [Part D]. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.''

B. EPA Guidance

EPA has issued several guidance documents related to the post-1990 requirements for CO SIPs. Among them is the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' that sets forth EPA's preliminary views on how the Agency intends to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). EPA has also issued a ''Technical Support Document to Aid the States with the Development of Carbon Monoxide State Implementation Plans,'' July 1992. This 1992 TSD expands on EPA's interpretation of the CO SIP requirements in the General Preamble.

For CO, the General Preamble addresses specifically only the contingency measures required under section 187(a)(3) of the Act for moderate areas with design values above 12.7 ppm. See 57 FR 13498, 13532–13533. In connection with the discussion of requirements for moderate ozone areas, the General Preamble addresses generally the section 172(c)(9) requirements which are applicable to low moderate CO nonattainment areas such as Phoenix as well. See 57 FR 13498, 13510–13511. In both discussions, EPA states that the contingency measure provisions of the 1990 Amendments supersede the contingency requirements contained in the 1982 guidance.

The 1992 TSD contains a discussion directly applicable to low moderate CO areas. See pages 5–6. This guidance explains that the trigger for implementation of the section 172(c)(9) measures is a finding by EPA that such an area failed to attain the CO NAAQS by the applicable attainment date and that states must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions upon such a finding. As a result of this requirement, the 1992 TSD states that contingency measures must be adopted and enforceable prior to submission to EPA.

In the TSD, EPA notes that section 172(c)(9) does not specify how many contingency measures are needed or the magnitude of emission reductions they must provide if an area fails to attain the CO NAAQS. EPA suggests that one appropriate choice would be to provide for the implementation of sufficient reductions in vehicle miles traveled (VMT) or emission reductions to counteract the effect of one year's growth in VMT while the state revises its SIP to incorporate the new requirements for a serious CO area. Thus, in suggesting a benchmark of one year's growth in VMT, EPA concluded that the purpose of the Act's contingency requirement is to maintain the actual attainment year emissions level while the serious area attainment demonstration is being developed.

In the TSD, EPA lists several examples of contingency measures that a state might choose, and concludes that the selected measures must be implemented within 12 months after the finding of failure to attain.

III. Contingency Measure SIP Revisions

A. Enhanced Remote Sensing Program

On November 11, 1993, the Arizona legislature adopted House Bill (H.B.) 2001. H.B. 2001 is included in the Maricopa Association of Government's (MAG) Addendum to the 1993 Carbon Monoxide Plan for the Maricopa County Area.[3] MAG held a public hearing on the 1993 CO Plan Addendum on March 17, 1994. Following adoption by the MAG Regional Council on March 25, 1994, the 1993 CO Plan Addendum was forwarded to the State of Arizona. The State then submitted the plan to EPA as a revision to the Arizona CO SIP on April 4, 1994. For more information on the public hearing process, see ''MAG 1993 Carbon Monoxide Plan for the Maricopa County Area, Addendum,'' Appendix, Exhibit 5.

[2] The pre-1990 Act contained no statutory provision for contingency measures. As a result of this absence, EPA developed the 1982 guidance pursuant to which EPA promulgated the FIP contingency process.

[3] EPA intends to propose action on the rest of the measures and the attainment demonstration in the 1993 CO Plan Addendum later this year.

An enhanced remote sensing program was included in H.B. 2001 which, among other things, revised title 49 of the Arizona Revised Statutes (ARS) by adding section 49–542.01. Section 49–542.01 describes the requirements of the remote sensing program, including the enhanced remote sensing component which is set forth in section 49–542.01.E.:

> If the Administrator of the United States Environmental Protection Agency finds that Area A[4] has failed to demonstrate reasonable further progress or has failed to attain the national ambient air quality standard for ozone or carbon monoxide by the applicable attainment date, the notification procedure and requirements shall comply with subsection C of this section, except that the emissions test shall be required the first time a vehicle is identified.

