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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2013-0762; FRL-9912-01-Region 9]

Approval and Promulgation of Implementation Plans – Maricopa County PM-10 Nonattainment Area; Five Percent Plan for Attainment of the 24-Hour PM-10 Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State implementation plan (SIP) revision submitted by the State of Arizona to meet Clean Air Act (CAA) requirements applicable to the Maricopa County (Phoenix) PM-10 Nonattainment Area. The Maricopa County PM-10 Nonattainment Area is designated as a serious nonattainment area for the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM-10). The submitted SIP revision consists of the *Maricopa Association of Governments 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* and the *2012 Five Percent Plan for the Pinal County Township 1 North, Range 8 East Nonattainment Area*" (collectively, the 2012 Five Percent Plan). EPA is approving the 2012 Five Percent Plan as meeting all relevant statutory and regulatory requirements.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGSITER]**.

ADDRESSES: You may inspect the supporting information for this action, identified by docket number EPA-R09-OAR-2013-0762, by one of the following methods:

1. Federal eRulemaking portal, *http://www.regulations.gov,* please follow the online instructions; or,

2. Visit our regional office at, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* voluminous records, large maps, 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 directly below.

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, (415) 972-3959, lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Summary of Proposed Action

On February 6, 2014 (79 FR 7118), EPA proposed to approve the 2012 Five Percent Plan,[1] which the State of Arizona submitted on May 25, 2012, as meeting all relevant statutory and regulatory requirements under the Clean Air Act (CAA). As discussed in our proposed rule, the Maricopa County (Phoenix) PM-10 nonattainment area is a serious PM-10 nonattainment area, and is located in the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale, several other smaller jurisdictions, unincorporated County lands, as well as the town of Apache Junction in Pinal County. Arizona's obligation to submit the 2012 Five Percent Plan was triggered by EPA's June 6, 2007 finding that the Maricopa PM-10 Nonattainment Area had failed to

[1] The 2012 Five Percent Plan includes the "MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area" (dated May 2012)(MAG 2012 Five Percent Plan) and the "2012 Five Percent Plan for the Pinal County Township 1 North, Range 8 East Nonattainment Area" (dated May 25, 2012)(Pinal 2012 Five Percent Plan)(collectively, the 2012 Five Percent Plan). In our proposed rule we cited primarily to the MAG 2012 Five Percent Plan; however, both plans were submitted by ADEQ on May 25, 2012 and are included in the docket for this rulemaking. See May 25, 2012 letters from Henry R. Darwin, Director, Arizona Department of Environmental Quality, to Jared Blumenfeld, Regional Administrator, U.S. Environmental Protection Agency Region IX.

meet its December 31, 2006 deadline to attain the PM-10 NAAQS. The CAA requires a serious PM-10 nonattainment area that fails to meet its attainment deadline to submit a plan providing for attainment of the PM-10 NAAQS and for an annual emission reduction in PM-10 or PM-10 precursors of not less than five percent until attainment. Our February 6, 2014 proposed rule provides the background and rationale for this action.[2]

II. Public Comments and EPA Responses

EPA provided a 30-day public comment period on our proposed action. The comment period ended on March 10, 2014. We received 12 public comment letters from State and local agencies, industry, congressional representatives and environmental groups.[3] All of the submitted comment letters are in our docket. We respond to all the comments below.

A. Update 2002 BACM and MSM Determinations

Comment: The Arizona Center for Law in the Public Interest (ACLPI) commented that EPA's proposed action did not discuss or analyze requirements under CAA 189(b)(1)(B) for best available

[2] We have also approved Arizona statutory provisions and the Dust Action General Permit, which were submitted with the 2012 Five Percent Plan. See our proposed rule at 79 FR 7118, p. 7123 (footnote 20) and recent EPA actions at 79 FR 17878 (March 31, 2014), 79 FR 17879 (March 31, 2014) and 79 FR 17881 (March 31, 2014).

[3] Commenting organizations include: U.S. Senator Jeff Flake, Arizona Center for Law in the Public Interest (2 letters), Maricopa Association of Governments, City of Phoenix, Arizona Rock Products Association, Salt River Project, ADEQ, Arizona Association of General Contractors, Maricopa County Air Quality Department, the Arizona Chamber of Commerce, and Amanda Reeve, former Arizona State Representative and Chair of Arizona House Environment Committee.

control measures (BACM) or requirements under CAA 188(e) for most stringent measures (MSM). ACLPI stated that these requirements apply to the Maricopa County PM10 nonattainment area because it is a serious PM10 nonattainment area that obtained a five-year extension of its attainment date pursuant to section 188(e) in 2001. ACLPI also asserts that EPA's 2002 approval of BACM and MSM requirements must be updated in light of EPA's statements in correspondence to ADEQ and in a proposed rulemaking in 2010 that new more stringent control measures have been adopted by air agencies in Nevada and California and that agricultural controls no longer represent BACM. ACLPI also states that addressing the question of whether existing control constitute BACM is necessary in order to evaluate ADEQ's claims that 135 exceedances qualify as exceptional events.

