

## § 52.1620 Identification of plan.

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## EPA-APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
<b>New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality</b>				
Part 66 .....	Cotton Gins .....	4/7/2005 .....	6/13/2012 [Insert FR page number where document begins].	

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[FR Doc. 2012–14154 Filed 6–12–12; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA–R09–OAR–2010–0717; FRL 9661–3]

**Approval and Promulgation of Implementation Plans; Arizona; Update to Stage II Gasoline Vapor Recovery Program; Change in the Definition of “Gasoline” To Exclude “E85”****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** Under the Clean Air Act, EPA is taking final action to approve certain revisions to the Arizona State Implementation Plan submitted by the Arizona Department of Environmental Quality. These revisions concern amendments to the statutory and regulatory provisions adopted by the State of Arizona to regulate volatile organic compound emissions from the transfer of gasoline from storage tanks to motor vehicle fuel tanks at gasoline dispensing sites, i.e., stage II vapor recovery. The revisions also amend the definition of “gasoline” to explicitly exclude E85 and thereby amend the requirements for fuels available for use in the Phoenix metropolitan area as well as the requirements for vapor recovery. In approving the revisions, EPA is taking final action to waive the statutory stage II vapor recovery requirements at E85 dispensing pumps within the Phoenix metropolitan area. Lastly, EPA is taking final action to correct an EPA rulemaking that approved a previous version of the Arizona rules regulating these sources and to thereby identify the appropriate regulatory agency and specific rules that were previously

approved and incorporated by reference into the Arizona State Implementation Plan.

**DATES:** *Effective Date:* This rule is effective on July 13, 2012.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2010–0717 for this action. The index to the docket is available electronically at [www.regulations.gov](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., Confidential Business Information). 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:** For further information on the revisions to the Arizona State Implementation Plan submitted by the Arizona Department of Environmental Quality, contact Mr. Andrew Steckel, EPA Region IX, 75 Hawthorne Street (AIR–4), San Francisco, CA 94105, phone number (415) 947–4115, fax number (415) 947–3579, or by email at [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to EPA.

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**I. EPA’s Proposed Action****A. The State’s Submittal**

On October 3, 2011 (76 FR 61062), we proposed to approve a revision to the Arizona State Implementation Plan (SIP) submitted to EPA on September 21, 2009 by the Arizona Department of Environmental Quality (ADEQ). The purpose of the SIP revision is to update the gasoline vapor recovery program that was originally submitted and approved by EPA in 1994 to meet certain applicable requirements of the Clean Air Act, as amended in 1990 (CAA or “Act”).<sup>1</sup> The specific revisions include statutory provisions and administrative rules regulating the emissions of volatile organic compounds (VOC) due to the transfer of gasoline from storage tanks (typically underground) to motor vehicle fuel tanks at gasoline stations in the Phoenix metropolitan area. The statutory provisions and administrative rules are contained in enclosures 3 and 4 of ADEQ’s September 21, 2009 SIP revision submittal package.<sup>2</sup>

ADEQ’s submittal represents an update to the stage II requirements but is comprehensive in that the submitted

<sup>1</sup> Gasoline dispensing pump vapor control devices, commonly referred to as “stage II” vapor recovery, are systems that control VOC vapor releases during the refueling of motor vehicles. This process takes the vapors normally emitted directly into the atmosphere when pumping gas and recycles them back into the fuel storage tank, preventing them from polluting the air. For more information on stage II vapor recovery systems, please see EPA’s proposed rule, “Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver,” 76 FR 41731, at 41734 (July 15, 2011).

<sup>2</sup> By letter dated April 12, 2011, ADEQ substituted the statutes and rules in enclosures 3 and 4 as submitted on September 21, 2009 with official, published versions of the same statutes and rules in keeping with the requirements. ADEQ did so in response to an EPA request for the official, published versions of the statutes and rules to comply with the requirements established by the Office of the Federal Register for incorporating such materials by reference into the Code of Federal Regulations.

statutory and regulatory provisions also address general requirements related to stage I vapor recovery.<sup>3</sup> While ADEQ's submittal relates almost entirely to the State's vapor recovery program, it also amends the State's fuels program by amending the definition of the term "gasoline" to exclude "E85,"<sup>4</sup> a change that affects both the gasoline fuels program established for the Phoenix metropolitan area and the stage II vapor

recovery program because both programs now rely on that particular definition. In our October 3, 2011 proposed rule, we concluded that ADEQ's September 21, 2009 SIP revision submittal contains adequate documentation of public notice, opportunity for comment, and a public hearing on the proposed SIP revision (see enclosure 5 of the submittal) and that the public participation materials

submitted by ADEQ demonstrate compliance with the procedural requirements set forth in section 110(l) of the CAA.

Table 1 lists the statutory provisions, and Table 2 lists the administrative rules, that were submitted by ADEQ on September 21, 2009 and that we are approving in today's action.