The enhanced remote sensing program differs from the basic remote sensing program, subsections B. and C. of section 49–542.01, in its immediate requirement for vehicle inspection and testing. Under the enhanced remote sensing program, once a vehicle has been identified as exceeding specified emissions cutpoints, the vehicle owner is informed of the test results and required to have the vehicle tested within 30 days at an official state vehicle emissions inspection station. If the vehicle owner does not comply with this requirement, the Arizona Department of Transportation (ADOT) is required to suspend the vehicle's registration. Under the basic remote sensing program the vehicle owner is not required to have the vehicle tested at a state vehicle emissions inspection station unless a second notification is received within 12 months of the first notification that the vehicle has again failed a remote sensor emissions test.

The enhanced remote sensing contingency measure is administered by the State through the Arizona Vehicle Emission Inspection program which was approved into the CO SIP by EPA on May 8, 1995 at 60 FR 22518. That Federal Register notice describes the statutory and regulatory provisions applicable to the inspection and maintenance (I/M) program. Those provisions include an annual emissions inspection program, ARS section 49–542, and funding for that program and the remote sensing programs, ARS section 49–544. The emission reductions assigned to the enhanced remote sensing program are 6.5 metric tons/day (tpd) of CO. These reductions represent a 0.79% reduction from the total estimated 1995 CO baseline emissions. See 1993 CO Plan Addendum, Appendix, Exhibit 3, ''Revised Base Case and Demonstration of Attainment for Carbon Monoxide for Maricopa County,'' Table 2–7, page 2–11.

B. Traffic Diversion Measure

On September 10, 1992, MAG held a public hearing on a traffic diversion measure which was adopted by the MAG Regional Council on October 28, 1992 subject to receiving an implementation commitment. On November 20, 1992, the Arizona Transportation Board adopted a resolution (ADOT resolution) committing to implement the measure. On November 24, 1992, MAG forwarded the ADOT resolution to ADEQ and the State submitted it to EPA on December 11, 1992. On February 24, 1993, MAG adopted the ''MAG Process and Impact Documentation for Carbon Monoxide Contingency Measures'' (MAG process document) which describes the traffic diversion measure. The State submitted the MAG process document as a SIP revision to EPA on June 23, 1993.[5] The traffic diversion measure would divert interstate through traffic around the Phoenix nonattainment area during the high pollution season by installing signs along alternative state highway routes. The purpose of the traffic diversion is to manage congestion by eliminating unnecessary traffic from the urbanized portion of the nonattainment area, thereby reducing CO emissions.

Attachment A to the ADOT resolution describes the implementation and funding mechanisms for the measure. The appropriate signs will be placed at designated locations within 60 days of a determination by EPA that the Phoenix area has failed to make reasonable further progress for CO or has failed to meet the applicable attainment date for CO. ADOT has indicated in its 1992 resolution that it has the financial resources and access to manpower to fabricate, install and maintain the appropriate signs.

The traffic diversion measure was modeled based on the assumption that half of the through traffic would be diverted to alternate routes. Based on the modeling runs it performed, MAG estimated that if half of the trips were voluntarily diverted through the use of alternate route signs, there would be a .1% reduction in regional CO emissions which equates to a reduction of .8 tpd. For additional information on the traffic diversion measure, see the MAG process document, the November 20, 1992 ADOT resolution and the 1993 CO Plan Addendum.

IV. Standard for SIP Approval

A. Completeness

Under section 110(k)(1)(B) of the CAA, within 60 days of receipt of a SIP submittal, but no later than six months after the date, if any, by which a state is required to submit the plan or plan revision, EPA must determine if the submittal meets the ''Criteria for Determining the Completeness of Plan Submissions'' at 40 CFR Part 51, Appendix V. If EPA has not determined six months after the receipt of the submission that it fails to meet the Appendix V criteria, the submission is deemed to be complete by operation of law.