Response: EPA disagrees with the commenter's statement that EPA's proposed action on the 2012 Five Percent Plan did not discuss or analyze section 189(b)(1)(B) and 188(e) requirements for BACM and MSM. Our proposed action on the 2012 Five Percent Plan explained that the Maricopa County PM-10 nonattainment area was initially classified as moderate, and, when it failed to reach attainment by the attainment deadline for moderate areas, was reclassified, on May 10, 1996, as a serious PM-10 nonattainment area with a new attainment deadline of December 31, 2001. *See* 79 FR 7118-7119. Our proposed action on the 2012

Five Percent Plan also explained the criteria set forth in section 188(e) necessary to grant a five year extension of that deadline. In addition, our proposed action on the 2012 Five Percent Plan included the following statement: "On July 25, 2002, EPA approved the serious area PM-10 plan for the Maricopa PM-10 Nonattainment Area as meeting the requirements for such areas in CAA sections 189(b) and (c), including the requirements for implementation of best available control measures (BACM) in section 189(b)(1)(B) and MSM in section 188(e). In the same action EPA approved the submission with respect to the requirements of section 188(d) and granted Arizona's request to extend the attainment date of the area to December 31, 2006." [4] 79 FR 7119.

We understand the comment to be more specifically directed at the issue of whether our action on the 2012 Five Percent Plan requires EPA to "update" or re-evaluate the BACM and MSM determinations we made when we acted on the State's serious area plan and attainment deadline extension request in 2002. EPA does not agree that the CAA requires such a reevaluation in the context of acting on a state's submission of a new plan to meet the requirements of section 189(d). We interpret CAA section 189(b)(1)(B) to provide that the requirement for BACM is

[4] EPA's approval of BACM for this area and approval of the extension under section 188(e) were upheld in *Vigil v. Leavitt*, 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004).

triggered by a specific event: the reclassification of a moderate PM-10 nonattainment area to serious. Similarly, we interpret section CAA 188(e) to provide that the requirement for MSM is triggered by a particular event: EPA's granting of a state's request for an extension of the attainment deadline for a serious nonattainment area. If a serious nonattainment area fails to reach attainment by the applicable deadline, CAA section 189(d) requires the state to submit "plan revisions which provide for attainment of the PM-10 air quality standard" and "for annual reduction in PM-10 . . . of not less than 5 percent . . . " The Act, however, does not contain a specific requirement that the state update the previously approved requirements for BACM and MSM as a consequence of failing to reach attainment by the applicable deadline for serious PM-10 nonattainment areas as an element of the plan revision required by section 189(d).

Consistent with the Act's structure of requiring increasingly stringent obligations as the severity of the air pollution problem increases, we interpret sections 189(b)(1)(B) and 188(e), as well as 189(d), as parts of a statutory scheme that imposes increasingly more stringent requirements when a PM-10 nonattainment area fails to reach attainment by applicable deadlines. *See* Addendum to the General Preamble, 59 FR 42010 (August 16, 1994). As stated previously, the Maricopa County

PM-10 Nonattainment Area was initially classified as moderate. In 1996, when EPA determined that the Area failed to reach attainment by the moderate area attainment deadline, EPA reclassified the Area to serious. As a consequence of this reclassification, the Maricopa County PM-10 Nonattainment Area was subject to a new attainment deadline (December 31, 2001) as well as new requirements for a serious PM10 attainment plan pursuant to CAA section 188(c) and for BACM pursuant to CAA section 189(b)(1)(B). Subsequently, the State's request for an extension of the serious area attainment deadline (December 31, 2006), and EPA's granting of that request in 2002, resulted in an obligation for the State to demonstrate that its SIP imposed MSM pursuant to section 188(e). In 2007, EPA's determination that the Maricopa County PM-10 Nonattainment Area had failed to reach attainment by the extended serious area deadline resulted in section 189(d)'s requirements for plan revisions and annual reductions in PM-10 of five percent until attainment. Thus, the CAA's requirements for BACM and MSM are tied to specific triggers in the Act: BACM by the reclassification to serious following the missed moderate area deadline, and MSM by the extension of the serious area deadline. For serious nonattainment areas that fail to reach attainment by an applicable deadline, the CAA specifies a particular consequence: a requirement for additional plan revisions that provide for

attainment and annual five percent reductions. There is no explicit requirement in section 189(d) that a state with a serious nonattainment area that misses its attainment deadline must also reevaluate BACM and MSM provisions in its SIP that EPA has already approved. Indeed, the requirements of section 189(d) do not specify the requisite level of control and merely speak in terms of expeditious attainment and a set percentage of annual reductions from the most recent inventory, without regard to the level of control on sources needed to achieve those objectives. We note further that the commenter did not provide a legal rationale to support an interpretation of the Act that would require the state to reevaluate the existing BACM and MSM in its SIP as part of the explicit requirements of section 189(d). A state may elect to do so, and may elect to do so as a means of achieving additional emissions reductions to meet the five percent requirement, but that is not a specific requirement of section 189(d).

EPA notes that it has other discretionary authority under the CAA to address deficiencies in existing state SIPs, if that were necessary to address substantive concerns like those raised by the commenter. If EPA were to find a state SIP to be "substantially inadequate" to attain or maintain a standard or to meet any other requirements of the CAA, section 110(k)(5) provides a remedy by which EPA may require a state to revise its

SIP to correct the identified inadequacies. In such a situation, EPA notifies a state of the inadequacies and can allow the state up to 18 months to submit revisions to the SIP to address the problems. *See* 42 U.S.C. 7410(k)(5). EPA has not made such a determination with respect to BACM or MSM for the Maricopa County PM-10 Nonattainment Area.