TABLE 1—SUBMITTED STATUTORY PROVISIONS

Arizona revised statutes	Title	Submitted
Title 41, chapter 15, article 1, section 41–2051 .....	Definitions: subsection 6 ("Certification"), subsection 10 ("Department"), subsection 11 ("Diesel fuel"), subsection 12 ("Director"), and subsection 13 ("E85").	09/21/09
Title 41, chapter 15, article 6, section 41–2121 .....	Definitions: subsection 5 ("Gasoline") .....	09/21/09
Title 41, chapter 15, article 7, section 41–2131 .....	Definitions: subsection 1 ("Annual throughput"), subsection 2 ("Clean air act"), subsection 3 ("Gasoline dispensing site"), subsection 4 ("Stage I vapor collection system"), subsection 5 ("Stage II vapor collection system"), and subsection 6 ("Vapor control system").	09/21/09
Title 41, chapter 15, article 7, section 41–2132 .....	Stage I and stage II vapor recovery systems .....	09/21/09
Title 41, chapter 15, article 7, section 41–2133 .....	Compliance schedules .....	09/21/09

TABLE 2—SUBMITTED RULES

Arizona administrative code	Rule title	Effective date (for state purposes)	Submitted
Title 20, chapter 2, article 1, section R20–2–101 .....	Definitions .....	06/05/04 .....	09/21/09
Title 20, chapter 2, article 9, section R20–2–901 .....	Material Incorporated by Reference .....	06/05/04 .....	09/21/09
Title 20, chapter 2, article 9, section R20–2–902 .....	Exemptions .....	06/05/04 .....	09/21/09
Title 20, chapter 2, article 9, section R20–2–903 .....	Equipment and Installation .....	06/05/04 .....	09/21/09
Title 20, chapter 2, article 9, section R20–2–904 .....	Application Requirements and Process for Authority to Construct Plan Approval.	06/05/04 .....	09/21/09
Title 20, chapter 2, article 9, section R20–2–905 .....	Initial Inspection and Testing .....	06/05/04 .....	09/21/09
Title 20, chapter 2, article 9, section R20–2–907 .....	Operation .....	10/08/98 .....	09/21/09
Title 20, chapter 2, article 9, section R20–2–908 .....	Training and Public Education .....	10/08/98 .....	09/21/09
Title 20, chapter 2, article 9, section R20–2–909 .....	Recordkeeping and Reporting .....	10/08/98 .....	09/21/09
Title 20, chapter 2, article 9, section R20–2–910 .....	Annual Inspection and Testing .....	06/05/04 .....	09/21/09
Title 20, chapter 2, article 9, section R20–2–911 .....	Compliance Inspections .....	06/05/04 .....	09/21/09
Title 20, chapter 2, article 9, section R20–2–912 .....	Enforcement .....	06/05/04 .....	09/21/09

Under Arizona law, the principal stage II vapor recovery requirements are found in Arizona Revised Statutes (ARS) section 41–2132 ("Stage I and stage II vapor recovery systems"), which requires gasoline dispensing sites to be equipped with a stage II vapor collection system within "an ozone nonattainment area designated as moderate, serious, severe or extreme by the United States environmental protection agency under § 107(d) of the

clean air act, area A or other geographical area \* \* \*." ARS section 41–2132(C). "Area A" is defined in ARS section 49–541 and it includes all of the metropolitan Phoenix former 1-hour ozone nonattainment area plus additional areas in Maricopa County to the north, east, and west, as well as small portions of Yavapai County and Pinal County.

ARS 41–2132 also provides an exemption for gasoline dispensing sites

with a throughput of less than 10,000 gallons per month or less than 50,000 gallons per month in the case of an independent small business marketer as defined in section 324 of the CAA, and for gasoline dispensing sites that are located on a manufacturer's proving ground. ARS 41–2133 sets forth certain compliance schedules related to the stage II vapor recovery requirements in ARS 41–2132.

<sup>3</sup> "Stage I" vapor recovery refers to the collection of VOC emissions expelled from underground storage tanks at gasoline stations when being refilled by tank trucks. The Maricopa County Air Quality Department (MCAQD) implements its own stage I vapor recovery regulation within the Phoenix metropolitan area, Regulation III, Rule 353 ("Transfer of Gasoline into Stationary Storage Dispensing Tanks"). EPA approved MCAQD rule

353 and incorporated it into the Arizona SIP. See 61 FR 3578 (February 1, 1996). MCAQD's stage I vapor recovery program and related rule are not affected by today's proposed action.

<sup>4</sup> E85 is a motor vehicle fuel that is a blend of as little as 15 percent gasoline and up to 85 percent ethanol. (In wintertime applications, the ratio may be 30 percent gasoline and 70 percent ethanol.) E85 can only be used in specially designed FFVs, which

have mostly been manufactured since 1998. Since these are newer vehicles, most of them are equipped with ORVR, and every FFV built today has ORVR. Thus, most vehicles refueling at E85 dispensing pumps are already having their evaporative emissions captured, as in the cases of late model rental cars refueling at rental car facilities and newly manufactured cars being fueled for the first time at automobile assembly plants.