EPA made no completeness finding on the 1993 CO Plan Addendum which contains the enhanced remote sensing program. As a result, this submittal became complete by operation of law on October 8, 1994.

EPA made no completeness finding on the submittal of the ADOT resolution in which the Department commits to implement the traffic diversion measure. As a result, the submittal became complete by operation of law on June 11, 1993. EPA found the MAG process document, which describes the traffic diversion measure, complete on July 26, 1993. See July 26, 1993 letter from David P. Howekamp, EPA, to Edward Z. Fox, ADEQ. The traffic diversion measure is also described in the 1993 CO Plan Addendum which became complete by operation of law on October 8, 1994.

B. Section 110(l)

Once a SIP submittal is deemed complete, EPA must next determine if the submittal is approvable as a revision to the SIP. EPA's primary responsibility when approving SIP revisions is to ensure that the revisions strengthen or maintain the SIP and are consistent with CAA requirements.

Section 110(l) of the CAA states that the ''Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of [the Clean Air] Act.'' Therefore, before

[4] Area A, as defined in ARS section 49–541.1., is a CO nonattainment area in a county with a population of one million two hundred thousand or more persons as determined by the most recent U.S. census. The Phoenix CO nonattainment area currently falls within this definition.

[5] This SIP revision also contained a MAG contingency process that was intended to replace the FIP contingency process. EPA proposed to approve the MAG process on December 8, 1993, but never took final action on the proposal. 58 FR 64530. The traffic diversion measure is also contained in the 1993 CO Plan Addendum at p. 2–16.

approving the State's 172(c)(9) measures and withdrawing the FIP contingency process, EPA must demonstrate that the revision will not: (1) delay attainment, (2) interfere with reasonable further progress (RFP), or (3) conflict with the Phoenix area's compliance with other requirements of the Act. As stated previously, for low moderate CO areas, section 172(c)(9) establishes the only requirement for contingency measures. As discussed elsewhere in this notice, EPA is proposing to conclude that the State's submittals meet the requirements of section 172(c)(9). Neither the statute nor current EPA policy requires contingency procedures (as distinguished from actual measures) in SIPs. As noted above, the 1982 SIP guidance, which required contingency procedures and under which the FIP was promulgated, has been superseded. Therefore, withdrawal of the FIP contingency process, in conjunction with the approval of contingency measures consistent with the requirements of the CAAA, does not conflict with current law or EPA policy regarding contingency requirements.

EPA has also concluded that approval of the section 172(c)(9) measures and withdrawal of the FIP contingency process does not interfere with RFP. Under section 171(1) of the Act, RFP means ''such annual incremental emission reductions as are required by this part [D] or may reasonably be required by the Administrator for the purpose of assuring attainment of the applicable national ambient air quality standard by the applicable attainment date.'' Under section 172(c)(9), contingency measures are designed to go into effect if the area fails to make RFP or to attain the NAAQS. Thus, by their very nature, such measures become operative only when there has been a failure to make RFP. Therefore, approval of the State's contingency measures and withdrawal of the FIP contingency process cannot be said to interfere with RFP.

The final remaining inquiry under section 110(l) is whether approval of the State's section 172(c)(9) measures and withdrawal of the FIP process would interfere with timely attainment. Under the pre-amended Act there were no statutory provisions to extend the attainment deadline or to establish a new deadline if an area failed to attain the NAAQS by the applicable statutory deadline. EPA's pre-amendment contingency guidance was created to fill this vacuum by requiring states to include in their SIPs a self-executing process[6] to delay highway projects that could adversely affect air quality while new control measures were being adopted to cure the attainment shortfall. See 46 FR 7182. The FIP contingency process was developed to comply with this guidance in the context of the pre-amended Act.[7]

The FIP contingency process involves, among other things, various assessments and findings that then determine what action, if any, EPA must take if a violation occurs after the attainment deadline, currently December 31, 1995. At its most aggressive, the FIP process requires EPA to adopt measures to cure the shortfall within a minimum of 14 to 16 months from a violation occurring after the attainment deadline. Even if the FIP requirement to adopt new control measures to cure the shortfall can be construed as, effectively, a requirement to adopt a new attainment demonstration, such a demonstration would be developed under the amended Act's provisions.