Finally, we note that Arizona was able to demonstrate attainment of the PM-10 NAAQS and provide for annual reductions of five percent until attainment without requiring additional BACM and MSM measures in its SIP.[5] Given that this area has demonstrated that it attained the PM-10 NAAQS by December 31, 2012 and has met the requirements of section 189(d), EPA does not see a need for the State to reevaluate its existing BACM and MSM as part of the action on the 2012 Five Percent Plan.

We address ACLPI's comments with respect to BACM and MSM as they relate specifically to agricultural controls and exceptional events below.

B. BACM for Agricultural Sources

Comment: ACLPI commented that EPA should not approve the 2012 Five Percent Plan because it does not include adequate measures for agricultural emissions. ACLPI commented that EPA has stated that ACC R 18-2-611 [Ag BMP Rule] no longer qualifies

[5] *See* MAG 2012 Five Percent Plan, at p. 5-7, Table 5-3. Note that the emissions from agricultural sources ("tilling, harvesting and cotton ginning" and "windblown agriculture") are constant, reflecting no reductions in emissions from 2008 to 2012.

as BACM because other nonattainment areas have stronger programs for controlling agricultural emissions and do not have an enforceability issue found in the rule. ACLPI also commented that the State's 2011 revisions to the Ag BMP Rule to address concerns identified by EPA are still clearly insufficient to qualify as BACM.

Response: As explained above, CAA section 189(d) does not require the State to reevaluate the BACM and MSM determinations that were addressed in its serious area PM-10 plan for the Maricopa County PM-10 Nonattainment Area.

In addition, the 2012 Five Percent Plan satisfied all requirements for an approvable section 189(d) plan without relying on additional emissions reductions from agricultural sources. The 2012 Five Percent Plan is based on the "2008 PM-10 Periodic Emissions Inventory for Maricopa County, Revised 2011 (2008 Inventory)," which EPA found to be comprehensive, accurate and current. 79 FR 7120-7121. The 2008 Inventory shows that the most significant sources of emissions in the Maricopa County Nonattainment Area are unpaved roads and alleys (21 percent), construction-related fugitive dust (17 percent), paved road dust (17 percent) and windblown dust (9 percent). 79 FR 7120. Section 189(d) requires an approvable plan to show annual five percent reductions in PM-10 or PM-10 precursors until attainment. The 2012 Five Percent Plan was able to satisfy this

criterion without assuming additional reductions in agricultural emissions.[6] Similarly, the 2012 Five Percent Plan demonstrated that the area would attain the standard without additional reductions in agricultural emissions.[7] Instead, the 2012 Five Percent Plan predicts that decreases in emissions from other categories, primarily construction and windblown dust from vacant and open lands, would achieve the requisite 5 percent reductions.[8]

Recent monitoring data support the attainment demonstration in the 2012 Five Percent Plan. 79 FR 7122. Finally, the State used no reductions in agricultural emissions for contingency measures.[9] Because the 2012 Five Percent Plan did not depend on additional emission reductions from agricultural sources and because EPA finds that the State is not required to reevaluate the BACM determinations we made in 2002 as part of meeting the requirements of section 189(d), the content of the Ag BMP rule does not determine the outcome of our action on the 2012 Five Percent Plan.

Nevertheless, EPA is continuing to work with ADEQ, Arizona stakeholders and the Governor's Agricultural BMP Committee to improve the Ag BMP rule. EPA anticipates that these

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[6] *Id.*
[7] *See* MAG 2012 Five Percent Plan, App. B, "Technical Document in Support of the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area," p. V-65.
[8] *Id.* at p. III-2, Table III-1.
[9] *See* MAG 2012 Five Percent Plan, at p.6-39, Table 6-22.

improvements will be particularly important for addressing PM-10 emissions in Pinal County, a portion of which EPA re-designated as non-attainment in 2012. *See* 77 FR 32024 (May 31, 2012).

C. Dust Action General Permit

Comment: ACLPI commented that the 2012 Five Percent Plan relies on an estimate that the Dust Action General Permit (DAGP) will increase the rule effectiveness of Rule 310.01 by one percent, but argued that it is not clear that the DAGP achieves any measurable reduction in emissions. ACLPI stated that the structure of the DAGP means that its scope is unclear and that there is no way to gauge that issuance of the DAGP is actually impacting behavior in a way that reduces emissions. ACLPI stated that compliance is only measured by instances of lack of compliance discovered by inspectors who happen upon an owner or operator of a regulated activity who is not implementing a BMP. ACLPI stated that ADEQ has not yet issued a single Requirement to Operate ("RTO"), which means that it is possible that sources not already subject to permits have implemented BMPs as a result of the permit, but it is equally plausible that BMPs are not being implemented and that inspectors haven't discovered the violations, or that the universe of potential permittees under the DAGP was so small that the adoption of the permit had no practical effect whatsoever.