The stage II vapor recovery requirements in ARS 41–2132 rely upon the definitions of certain terms, such as “gasoline,” “stage II vapor collection system,” and “E85,” among others, which are codified in ARS sections 41–2015, 41–2121, and 41–2131, and ADEQ included the relevant definitions, along with ARS sections 41–2132 and 41–2133, in the SIP revision submittal dated September 21, 2009. See table 1 of this document. The definition of “gasoline,” which is codified in paragraph (5) of ARS 41–2121, specifically excludes “diesel fuel” and “E85.”

ARS section 41–2132(G) directs the Arizona Department of Weights and Measures (ADWM) to adopt rules that establish standards for the installation and operation of stage I and stage II vapor recovery systems. In 1994, EPA approved an earlier version of ADWM’s rules for stage II vapor recovery. See 59 FR 54521 (November 1, 1994). Since then, in addition to renumbering and recodifying the rules, ADWM has amended the vapor recovery rules to delete, modify, and add certain definitions; to approve use of certain new test procedures developed by the California Air Resources Board (CARB); to include general requirements for stage I vapor recovery systems; to add exemptions for motor raceways, motor vehicle proving grounds, and marine and aircraft refueling facilities; to clarify and expand application requirements; and to enhance compliance-related provisions.

ADWM’s rules for such systems are now codified at title 20, chapter 2, article 9 (“Gasoline Vapor Recovery”), of the Arizona Administrative Code (AAC). These rules rely upon certain definitions in AAC, title 20, chapter 2, article 1 (“Administration and Procedures”), section R20–2–101 (“Definitions”). ADEQ submitted these rules and definitions to EPA as part of the stage II SIP revision dated September 21, 2009—see table 2 of this document.

In our October 3, 2011 proposed rule, we also explained that in our 1994 final rule approving an earlier version of ADWM’s vapor recovery rules, we made an error in how we codified the stage II vapor recovery rules into the Arizona SIP, and were thus proposing to correct that error. Please see our October 3, 2011 proposed rule at pages 61063 and 61064 for additional information on these topics.

### B. Regulatory Context

Under CAA section 182(b)(3), stage II vapor recovery systems are required to be used at larger gasoline dispensing

facilities located in Serious, Severe, and Extreme nonattainment areas for ozone.<sup>5</sup> More specifically, the Act specifies that such systems be installed at any facility that dispenses more than 10,000 gallons of gasoline per month, or, in the case of an independent small business marketer (as defined in CAA section 324), any facility that dispenses more than 50,000 gallons of gasoline per month. Based on deadlines established in the Act, within 24 months from the effective date of the initial area designation and classification, states must adopt a stage II program into their SIPs, and the controls must be installed according to specified deadlines following state rule adoption. For existing facilities the installation deadlines depend on the date the facilities were built and the monthly volume of gasoline dispensed. See CAA sections 182(b)(3)(A)–(B), and 324(a)–(c).<sup>6</sup>

However, the CAA provides discretionary authority to the EPA Administrator to, by rule, revise or waive the section 182(b)(3) stage II requirement after the Administrator determines that On-Board Refueling Vapor Recovery (ORVR) is in widespread use throughout the motor vehicle fleet. See CAA section 202(a)(6). ORVR consists of an activated carbon canister installed in the vehicle into which vapors being expelled from the vehicle fuel tanks are forced to flow. There the vapors are captured by the activated carbon in the canister. When the engine is started, the vapors are drawn off of the activated carbon and into the engine where they are burned as fuel. EPA promulgated ORVR standards on April 6, 1994, 59 FR 16262.

EPA first began the phase-in of ORVR by requiring that 40 percent of passenger cars manufactured in model year 1998 be equipped with ORVR. The

ORVR requirement for passenger cars was increased to 100 percent by model year 2000. Phase-in continued for other vehicle types and ORVR has been a requirement on virtually all new gasoline-powered motor vehicles (passenger cars, light trucks, and complete<sup>7</sup> heavy-duty gasoline powered vehicles under 10,000 lbs gross vehicle weight rating (GVWR)) sold since model year 2006. See 40 CFR part 86. Currently, ORVR-equipped vehicles comprise approximately 67 percent of the in-service vehicle fleet nationwide, and account for around 76 percent of the vehicle miles traveled (VMT) in the nationwide fleet. The percentage of non-ORVR vehicles and the percentage of VMT driven by those vehicles declines each year as these older vehicles wear out and are removed from service. Since certain vehicles are not required to have ORVR, including motorcycles and incomplete heavy-duty gasoline powered trucks chassis, under current requirements the nationwide motor vehicle fleet would never be entirely equipped with ORVR but these vehicles account for less than 2 percent of national annual highway gasoline consumption.