The CAAA contain an entirely different scheme for dealing with a violation of the NAAQS after 1995. In the case of Phoenix, which recorded apparent violations[8] of the CO standard in 1995 and early 1996, the area is not expected to be able to qualify for attainment deadline extensions under the extension provisions of the amended Act. Rather, following a finding by EPA that the area failed to attain the CO standard, it would be reclassified to serious. Once reclassified, under section 187(f) and EPA guidance,[9] Arizona would be required to submit a new plan meeting the serious area requirements of section 187(c)(1) 18 months after reclassification that demonstrates attainment as expeditiously as practicable but not later than December 31, 2000. See section 186(a)(1). For the 18 month period during which the new SIP is being developed, the section 172(c)(9) contingency measures would go into effect to ensure that air quality in the area does not deteriorate pending development of the serious area attainment demonstration.

As demonstrated above, the section 172(c)(9) measures in the amended Act take the place of, and serve the same purpose as, the highway delay provision in EPA's pre-amendment guidance and the FIP contingency process. Similarly, the extension and reclassification provisions of the amended Act replace the pre-amendment contingency guidance and the FIP provision for adoption of additional control measures to cure the shortfall. EPA recognized this when it indicated that its 1982 guidance on contingency procedures was no longer applicable.

Interference with timely attainment under section 110(l) can be found only if the existing statutory scheme for attainment would be thwarted by replacing the FIP contingency process with the State's section 172(c)(9) measures. Rather than thwarting the amended Act's statutory scheme, such a substitution will serve to bring Phoenix in line with what Congress intended in the CAAA. In short, the existence of the FIP contingency process in the context of the CAAA is at best an uncomfortable fit, and at worst it is duplicative and inconsistent with the new statutory scheme. Thus approving Arizona's section 172(c)(9) measures and withdrawing the FIP process would promote Congress' intent in crafting the new attainment provisions. Under these circumstances, EPA believes that such an outcome would clearly not interfere with timely attainment within the meaning of section 110(l).

C. Section 193

On December 8, 1993, EPA proposed to withdraw the FIP contingency process and to approve in its place a similar process adopted by MAG and submitted to EPA as a SIP revision. 58 FR 64530. While EPA did not take final action on this proposal, during the public comment period following its publication, the Arizona Center for Law in the Public Interest (ACLIPI) filed comments in which it asserted, among other things, that section 193, the general savings clause, applies to the FIP contingency process. EPA disagrees with ACLIPI. Since such a comment is relevant to today's proposal, the Agency is addressing it here. Section 193 provides in pertinent part that:

---

[6] Under section 110(a)(2)(H) of the pre-amended Act, EPA could require a state to revise its SIP if the Agency made a finding that the plan was substantially inadequate to achieve the NAAQS or to otherwise comply with the requirements of the Act.

[7] The FIP, which contained control measures, an attainment demonstration and conformity procedures as well as a contingency process, was proposed prior to the passage of the CAAA. Therefore it was developed under the pre-1990 statute and EPA guidance designed to implement that Act. Even though the CAAA were enacted prior to EPA's final FIP rulemaking, the final FIP reflected the requirements of the old law and guidance.

[8] EPA has not yet completed its review of the 1995 air quality data for the Phoenix area and, under 40 CFR section 58.35(c)(1), the State has until June 30, 1996 to formally submit data from the first quarter of 1996.

[9] See Memorandum from Sally Shaver, Director, Air Quality Strategies and Standards Division, EPA, to Air Division Directors entitled ''Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate CO Nonattainment Areas.'' October 23, 1995.