Response: The 2012 Five Percent Plan does not rely on assumptions regarding compliance with the DAGP *per se*; rather, the 2012 Five Percent Plan relies on an assumption that the DAGP will improve compliance with Rule 310.01. As the 2012 Five Percent Plan explains, "[e]missions reduction credit was taken for one new measure, the Dust Action General Permit . . . *This new measure is expected to raise rule effectiveness for Rule 310.01 by one percent during high wind hours* . . ."[10] This statement is consistent with Table 5-1 of the MAG 2012 Five Percent Plan, "Impact of Increased Rule Effectiveness on 2008-2012 PM-10 Emissions," which shows that ADEQ estimated that the rule effectiveness for the category "windblown vacant, open, test tracts," (the category of sources subject to Rule 310.01), would increase from 96% in 2010-2011 to 97% in 2012.[11] Table 5-1 associates this improved rate of compliance with an annual reduction in PM-10 emissions of 149 tons per year.[12]

The Maricopa County Air Quality Department's (MCAQD) compliance data for calendar year 2012 support the 2012 Five Percent Plan's assumptions that the DAGP will improve compliance with Rule 310.01. MCAQD reviewed its records of inspections during calendar year 2012, as documented in "Evaluation of

[10] MAG 2012 Five Percent Plan, p. ES-10 (emphasis added). *See also,* MAG 2012 Five Percent Plan at p. 6-45; App. B, "Technical Document in Support of the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area," ppg. III-1 to III-8.
[11] MAG 2012 Five Percent Plan at p. 5-3, Table 5-1.
[12] *Id.*

Innovative Control Measures and Existing Maricopa County Control Measures Contained in the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area, revised," Maricopa County Air Quality Department, June 6, 2013 (2013 Evaluation Report).[13] It found that, out of a total of 5,431 sites inspected for compliance with Rule 310.01 in 2012, 149 citations were issued -- amounting to a rule effectiveness rate of 97.62 percent. 2013 Evaluation Report at pages 3-4. This amount exceeds the compliance rate of 96% associated with previous years. MAG 2012 Five Percent Plan at p.5-3, Table 5-1. EPA acknowledges that estimating rule compliance requires reliance on compliance information collected by reliable means. In this instance, EPA believes that the information gathered through the MCAQD's inspections program provides information to support the conclusion that most affected sources are complying with the requirements of Rule 310.01, and that compliance improved in 2012 as a result of those inspections.

The 2012 Five Percent Plan further describes the connection between Rule 310.01 and the DAGP.[14] The Plan explains that the

[13] MCAQD has committed to conducting this evaluation on a triennial basis. MAG 2012 Five Percent Plan, App. C, Exhibit 2, "Maricopa County Resolution to Evaluate Measures in the MAG 2012 Five Percent Plan for the Maricopa County Nonattainment Area."

[14] *See* MAG 2012 Five Percent Plan, p. ES-10; p. 5-3, Table 5-1; p. 6-45. See also MAG 2012 Five Percent Plan, App. B, "Technical Document in Support of the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area," ppg. III-1 to III-8. The relationship between Rule 310.01 and the DAGP is also described in ADEQ's comments on our proposed

DAGP is expected to increase compliance with Rule 310.01 because, whenever ADEQ issues a forecast of a high wind dust event, sources subject to Rule 310.01 (primarily open areas, vacant lots, and unpaved parking areas and roadways),[15] will take additional measures to stabilize open areas and unpaved surfaces by implementing the best management practices (BMPs) specified in Rule 310.01 and the DAGP.[16] Such measures might include restricting access to open areas and vacant lots, or by applying dust suppressants and/or maintaining surface gravel.[17] As specified in the DAGP, sources that fail to choose or implement a BMP when ADEQ issues a forecast of a high wind dust event may trigger applicability of the DAGP and the additional requirements it imposes.[18] Thus, the existence of the DAGP enhances compliance with Rule 310.01 because sources subject to Rule 310.01 associate noncompliance with Rule 310.01 with an adverse consequence – specifically, the obligation to apply for and comply with the DAGP. Again, MCAQD's study of the compliance rate of Rule 310.01 supports this assumption in the 2012 Five Percent Plan.

D. Exceptional Events – General

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action, Letter from Eric C. Massey, Director, Air Quality Division, ADEQ to Greg Nudd, US EPA, dated March 10, 2014.

[15] *See* Rule 310.01, section 102; 2012 Five Percent Plan at ES-7 to ES-10.

[16] MAG 2012 Five Percent Plan at ES-10.

[17] *See* DAGP, Attachment C, "Best Management Practice Examples"; Rule 310.01, sections 301 – 307.

[18] DAGP, section V.

Comment: ACLPI stated that it was unable to reconcile some of the numbers of exceptional events cited by EPA. The commenter stated that the subtotals in EPA's concurrence letters add up to 131, but the subtotals in the tables in the supporting documentation add up to 135. The commenter added that if sites with double monitors are counted as only one exceedance, the total number of exceedances is 127.

Response: EPA acknowledges the discrepancy between the number of exceedances in concurrence letters and the tables in the TSDs. After closely re-reviewing the data, EPA has determined that the total number of exceptional events addressed by our concurrence letters dated September 6, 2012, May 6, 2013, and July 1, 2013 should be 135 exceedances.[19] These 135 exceptional event exceedances occurred on 25 days over the three year period, 2010-2012.

Comment: ACLPI commented that EPA's exclusion of such a large number of frequent and severe exceedances is unconscionable and misrepresents the extent of the particulate pollution in the Area. The commenter stated that the reported exceedances are "frequent" and "severe" within the meaning of EPA guidance, specifically, EPA's Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude

[19] *See* spreadsheet entitled "EPA Exceptional Event Concurrence Sheet," included in the docket for this rule.

Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule, May 2013 (Interim Guidance).