The CAA anticipates that, over the long-term, ORVR will reduce the benefit from, and the need for, stage II vapor recovery systems at gasoline dispensing sites in ozone nonattainment areas, and as noted above, section 202(a)(6) of the CAA allows EPA to revise or waive the application of stage II vapor recovery requirements for areas classified as Serious, Severe, or Extreme for ozone, as appropriate, after such time as EPA determines that ORVR systems are in widespread use throughout the motor vehicle fleet. CAA section 202(a)(6) does not specify which motor vehicle fleet must be the subject of a widespread use determination before EPA may revise or waive the section 182(b)(3) stage II requirement. Nor does the CAA identify what level of ORVR use in the motor vehicle fleet must be reached before it is “widespread.” To date, EPA has issued two memoranda addressing when ORVR widespread use might be found for particular fleets.<sup>8</sup>

<sup>5</sup> See CAA section 182(b)(3), 42 U.S.C. 7511a(b)(3). Originally, the section 182(b)(3) stage II requirement also applied in all Moderate ozone nonattainment areas. However, under section 202(a)(6) of the CAA, 42 U.S.C. 7521(a)(6), the requirements of section 182(b)(3) no longer apply in Moderate ozone nonattainment areas after EPA promulgated ORVR standards on April 6, 1994, 59 FR 16262, codified at 40 CFR parts 86 (including 86.098–8), 88 and 600. Under implementation rules issued in 2004 for the 1997 8-hour ozone standard, EPA retained the stage II-related requirements under section 182(b)(3) as they applied for the 1-hour ozone standard. 40 CFR 51.900(f)(5).

<sup>6</sup> Section 182(b)(3)(B) has the following effective date requirements for implementation of stage II after the adoption date by a state of a stage II rule: 6 months after adoption of the state rule, for gas stations built after the enactment date (which for newly designated areas would be the designation date); 1 year after adoption date, for gas stations pumping at least 100,000 gal/month based on average monthly sales over 2-year period before adoption date; 2 years after adoption, for all others.

<sup>7</sup> For purposes of ORVR applicability, a “complete” vehicle means a vehicle that leaves the primary manufacturer’s control with its primary load carrying device or container attached.

<sup>8</sup> “Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Vapor Recovery is Demonstrated,” memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, and Margo Tsigotis Oge, Director, EPA Office of Transportation and Air Quality, to Regional Air Division Directors, dated December 12, 2006 (“2006 Page/Oge Memorandum”); and “Removal of Stage

EPA expects the possibility of different rates of implementation of ORVR across different geographic regions and among different types of motor vehicle fleets within any region. Given this, EPA does not believe that CAA section 202(a)(6) must be read narrowly to allow a widespread use determination and waiver of the stage II requirement for a given area or area's fleet only if ORVR use has become widespread through the entire United States, or only if ORVR use has reached a definite level in each area. Rather, EPA believes that section 202(a)(6) allows the Agency to apply the widespread use criterion to either the entire motor vehicle fleet in a State or nonattainment area, or to special segments of the overall fleet for which ORVR use is shown to be sufficiently high, and to base widespread use determinations on differing levels of ORVR use, as appropriate. EPA also believes that the Act allows the Agency to use an area-specific rulemaking approving a SIP revision to issue the section 202(a)(6) waiver for a relevant fleet in a nonattainment area.

One metric that EPA has considered in determining whether ORVR use is widespread within a given motor vehicle fleet considers when VOC emissions resulting from the application of ORVR controls alone equal the VOC emissions when both stage II vapor recovery systems and ORVR controls are used, after accounting for incompatibility excess emissions. The incompatibility excess emissions factor relates to losses in control efficiency when certain types of stage II and ORVR are used together. One metric previously discussed by EPA for widespread use in distinct and unique situations was that widespread use will likely have been reached when the percentage of motor vehicles in service with ORVR, the vehicle miles traveled (VMT) by ORVR-equipped vehicles, or the gasoline dispensed to ORVR-equipped vehicles reaches 95 percent. See the 2006 Page/Oge Memorandum, page 2. Application of the 95 percent criterion could lead to, for example, waiver of stage II vapor recovery requirements at gasoline dispensing sites that exclusively fuel new automobiles at assembly plants and rental cars at rental car facilities given the high percentage (essentially 100%) of ORVR-equipped vehicles associated with such facilities.

Recently, EPA proposed criteria for determining whether ORVR is in "widespread use" for purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. See 76 FR 41731 (July 15, 2011). In EPA's July 15, 2011 action, EPA also proposed criteria that would establish June 30, 2013 as the date on with "widespread use" will occur nationally, and the date on which a nationwide waiver of stage II gasoline vapor recovery systems will be effective.

EPA, after considering public comments, intends to take final action regarding the July 15, 2011 proposal to establish a nationwide date for determining when ORVR is in "widespread use" and for waiving the stage II requirement. In the proposed rule, EPA stated that it intends to provide that individual states may submit SIP revisions that demonstrate that ORVR widespread use has occurred (or will occur) on a date earlier than the date identified in the final rule for areas in their states, and to request that the EPA revise or waive the section 182(b)(3) requirement as it applies to only those areas. See 76 FR at 41733. Consistent with EPA's July 15, 2011 proposal to allow states to submit such SIP revisions, EPA is taking final action today to approve an area-specific revision to the Arizona SIP and to approve a waiver for a specific portion of the motor vehicle fleet, namely flexible fuel vehicles refueled with E85 gasoline blend, in the Phoenix metropolitan area.