[N]o control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

The contingency process contained in the Maricopa CO FIP was required by a March 1, 1990 order of the 9th Circuit—before the enactment of the CAAA on November 15, 1990. ACLIPI contended that the FIP contingency process falls within the scope of the above language of section 193 and that therefore EPA may not modify that process unless the modification insures equivalent or greater emission reductions.

Having concluded that Maricopa's pre-amendment CO plan did not contain contingency procedures that met EPA's 1982 guidance, the 9th Circuit ordered EPA to promulgate a Federal plan that contained contingency procedures in accordance with that guidance. *Delaney*, at 695. The FIP contingency process, promulgated in accordance with the Court's order, consists of an intricate series of actions by EPA potentially spanning a minimum of 14 to 16 months. The Federal process potentially involves, among other things, various assessments and findings, air quality modeling, review and delay of current highway projects in Arizona, and the adoption of additional control measures. The eventual length and scope of the process is dependent upon the outcome of the assessments and findings called for in the process and is therefore not predictable in advance. The FIP contingency process is described in detail at 56 FR 5471–5472.

EPA does not believe that such a process constitutes a ''control requirement'' within the meaning of section 193 of the Act. On its face, the savings clause prohibits the modification only of existing control requirements or specific control requirements required to be adopted pursuant to an order. While EPA was required by the Court's order in *Delaney* to promulgate a contingency plan in accordance with the Agency's then existing guidance, the Court did not order EPA to promulgate any specified control requirements in that plan. Indeed, the inclusion of any specific control requirements by EPA would not have been consistent with the terms and intent of EPA's 1982 guidance on contingency procedures.

While ''control requirement'' is not defined in the Act, it is generally viewed as a discrete regulation directed at a specific source of pollution; e.g., an emission control requirement for a smoke stack at a power plant. By contrast, a contingency process, as outlined by EPA's 1982 guidance, is much broader and far-reaching than a control requirement. Therefore, under a straightforward reading, the savings clause is best viewed as an anti-backsliding provision by which Congress intended to prevent the relaxation of actual, existing control requirements on specific pollution sources or controls required to be adopted for specific pollution sources while states are proceeding with their new planning obligations under the 1990 Amendments.

Beyond the plain language of section 193, however, EPA's interpretation of section 193 is consistent with the structure of the 1990 Amendments as they relate to the new planning requirements for nonattainment areas and the failure of those areas to attain the NAAQS. These requirements are discussed in previous sections of this notice. As shown above, the eternal retention of the FIP contingency process (or its equivalent) in the applicable plan for Phoenix would forever overlay its outdated, inconsistent planning scenario on the new statutory scheme.

For these reasons, EPA has concluded that both the plain language of section 193 and the new statutory scheme support EPA's interpretation that the FIP contingency process is not subject to the restrictions concerning equivalent emission reductions in section 193.

V. EPA Evaluation of SIP Submittal

A. Enhanced Remote Sensing Program

EPA has evaluated Arizona's enhanced remote sensing program and concluded that it meets the requirements of section 110(a)(2) of the CAA. The program is administered by the Arizona Department of Environmental Quality (ADEQ) as part of Arizona's I/M program which has been approved into the CO and ozone SIP. ARS section 49–542; 60 FR 22518. Arizona law confers the legal authority on ADOT to enforce the program's requirements through vehicle registration suspension. ARS section 49–542.01.C. The program is adequately funded through an emissions inspection fund. ARS section 49–544.

EPA has also concluded that the enhanced remote sensing program meets the requirements of section 172(c)(9) and EPA's guidance on contingency requirements for low moderate CO nonattainment areas. The program is fully adopted and capable of implementation upon a finding by EPA that the Phoenix area has failed to attain the CO NAAQS by the applicable attainment date. Therefore, the program meets the section 172(c)(9) requirement that, when triggered, contingency measures must take effect without further action by the State or the Administrator.