Response: We note that the 135 exceptional event exceedances occurred on 25 days over a three year period from 2010 to 2012. The determinations reflected in our concurrence letters and TSDs dated September 6, 2012, May 6, 2013 and July 1, 2013 are consistent with the EER and our Interim Guidance. We considered a range of relevant factors including whether anthropogenic sources had reasonable controls in place, meteorological data such as wind speed and direction, and the spatial extent of the events. The frequency and severity of the events were considered as part of this analysis, and although we agree that some of the excluded exceedances could meet the criteria for "frequent" and "severe" suggested in our Interim Guidance, that fact alone does not disqualify an exceedance from consideration as an exceptional event. *See* Interim Guidance at 12-13 (frequency and severity of past exceedances may be a factor considered in determining the reasonableness of controls). Also, the Interim Guidance acknowledges that events do not necessarily have to be rare to qualify as exceptional events. *See* Interim Guidance at 3 and 20.

Comment: ACLPI commented that EPA's analysis of whether the events are reasonably preventable or controllable should have been more probing and not a "cookie cutter" approach, given

the frequency and severity of the exceedances, as well as the area's status as serious nonattainment and the State's previous withdrawal of its earlier Five Percent Plan.

Response: The State submitted documentation on March 14, 2012, January 28, 2013, and February 13, 2013 to demonstrate to EPA that exceedances of the PM-10 NAAQS on various dates in 2011 and 2012 meet the criteria for an exceptional event in the EER. The State's submittals comprise over 1750 pages of documentation of the facts supporting each of the identified exceptional events. Our TSDs accompanying our concurrence letters dated September 6, 2012, May 6, 2013, and July 1, 2013 reflect EPA's methodical and systematic review of the State's documentation of the events and EPA's technical expertise and judgment. EPA presented its conclusions in a standardized format that was appropriate, considering the volume of information presented and reviewed, as well as the purpose of informing the public. In addition, EPA notes that we also received several comments in this rulemaking regarding the process required to document exceedances as "exceptional events" contending that the level of resources required to prepare and submit such documentation to EPA was too onerous.

Comment: ACLPI commented that the events excluded by EPA were predictable and seasonal in nature and could be ameliorated

if the State adopted appropriate control measures for windblown dust both in the attainment (*sic*) area and statewide.

Response: For each of the events that EPA concurred with, EPA found that the event was not reasonably controllable or preventable (nRCP). EPA's Interim Guidance states that, for anthropogenic sources of dust, "a high wind dust event may . . . be considered to be not reasonably controllable or preventable if: (1) the anthropogenic sources of dust have reasonable controls in place; (2) the reasonable controls have been effectively implemented and enforced; and (3) the wind speed was high enough to overwhelm the reasonable controls." *See* Interim Guidance at 10.

EPA's determinations of nRCP were primarily based on consideration of the control requirements based on the Area's serious nonattainment classification for the PM-10 NAAQS. *See* Interim Guidance at 13. ADEQ provided detailed information of required controls (including BACM-level controls for significant sources previously approved by EPA for this area), as well as information on rule implementation, rule effectiveness, compliance and enforcement, alert systems and public notification activities. A typical example is the documentation ADEQ submitted in connection with the event that occurred on August 11, 2012. *State of Arizona, Exceptional Event Documentation for the Event of August 11, 2012 for the Phoenix*

PM10 Nonattainment Area, February 2013 (AZ EE Documentation for August 11, 2012). This submittal included a list of control measures regulating sources of dust in Maricopa and Pinal counties, information about rule effectiveness, and data regarding compliance and enforcement. *See* AZ EE Documentation for August 11, 2012, Section 5.

In addition, EPA's determinations of nRCP were based on ADEQ's documentation of wind speeds. For example, the exceedances that occurred on September 11 and 12, 2011 involved wind speeds of 20 miles per hour (mph) and 25 mph, respectively. *See e.g.,* EPA Letter dated July 1, 2013, and accompanying TSD at p. 4. See also, e.g., TSD discussion of June 16, 2012 event at p. 10 (sustained wind speeds of 29 mph – 32 mph); TSD discussion of June 27, 2012 event at p. 15 (sustained wind speeds of 31 mph – 38 mph); TSD discussion of July 11, 2012 event at p. 20 (sustained wind speeds of 20 mph – 25 mph).[20] Given the wind speeds associated with each of the events that EPA concurred upon, EPA believes ADEQ's controls assessment was appropriate and that the pre-existing and previously approved BACM level

[20] The commenter did not specify particular dates or exceedances for which she found EPA's analysis deficient; therefore, EPA's response provides just a few examples from our TSDs in which we refer to the documentation of wind speeds included in the State's submittals. We reiterate, however, that our review of the State's submittals involved a methodical, case-by-case approach as documented by each of the TSDs accompanying our concurrence letters dated September 6, 2012, May 6, 2013 and July 1, 2013.

controls are adequate for meeting the requirement of "reasonable controls" for a PM-10 serious nonattainment area.

Additional information regarding EPA's consideration of reasonable controls can be found in EPA's TSDs for each event.

E. Exceptional Events and Reasonable Controls

Comment: ACLPI commented that BACM level controls were not in place in the nonattainment area. ACLPI commented that EPA's Interim Guidance says that BACM measures may be insufficient if the SIP has not been recently reviewed and that EPA has indicated that it will consider windblown dust BACM to be reasonable controls for purposes of exceptional events claims if the measures have been reviewed and approved in the context of a SIP revision within the past three years and if the measures are specific to windblown dust. ACLPI commented that EPA's proposed action departs from this guidance because EPA last approved BACM for the area in 2002, with a supplemental analysis in 2006.