As explained in our October 3, 2011 proposed rule, the "Phoenix area," defined by the Maricopa Association of Governments' (MAGs') urban planning area boundary (but later revised to exclude the Gila River Indian Community at 70 FR 68339 (November 10, 2005)), was classified as a "Moderate" nonattainment area for the 1-hour ozone national ambient air quality standard (NAAQS) and later reclassified as "Serious" for the 1-hour ozone standard. See 56 FR 56694, at 56717 (November 6, 1991) and 62 FR 60001 (November 6, 1997). As noted above, section 182(b)(3) of the Act required States with ozone nonattainment areas such as the Phoenix area to adopt and submit a SIP revision requiring gasoline dispensing facilities to install and operate stage II vapor recovery equipment, and in response, ADEQ submitted the statutory provisions and rules establishing stage II vapor recovery requirements in the Phoenix area. EPA approved the stage II vapor recovery rules as a revision to the Arizona SIP. See 59 FR 54521 (November 1, 1994). We are taking final

action today to approve a SIP revision that updates the stage II vapor recovery requirements for the Phoenix metropolitan area and that waives stage II vapor recovery requirements at E85 dispensing pumps.

### *C. EPA's Evaluation of SIP Submittal and Proposed Action*

#### **Relevant Statutes, Rules, Policies, and Guidance**

In our October 3, 2011 proposed rule, we explained how we evaluated the statutory provisions and administrative rules that ADEQ submitted to update the Arizona SIP with respect to the stage II vapor recovery program in the Phoenix metropolitan area. To summarize that information, we evaluated ADEQ's stage II vapor recovery SIP update revision based on the Phoenix metropolitan area's designations and classifications for the now-revoked one-hour ozone standard and the current eight-hour ozone standard to ensure Arizona's stage II program complies with section 182(b)(3) of the Act (which is described in section I.B. of this document), to ensure that the requirements of the program are enforceable (see CAA section 110(a)(2)), and that the changes would not interfere with reasonable further progress or attainment of the NAAQS (see CAA section 110(l)).

In doing so, we relied on a number of guidance and policy documents including, but not limited to the 2006 Page/Oge Memorandum<sup>9</sup> and the 2007 Page/Oge Memorandum (see footnote 7 of this document for the full references to these memoranda). Please see our October 3, 2011 proposed rule at page 61065 for a complete list of the guidance and policy documents upon which we relied.

#### **Compliance With CAA Section 182(b)(3) Stage II Requirements**

In our October 3, 2011 proposed rule, we concluded that the statutory provisions meet the CAA section 182(b)(3) stage II requirements for the following reasons:

- The State is requiring stage II vapor recovery controls in an area that encompasses all of the 1-hour ozone "serious" nonattainment area consistent

<sup>9</sup>In EPA's recent national rulemaking regarding waiver of stage II requirements, we indicate that the Agency continues to believe the 2006 Page/Oge Memorandum is sound guidance in areas where stage II is currently being implemented, and is unaffected by the proposed national widespread use determination. See 76 FR 41731, at 41737 (July 15, 2011). In today's action, we rely primarily on the principles and rationale set forth in the 2006 Page/Oge Memorandum rather than those set forth in EPA's July 15, 2011 proposed rule.

II Vapor Recovery from Refueling of Corporate Fleets," memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, and Margo Tsigotis Oge, Director, EPA Office of Transportation and Air Quality, to Regional Air Division Directors, dated November 28, 2007 ("2007 Page/Oge Memorandum").

with compliance schedules set forth in the Act and the State provides low-volume throughput exemptions that are consistent with those allowed for in CAA section 182(b)(3); and

- The State law exemption for a “gasoline dispensing site that is located on a manufacturer’s proving ground” in ARS 41–2132(C) does not apply to any facility within the nonattainment area, and, assuming that the fuel throughput at the facility to which it had applied is representative of the throughput of any such facility that might locate within the nonattainment area, the exemption would be consistent with the low-volume throughput exemptions allowed for in CAA section 182(b)(3).

Further, in our October 3, 2011 proposed rule, we evaluated whether the exclusion of “E85” from the State law definition of gasoline comports with section 182(b)(3) vapor recovery requirements. Based on this evaluation, we concluded that, given how close the ORVR-equipped percentage for flexible fuel vehicles (FFVs) in the Phoenix metropolitan area (87 percent in 2008 and climbing) is to the ORVR widespread use threshold based on comparable VOC emissions (95 percent) and because the change in emissions due to use of E85 would not interfere with attainment and RFP of any of the NAAQS, ORVR is in widespread use in the FFV vehicle fleet in the Phoenix metropolitan area for the purposes of CAA section 202(a)(6). Based on the finding of “widespread use,” in our October 3, 2011 proposed rule, we proposed to waive the stage II vapor recovery requirements for E85 dispensing pumps in the Phoenix metropolitan area under section 202(a)(6).