B. Traffic Diversion Measure

EPA has evaluated MAG's traffic diversion measure and concluded that it meets the requirements of section 110(a)(2) of the CAA. ARS section 28–642 authorizes ADOT to place and maintain traffic control devices on all state highways for the purpose of traffic regulation. As discussed in section III.B. of this notice, ADOT has indicated in its 1992 resolution that it has both the funding and personnel to implement the measure once it is triggered by an EPA finding.

The implementation commitment in the ADOT resolution is in enforceable form and therefore legally binds the Department to initiate the traffic diversion measure within 60 days of an EPA finding. However, the measure's ability to achieve emission reductions is entirely dependent on the voluntary actions of motorists, and there is no credible means of determining how many of them will heed the signs' exhortations. Therefore, while MAG has estimated that the measure will reduce CO emissions in the Phoenix area by .8 tpd, EPA is assuming, for the purposes of its proposed section 172(c)(9) approval, only that the measure will result in some, albeit unquantifiable, emission reduction benefit.

With respect to the requirements of section 172(c)(9) and EPA's guidance on contingency measures for low moderate CO areas, EPA has concluded that the traffic diversion measure is acceptable. ADOT has indicated in its 1992 resolution that it can implement the measure within 60 days of an EPA finding and has committed to do so. EPA has stated in its 1992 TSD that states must show that their contingency measures can be implemented with minimal further action (other than rulemaking) and that full implementation of the measures within 60 days after EPA notification is sufficient to meet the section 172(c)(9) requirements.

EPA believes that the traffic diversion measure, when triggered as a contingency measure, will serve to strengthen the SIP. Although EPA cannot now find that the measure will produce any specific amount of emission reduction, the measure, taken in conjunction with the enhanced remote sensing program and other

emission reductions occurring in the area, as described below, will result in reductions more than adequate to offset one year of VMT growth as suggested by EPA's guidance.

C. Additional Post-1995 Emission Reductions

As has been shown above, CO emission reductions of 6.5 tpd are expected to result from the implementation of the enhanced remote sensing program. Moreover, EPA believes that some additional but unknown reductions will be achieved through implementation of the traffic diversion measure. The State has provided to EPA data indicating that emissions increases of 17 tpd from VMT growth are expected to occur in 1996 and 1997, the period during which the SIP would be revised if the area is found to have failed to attain the CO standard by December 31, 1995.

The State has also provided information documenting that emission reductions of 32 tpd are expected to be achieved in 1996 and 1997 through continued implementation of Arizona's I/M program beyond those reductions achieved through 1995 from the I/M program. The 6.5 tpd reductions from the enhanced remote sensing program and the additional benefits from the traffic diversion measure, if triggered as contingency measures, in conjunction with these additional I/M reductions, are more than sufficient to offset the projected emissions associated with VMT growth during the 2 year SIP revision period.[10]

As set forth in section II.B. of this notice, EPA suggested in its 1992 TSD that contingency measures for these areas achieve emission reductions offsetting one year's VMT growth while the SIP is being revised. In establishing this suggested benchmark, EPA intended that, following a finding of nonattainment, the status quo, as represented by the emissions level in the attainment deadline year, be maintained during this period. EPA believes that this result can be achieved by considering reductions from the section 172(c)(9) measures in combination with new reductions scheduled to occur in the area during the SIP revision period, as long as these offsetting reductions are from measures approved into the SIP and are in excess of reductions occurring in the attainment deadline year. The emission reductions from the enhanced remote sensing program, the traffic diversion measure, and the additional reductions from the I/M program in 1996 and 1997 more than meet this test.

For the above reasons, EPA is proposing to approve the State's enhanced remote sensing program and the MAG traffic diversion measure as meeting the requirements of section 172(c)(9).