Response: EPA's Interim Guidance states: "Generally, the EPA will consider windblown dust BACM to constitute reasonable controls if these measures have been reviewed and approved in the context of a SIP revision for the emission source area within the past three years." Interim Guidance at 15. Although our BACM determinations were made outside this recommended time frame, we believe that our determinations regarding nRCP were correct. First, the 2012 Five Percent Plan shows that the

significant stationary source categories for PM-10 are: construction; unpaved roads and alleys; paved road dust; windblown dust (non-agriculture); unpaved parking lots; and off-road recreational vehicles.[21] Each of these source categories was included in our earlier BACM determinations. *See* 67 FR 48718 (July 25, 2002); *see also*, 67 FR 48733-34. Because the significant sources within the Phoenix PM-10 nonattainment area have not significantly changed since 2002, and the range of potential measures for controlling emissions from these source categories (e.g., stabilization of disturbed surface areas; spray bars to apply water or dust suppressants; track out, rumble grate and wheel washer requirements) have not significantly changed since 2002, we believe that our previous BACM determinations remain appropriate for the purposes of making exceptional event determinations, including determinations regarding nRCP.

Second, although the State has not prepared a new BACM analysis and EPA has not made new BACM determinations in the past three years, Arizona has adopted revisions to rules regulating sources of windblown dust that EPA has approved into the SIP because they are more stringent. Specifically, EPA has approved updated revisions of: Rule 310, which regulates sources of fugitive dust from dust generating operations such as

[21] MAG 2012 Five Percent Plan, at -. 5-7, Table 5-3.

construction; Rule 310.01, which regulates sources of windblown dust from open areas, vacant lots, unpaved parking lots, and unpaved roadways; and Rule 316, which regulates sources of dust from nonmetallic mineral processing. [22]

Third, to the extent the commenter interprets the Interim Guidance as stating that a BACM determination that is older than three years cannot be relied upon in a demonstration of reasonable controls, the commenter is incorrect. The Interim Guidance provides a guideline to states preparing documentation to submit to EPA that more recent BACM determinations will generally satisfy EPA's consideration of reasonable controls. It does not disqualify measures that EPA determined to be BACM more than three years previously from consideration as reasonable controls, nor does it impose an obligation on the part of the state or EPA to re-evaluate BACM.

Comment: ACLPI commented that EPA found that the 2007 Maricopa BMP Rule no longer represents BACM for agricultural emissions (referencing statements in a 2010 proposed rulemaking and in a 2010 letter to the Arizona Agricultural Best Management Practices (BMP) Committee) and that although the 2007 Maricopa BMP Rule was revised in 2011, the revisions were not implemented until March 2012. The commenter states that 98 of the 217

[22] *See* 74 FR 58554 (November 13, 2009) (EPA approval of Maricopa County's revisions to Rule 316, adopted on March 12, 2008); 75 FR 78167 (December 15, 2010) (EPA approval of Maricopa County's revisions to Rule 310 and 310.01, adopted on January 27, 2010).

exceedances at issue occurred in 2011 (i.e., prior to the implementation of the 2011 Maricopa BMP Rule revisions). The commenter argued that even into 2012, the "revised Maricopa BMP Rule" (which EPA understands to be a reference to the 2011 Maricopa BMP Rule) is not clearly BACM because it did not include EPA's recommendations for improvement. The commenter concludes that EPA's concurrence on exceptional events was erroneous because EPA relied on its prior approval of the State's previous BACM demonstration and did not attempt to determine whether the controls in place during the event were BACM.

Response: Our response above explains why the CAA does not require EPA to reevaluate its earlier BACM determination in connection with our action on the 2012 Five Percent Plan. We understand the commenter to be asserting another basis for EPA to reevaluate BACM, in particular, that EPA's concurrence on exceptional events may be a basis to require EPA to make a determination regarding BACM. EPA's Interim Guidance, however, states that BACM for windblown dust is a measure that EPA has identified as being "reasonable" for the purposes of exceptional events determinations. Interim Guidance at 15. The Interim Guidance acknowledges that "[h]aving BACM/RACM in place during the time of the event is an important consideration" for an exceptional event determination, but more justification may be

necessary if, for example, the measures are not related to windblown dust, or if the SIP has not been recently reviewed. *Id.* For the reasons set forth below, EPA's reliance on the BACM determinations it made in 2002 was a reasonable basis to concur on the State's exceptional event claims.[23]

First, the 2008 Inventory shows that agricultural sources are a very small contributor to windblown dust in Maricopa County. According to the 2008 Inventory, agricultural windblown dust comprises approximately 0.9% of the total annual windblown dust emissions in the nonattainment area (448 tons out of a total of 49,673.01 tons in 2012).[24] Other agricultural sources, such as tilling, harvesting, and cotton ginning, comprise approximately 1.8% of the total annual PM-10 emissions inventory (893 tons out of a total of 49,673.01 tons in 2012).[25] Thus, agricultural sources contribute only a relatively small percentage of the total emissions in the 2008 Inventory.

Second, in determining that the exceedances that occurred in 2011 and 2012 were nRCP, it was appropriate for EPA to find

[23] EPA notes that it applies a weight-of-the-evidence standard in evaluating exceptional events claims. *See e.g.,* Interim Guidance at 8: "The EPA uses a weight-of-the-evidence approach in reviewing air agency requests for data exclusion under the EER [Exceptional Events Rule]. Evidence and narrative that constitute a strong demonstration for one element can also be part of the demonstration for another element, but cannot make up for the absence of or insufficient explanation supporting another element. A strong demonstration for one requirement could, however, influence the persuasiveness of the demonstration for another."