Third, in our October 3, 2011 proposed rule, we noted that changes in ADWM’s vapor recovery rules would generally serve to clarify and improve the existing stage II vapor recovery rules that we approved into the SIP in 1994, and that the only significant changes potentially affecting approvability with respect to CAA section 182(b)(3) would be the new exemptions for motor raceways, and for marine and aircraft refueling facilities. We evaluated the new exemptions and concluded that they would be acceptable under section 182(b)(3) because the fuel throughput at the one motor raceway facility to which the exemption applies is far below the 10,000-gallon per month low-throughput threshold exemption allowed under CAA section 182(b)(3) and because the exemptions as applied to the race cars themselves and to marine and aircraft refueling facilities do not apply to “motor

vehicles” as defined in CAA section 216(2) and thus are not required to be subject to stage II vapor recovery requirements under section 182(b)(3). Please see our October 3, 2011 proposed rule at pages 61066 and 61067 for more information about our evaluation of the submitted statutory provisions and rules for compliance with section 182(b)(3) and for more information about our proposed waiver under section 202(a)(6).

#### Compliance With CAA Section 110(l)

In our October 3, 2011 proposed rule, we also evaluated the statutory provisions and administrative rules submitted by ADEQ as part of the September 21, 2009 SIP revision under CAA section 110(l) for possible interference with any applicable requirement concerning reasonable further progress (RFP) and attainment of any of the NAAQS or any other applicable requirement under the Act. With respect to this SIP revision, we found that the only potentially significant adverse effect on emissions and, thus, potential for interference would stem from the exclusion of E85 from the definition of “gasoline” in ARS 41–2121. The exclusion of E85 from “gasoline” would allow for increased use of E85 (by FFVs) as a motor fuel in the Phoenix metropolitan area and would result in corresponding change in emissions from FFVs using E85 relative to the same vehicles using the specially formulated gasoline (referred to as “Arizona Cleaner Burning Gasoline,” or “Arizona CBG”) otherwise required.<sup>10</sup>

<sup>10</sup> EPA’s guidance for States in developing their stage II SIPs in the early 1990s suggested that States use the same definition of “gasoline” as the one found in EPA’s Standard of Performance for Bulk Gasoline Terminals at 40 CFR 60.501, which includes “any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines.” EPA recommended using this definition to most broadly reach situations in which refueling of motor vehicles results in evaporative VOC emissions that contribute to ozone nonattainment concentrations, and to avoid a narrow interpretation of what is “gasoline” that would allow significant VOC emissions from motor vehicle refueling activities in nonattainment areas to go uncontrolled.

In the existing SIP, Arizona includes a definition of “gasoline,” AAC R4–31–901(5), that is consistent with the NSPS definition. The SIP revision that we are approving today would replace the existing SIP definition of “gasoline” from Arizona’s rules for gasoline vapor recovery (AAC title 20, chapter 2, article 9) with the definition of “gasoline” from Arizona’s statutes governing motor fuel (ARS section 41–2121(5)). The definition of “gasoline” in ARS section 41–2121(5) is as inclusive as the existing SIP definition in AAC R4–31–901(5), except for the explicit exclusion of E85. Given that E85 can only be used by FFVs, and based on our proposed “widespread use” determination with respect to the FFV fleet in the Phoenix area that would be fueled at E85 dispensing pumps, we find

(Arizona CBG is a boutique fuel established to reduce vehicle emissions in the Phoenix metropolitan area and to help meet CAA air quality planning requirements.) The gasoline portion of E85 must continue to meet the specifications for Arizona CBG pursuant to AAC R20–2–718(B).

To evaluate the change in emissions, we reviewed a recently published study from the Journal of the Air & Waste Management Association titled “Effect of E85 on Tailpipe Emissions from Light-Duty Vehicles<sup>11</sup>” (herein, the “E85 Vehicle Emissions Study”), which compiled the results from previous published studies but also analyzed a significantly larger database compiled by EPA for vehicle certification purposes. As described in our October 3, 2011 proposed rule, though the results vary by pollutant and between “tier 1” (i.e., model year (MY) 1994–2003) and “tier 2” (MY 2004–2008) vehicles, in general, the study suggests that FFVs using E85 emit fewer oxides of nitrogen (NO<sub>x</sub>), carbon monoxide, and particulate matter (PM) relative to the same FFVs using gasoline. However, with respect to VOCs, FFVs may well emit greater VOCs than the same FFVs using gasoline [based on the measurement results for non-methane organic gases (NMOGs)].<sup>12</sup>

Thus, with respect to nitrogen dioxide, carbon monoxide and particulate matter, because emissions using E85 would be lower than those using CBG, we concluded that the incremental substitution of CBG with E85 would not interfere with RFP or

the exception for E85 from the definition of “gasoline” acceptable under CAA section 182(b)(3). Moreover, to allow for the distribution and sale of E85 in the Phoenix area, a change in the term of “gasoline” (to exclude E85) for stage II vapor recovery purposes alone would not have sufficed. Because of the boutique fuel requirements of Arizona CBG that have been approved into the Arizona SIP, a change in the definition of “gasoline” as a motor fuel (to exclude E85) was also necessary.