VI. Withdrawal of Federal Contingency Process

Based on the proposed approval of the State's 172(c)(9) contingency measures, EPA is proposing to withdraw the Federal contingency process for the Phoenix CO nonattainment area. Specifically, the Agency is proposing to delete the phrase ''After December 31, 1991 for the Maricopa CO nonattainment area or'' from the contingency provisions at 56 FR 5470, column 2 (February 11, 1991). This deletion will leave the Federal contingency process in place for the Pima County CO nonattainment area. EPA also proposes to withdraw the list of highway projects potentially subject to delay that was proposed on June 28, 1993 during the partial implementation of the FIP contingency process at that time. 58 FR 34547.

EPA is proposing these actions because, with its final approval of the State's section 172(c)(9) measures, the Federal process will become unnecessary for attainment and maintenance of the CO NAAQS in the Phoenix area. To leave the Federal process in place would complicate air quality planning within Maricopa County and would be unnecessarily redundant. In addition, giving preference to the State's measures is consistent with the Clean Air Act's intent that states have primary responsibility for the control of air pollution within their borders. See CAA sections 101(a)(3) and 107(a).

VII. Summary of EPA Actions

EPA is today proposing to approve into the Arizona SIP for the Phoenix CO nonattainment area the State's enhanced remote sensing program and the MAG traffic diversion measure as meeting the requirements of section 172(c)(9) of the CAA. EPA is also proposing to withdraw the Federal contingency process promulgated pursuant to section 110(c) of the Act and published on February 11, 1991 (56 FR 5458). Finally, EPA is withdrawing the list of highway projects subject to delay proposed on June 28, 1993 (58 FR 34547) as part of the implementation of the Federal contingency process in 1993.

Nothing in this proposed action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for a revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

VIII. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the Clean Air Act, do not create any new requirements, but simply approve requirements that the State is already imposing. Similarly, withdrawal of the FIP contingency process does not impose any new requirements. Therefore, because the Federal SIP approval and FIP withdrawal does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), 2 U.S.C. §§ 1501–1571, signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of these SIP revisions, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 182 of the CAA. These rules may bind State, local, and tribal

[10] Additional information on VMT growth and emission reductions from the I/M program after 1995 is provided in the TSD for this notice.

governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved today will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Similarly, EPA's withdrawal of the FIP contingency process will not impose any new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 3, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–8807 Filed 4–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OK–12–1–7079b; FRL–5438–5]

Approval of Volatile Organic Compound Regulations for Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Oklahoma for the purpose of removing equivalent test method and alternative standard language from the Oklahoma volatile organic compound regulations. In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment 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 proposed rule, no further activity is contemplated in relation to this rule. If the 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. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 9, 1996.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Multimedia Planning & Permitting Division (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Oklahoma Department of Environmental Quality, Air Quality Program, 4545 North Lincoln Blvd., Suite 250, Oklahoma City, Oklahoma 73105–3483.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Davis, Planning Section (6PD-L), Multimedia Planning & Permitting Division, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7584.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the final rules section of this Federal Register.

Dated: February 8, 1996.

Jane N. Saginaw,

Regional Administrator (6A).

[FR Doc. 96–8441 Filed 4–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL133–1–7125b; FRL–5435–1]

Approval and Promulgation of Air Quality Implementation Plans; Illinois: Motor Vehicle Inspection and Maintenance

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve the State Implementation Plan (SIP) revision request submitted by the State of Illinois on June 26, 1995, as a formal submittal of the 1992 motor vehicle inspection and maintenance program enhancements developed and implemented, in part, as a response to the 1989 Federal Implementation Plan agreement between Illinois, Wisconsin, and USEPA. In the final rules section of this Federal Register, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action 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 that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA 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 the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before May 9, 1996.

ADDRESSES: Written comments should be mailed to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at:

Regulation Development Section, Air Programs Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco Acevedo, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: February 15, 1996.

David A. Ullrich,

Regional Administrator.

[FR Doc. 96–8434 Filed 4–8–96; 8:45 am]

BILLING CODE 6560–50–P