[24] *Id.* at p. II-3, Table II-2; *see also,* MAG 2012 Five Percent Plan at p. 5-5, Table 5-2.

[25] *Id.*

that the existing controls were "reasonable" because, as we explained above, the State met the requirements of section 189(d) in the 2012 Five Percent Plan without relying on additional reductions from agricultural sources. Significantly, no additional reductions from the Maricopa BMP Rule were needed to demonstrate that the area would attain the standard.[26] Therefore, our determination that existing BACM requirements were sufficient to find that emissions sources were reasonably controlled at the time the exceedances occurred was appropriate.

Third, we acknowledge that EPA has previously indicated to the State that improvements to controls on agricultural sources should be considered. It is important to note, however, that EPA's proposed 2010 rulemaking was a proposed action to disapprove a different section 189(d) plan, the State's 2007 Five Percent Plan, in part because of EPA's concerns regarding the accuracy of the State's 2005 Periodic Emission Inventory. (We also note that the proposed rulemaking was never finalized.) It is also important to note that EPA's comments to the Ag BMP Committee predate the finalization of the 2008 Emission Inventory (May 2012) in which emissions from agricultural sources are a small part of the PM-10 emissions inventory. Further, although the 2008 Inventory indicates that agricultural sources are relatively small contributors to PM-10 emissions in

[26] *See* MAG 2012 Five Percent Plan, at p. 5-7, Table 5-3.

the Maricopa County PM-10 Nonattainment Area, EPA believes that agriculture is a significant source in certain portions of Pinal County, which EPA recently redesignated as a PM-10 nonattainment area. *See* 77 FR 32024 (May 31, 2012). Therefore, EPA believes that it is important to continue to improve the controls on agricultural sources, and EPA is working with ADEQ, stakeholders, and the Governor's Agricultural BMP Committee to improve these controls.

Comment: ACLPI commented that ADEQ and EPA did not adequately address the issue of whether the events were reasonably controllable or preventable with respect to sources outside the Maricopa County PM-10 Nonattainment Area. ACLPI stated that EPA's Interim Guidance says that a basic controls analysis should consider all upwind areas of disturbed soil to be potential contributing sources, and that the basic controls analysis should identify all contributing sources in upwind areas and provide evidence that such sources were reasonably controlled, whether anthropogenic or natural, and include inspection reports and/or notices of violation, if available. The commenter stated that ADEQ and EPA did not indicate that control measures outside of Maricopa County were evaluated for their "reasonableness." ACLPI commented that Pinal County's controls are "minimalist rules" that do not require controls to

address emissions caused solely by high wind events and that although Pinal County was only recently designated nonattainment, Pinal County should not be excused from the requirement to show that sources in the county were subject to reasonable controls.

Response: The comment concerns the level of controls imposed on sources outside the Maricopa County PM-10 Nonattainment Area, in particular, sources located in Pinal County. As noted in our proposed action, the Maricopa County PM-10 Nonattainment Area encompasses several cities within Maricopa County (including the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, and Glendale), and several other smaller jurisdictions and unincorporated county lands. The Maricopa County PM-10 Nonattainment Area also includes the town of Apache Junction in Pinal County. Recently, EPA designated a portion of Pinal County ("West Pinal") as a moderate PM-10 nonattainment area, which triggered nonattainment planning obligations that the State must fulfill. *See* 77 FR 32024 (May 31, 2012).[27]

[27] We note that our action on the 2012 Five Percent Plan relates to our concurrences with the State's exceptional event claims for exceedances at monitors for the Maricopa County PM-10 Nonattainment Area dated September 6, 2012, May 6, 2013, and July 1, 2013. Our action on the 2012 Five Percent Plan does not depend on data from monitors located within the newly redesignated West Pinal PM-10 Nonattainment Area or on any exceptional events claims regarding data from such monitors.

EPA's Interim Guidance contemplates that a basic controls analysis should include "a brief description" of upwind sources. The level of detail provided in describing the Pinal County sources was adequate given relevant factors such as wind speed. Moreover, ADEQ and EPA both indicated that they evaluated control measures outside of Maricopa County. For example, ADEQ's exceptional event documentation included an analysis of reasonable controls that identified measures that apply to sources located within the Maricopa County PM-10 Nonattainment Area, and measures applicable to sources in Pinal County, outside the Maricopa County PM-10 Nonattainment Area.[28] ADEQ specifically identified two Pinal County rules, Article 2, Fugitive Dust, and Article 3, Construction Sites – Fugitive Dust, as regulatory control measures.[29] EPA's TSDs also referenced this section of ADEQ's documentation, including the discussion of rules applicable to sources in Pinal County.[30]

In addition, the level of detail describing Pinal County sources and controls was also adequate for an area such as Pinal County for which a portion was recently redesignated as a PM-10 nonattainment area and is currently undergoing the nonattainment planning process. As EPA's Interim Guidance states, an area's

[28] *See e.g., ADEQ EE Documentation for July 3-8, 2011* at 39-45; in particular, ppg. 40-41, Tables 4-1 and 4-3 (sources within the Maricopa PM-10 Nonattainment Area) and Table 4-2 (sources outside the Maricopa PM-10 Nonattainment Area).
[29] *Id.* at 41, Table 4-2.
[30] *See e.g.,* EPA Letter dated Sept. 9, 2012 and accompanying TSD at 3.

attainment status is an appropriate guideline for assessing the reasonableness of controls: "Generally, the EPA does not expect areas classified as attainment, unclassifiable, or maintenance for a NAAQS to have the same level of controls as areas that are nonattainment for the same NAAQS. Also, if an area has been recently designated to nonattainment but has not yet been required to implement controls, the EPA will expect the level of controls that is appropriate for the planning stage." Interim Guidance at 15. EPA's recent redesignation of a portion of Pinal County as a moderate PM_{10} nonattainment area triggered CAA planning obligations for the State to develop regulations to implement controls such as Reasonably Available Control Measures (RACM) for existing sources of PM-10 and a section 173 preconstruction permitting program for new and modified sources of PM-10. EPA concurred with exceedances that occurred in 2011 and 2012; the latest exceedance occurred on September 6, 2012, well before the CAA's deadline for Arizona to submit an implementation plan to EPA for approval into the Arizona SIP. *See* 77 FR 32030.