<sup>11</sup> Janet Yanowitz and Robert L. McCormick, “Effect of E85 on Tailpipe Emissions from Light-Duty Vehicles,” Journal of the Air & Waste Management Association, Volume 59, February 2009, pages 172–182.

<sup>12</sup> Ethanol itself contains no lead (Pb) or sulfur, but the ethanol portion of E85 does contain some Pb and sulfur due to the addition of a denaturant, which can comprise up to 5% of the ethanol portion of E85. The denaturant used by ethanol producers is typically gasoline (either RFG or conventional gasoline, depending on where the ethanol plant is located), which has sulfur and Pb specifications similar to those for CBG. Therefore, a gallon of E85 would have less sulfur and Pb than a gallon of CBG (due to the dilution provided by the ethanol), and thus the emissions of sulfur dioxide and Pb from use of E85 in FFVs would be less than the corresponding emissions from use of CBG in those vehicles. Therefore, there would be no interference with RFP or attainment of the Pb and sulfur dioxide NAAQS.

attainment of the ambient standards for those pollutants.

We also concluded that the net effect on ozone conditions in the Phoenix 8-hour ozone nonattainment area would be beneficial despite the potential higher VOC emission rate by E85-fueled FFVs (relative to CBG-fueled FFVs) because of the offsetting effect of NO<sub>x</sub> emissions reductions (from use of E85 relative to Arizona CBG) and because of the extension of stage II vapor recovery requirements to "Area A," an area that is larger than the area formerly designated as nonattainment for the 1-hour ozone standard and that includes the fast-growing region west of the City of Phoenix.<sup>13</sup>

On the basis of the above rationale, we determined in our October 3, 2011 proposed rule that this SIP revision, including the change in the definition of "gasoline" to exclude "E85," would not interfere with RFP and attainment for any of the NAAQS. Please see our October 3, 2011 proposed rule at pages 61067 and 61068 for more information about our evaluation of the submitted statutory provisions and rules for compliance with section 110(l) of the CAA.

#### *D. Proposed Correction of Previous Rulemaking*

Lastly, in our October 3, 2011 proposed rule, we described our direct final action (59 FR 54521, November 1, 1994) to approve the administrative rules adopted by ADWM to provide for the installation and operation of stage II vapor recovery systems, and in which we included erroneous references and failed to identify the specific rules being incorporated by reference into the SIP. To address this issue, we proposed, under section 110(k)(6) and 301(a) of the CAA,<sup>14</sup> to correct our previous codification of our approval of the stage II vapor recovery rules to identify the appropriate regulatory agency and to identify the specific rules that were being approved and incorporated by reference into the Arizona SIP. Please

see our October 3, 2011 proposed rule at page 61068 for more information about our proposed error correction under CAA section 110(k)(6).

## **II. Public Comments and EPA Responses**

Our October 3, 2011 proposed rule provided a 60-day comment period. During this period, we received no comments on our proposed action.

## **III. Final Action**

As authorized in section 110(k)(3) of the Act and for the reasons provided in our October 3, 2011 proposed rule and summarized herein, EPA is taking final action to approve the statutory provisions and updated administrative rules establishing certain vapor recovery requirements in the Phoenix metropolitan area as a revision to the Arizona SIP. Specifically, we are taking final action to approve Arizona Revised Statutes (ARS) sections listed in table 1 of this document and the Arizona Administrative Code (AAC) sections listed in table 2 of this document.<sup>15</sup> Second, as authorized under CAA section 202(a)(6), we are taking final action to waive the stage II vapor recovery requirements at E85 dispensing pumps in the Phoenix area under CAA section 202(a)(6) based on our conclusion that ORVR is in widespread use among the FFVs that use such facilities.

In so doing, we conclude that the submitted statutory provisions and updated administrative rules meet the related requirements for stage II vapor recovery under CAA section 182(b)(3) and will not interfere with attainment and RFP of any of the NAAQS or any other CAA applicable requirement, consistent with the requirements of CAA section 110(l). Final EPA approval of the updated statutory provisions and rules and incorporation of them into the Arizona SIP makes them federally enforceable.

Lastly, under section 110(k)(6) and 301(a) of the CAA, we are taking final action to correct and clarify the incorporation of the previous version of ADWM's vapor recovery related administrative rules into the Arizona SIP.

<sup>13</sup> As submitted in 1993, ARS section 41-2132(C) established the stage II vapor recovery requirement within the ozone nonattainment area, but the current version of this statute, which is included in today's final approval action, extends the requirement to "Area A."

<sup>14</sup> Section 110(k)(6) of the CAA provides that, whenever EPA determines that the Agency's action approving, disapproving, or promulgating any plan or plan revision, area designation, redesignation, classification, or reclassification was in error, EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Section 301(a) of the CAA authorizes EPA to prescribe such regulations as are necessary to carry out the Agency's functions under the CAA.

<sup>15</sup> Our approval of the statutory provisions and administrative rules in tables 1 and 2 of this document supersedes the previously approved versions of the administrative rules in the Arizona SIP (i.e., AAC Article 9 ("Gasoline Vapor Control"), Rules R4-31-901 through R4-31-910, adopted by the Arizona Department of Weights and Measures on August 27, 1993, submitted on May 27, 1994, and approved on November 1, 1994 (59 FR 54521)).

## **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) given the limited nature of this SIP revision (as to geographic scope and vehicle applicability);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that

it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *August 13, 2012*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

#### List of Subjects in 40 CFR Parts 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 11, 2012.

**Lisa P. Jackson**,  
Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart D—Arizona

■ 2. Section 52.120 is amended by revising paragraph (c)(69)(i)(A) and adding paragraph (c)(148) to read as follows:

#### § 52.120 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(69) \* \* \*

(i) \* \* \*

(A) *Arizona Department of Weights and Measures.* (1) Letter from Grant Woods, Attorney General, State of Arizona, to John U. Hays, Director, Department of Weights and Measures, dated August 31, 1993, and enclosed Form R102 ("Certification of Rules and Order of Rule Adoption").

(2) Arizona Administrative Code, Article 9 ("Gasoline Vapor Control"), Rules R4-31-901 through R4-31-910, adopted August 27, 1993, effective (for state purposes) on August 31, 1993.

\* \* \* \* \*

(148) The following plan revision was submitted on September 21, 2009 by the Governor's designee.

(i) *Incorporation by reference.* (A) *Arizona Department of Weights and Measures.* (1) Arizona Revised Statutes, title 41 (State Government), chapter 15 (Department of Weights and Measures), as amended and supplemented by the general and permanent laws enacted through the First Special Session, and legislation effective January 11, 2011 of the First Regular Session of the Fiftieth Legislature (2011):

(i) Article 1 (General Provisions), section 41-2051 ("Definitions"), subsections (6) ("Certification"), (10) ("Department"), (11) ("Diesel fuel"), (12) ("Director"), and (13) ("E85"), amended by Laws 2008, Ch. 254, § 2;

(ii) Article 6 (Motor Fuel), section 41-2121 ("Definitions"), subsection (5) ("Gasoline") amended by Laws 2007, Ch. 292, § 11; and

(iii) Article 7 (Gasoline Vapor Control), section 41-2131 ("Definitions"), added by Laws 1992, Ch. 299, § 6; section 41-2132 ("Stage I and stage II vapor recovery systems"), amended by Laws 2010, Ch. 181, § 2; and section 41-2133 ("Compliance schedules"), amended by Laws 1999, Ch. 295, § 17.

(2) Arizona Administrative Code, title 20, chapter 2, article 1 (Administration and Procedures), section R20-2-101 ("Definitions"), effective (for state purposes) on June 5, 2004.

(3) Arizona Administrative Code, title 20, chapter 2, article 9 (Gasoline Vapor Control):

(i) Sections R20-2-901 ("Material Incorporated by Reference"), R20-2-902 ("Exemptions"), R20-2-903 ("Equipment and Installation"), R20-2-904 ("Application Requirements and Process for Authority to Construct Plan Approval"), R20-2-905 ("Initial Inspection and Testing"), R20-2-910

("Annual Inspection and Testing"), R20-2-911 ("Compliance Inspections"), and R20-2-912 ("Enforcement"), effective (for state purposes) on June 5, 2004.

(ii) Sections R20-2-907 ("Operation"), R20-2-908 ("Training and Public Education"), and R20-2-909 ("Recordkeeping and Reporting"), effective (for state purposes) on October 8, 1998.

[FR Doc. 2012-14148 Filed 6-12-12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR 52

[EPA-R09-OAR-2012-0253; FRL-9682-5]

### Approval of Air Quality Implementation Plan; Arizona; Attainment Plan for 1997 8-Hour Ozone Standard

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a state implementation plan (SIP) revision submitted by the State of Arizona on June 13, 2007, to demonstrate attainment of the 1997 8-hour ozone national ambient air quality standards (NAAQS) in the Phoenix-Mesa nonattainment area by June 15, 2009. This action was proposed in the **Federal Register** on April 11, 2012. EPA is approving the submitted SIP revision based on our determination that it contains all of the SIP elements required for ozone nonattainment areas under title I, part D, subpart 1 of the Clean Air Act (CAA) for the 1997 8-hour ozone NAAQS.

**DATES:** This rule is effective on July 13, 2012.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2012-0253 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business