Comment: ACLPI commented that claims that events were caused by "winds transporting dust from desert areas of Pima and Pinal Counties" are not substantiated and that the State's demonstrations do not determine source locations, as required by EPA's 2013 Interim Guidance (referencing 3.1.5.1). ACLPI

conducted its own analysis of the event that occurred on July 18, 2011. ACLPI commented that its analysis indicates that dust sources included agricultural sources in Pinal and Maricopa Counties, and that four downdrafts and four outflows impacted the monitors from multiple locations, in contrast to the State's assertion that one thunderstorm outflow transported dust from desert portions of Pinal and Pima counties into the Phoenix PM-10 nonattainment area. ACLPI stated that although the State claims that specific source areas are difficult to determine because of the less dense monitoring network in the general source area, ACLPI's analysis shows that likely source locations can be determined using meteorological modeling and observational data. Therefore, EPA should require the state to make a more concerted effort to identify the actual sources and adopt controls to avoid or ameliorate future events.

Response: Although a more refined analysis of the location of thunderstorm downdrafts and source areas is potentially helpful for certain high wind dust events, this additional analysis is not necessary to analyze the specific events that EPA concurred on. EPA reviewed the commenter's analysis and concluded that it does not contradict ADEQ's documentation, but rather corroborates the evidence presented in ADEQ's demonstration. ADEQ's documentation states that the contributing source regions were somewhat widespread, but that

the "majority" of the PM that was transported into Maricopa County likely originated from areas within Pinal County to the south and southeast of Maricopa County.[31] ADEQ also explained that it is likely that some dust was generated within the Maricopa County PM10 Nonattainment Area as gusts from the thunderstorm outflows passed through the area.[32] Thus, ADEQ did not claim that all the emissions were specifically caused by a single thunderstorm outflow. ADEQ's statement that the "majority" of the emissions were transported from areas of Pinal County and southeast Maricopa County is supported by the visualization of images from the Phoenix visibility camera included in the July 18, 2011 demonstration, which shows a large dust storm approaching from the south of the Maricopa County PM-10 Nonattainment Area.[33]

Comment: ACLPI commented that the fact that some of the sources are located outside of the Maricopa County PM-10 Nonattainment Area does not absolve the State of its responsibility to ensure that they are reasonably controlled. The commenter stated that ADEQ is the single responsible actor for air quality control in Arizona and had the responsibility to address the public health risk presented by sources in Pinal

[31] State of Arizona Exceptional Event Documentation for the Event of July 18, 2011, for the Phoenix PM-10 Nonattainment Area, Jan. 23, 2013 at p. 9.
[32] *Id.* at 18.
[33] *Id.* at 27.

County, particularly given high wind events experienced in 2008 and 2009.

Response: EPA agrees that the State has a responsibility to ensure that sources outside the Maricopa County PM-10 Nonattainment Area are reasonably controlled. Our action with respect to exceedances at Maricopa County PM-10 Nonattainment Area monitors does not absolve in any way the State's responsibility to address PM-10 emissions in the West Pinal PM-10 Nonattainment Area. Our July 2012 redesignation of West Pinal to nonattainment triggers Clean Air Act nonattainment planning obligations that Arizona must fulfill. *See* 77 FR 32030. We note that our action on the 2012 Five Percent Plan relates to our concurrences with the State's exceptional event claims for exceedances at monitors for the Maricopa County PM10 Nonattainment Area dated September 6, 2012, May 6, 2013, and July 1, 2013, and does not depend on the treatment of data for monitors located within the newly redesignated West Pinal PM-10 Nonattainment Area.

F. Exceedances in 2013

Comment: ACLPI commented that the Maricopa County PM-10 Nonattainment Area experienced 30 exceedances over six days in 2013, which ADEQ has flagged and for which ADEQ is preparing EE documentation, and that EPA is simply assuming that it will concur with these EE demonstrations. The commenter stated that

this is unsupportable, particularly in light of EPA's failure to require mitigation measures and that there are frequent and severe violations of the standard at multiple monitors, many of which are located in low income neighborhoods.

Response: The 2012 Five Percent Plan was based on a projection that that the Area would attain the NAAQS in 2012. If, upon review of the available evidence, EPA finds that the exceedances of the standard in 2013 constitute a new violation of the PM-10 NAAQS, we have the authority to require the state to submit a SIP revision with additional controls and a demonstration that the new controls will bring the area back into attainment with the standard.[34]

G. Contingency Measures

Comment: ACLPI stated that EPA's proposal acknowledges that the contingency measures in the 2012 Five Percent Plan are already being implemented. The commenter stated that CAA (175(d)) envisions additional measures that are automatically and immediately implemented if a milestone for reasonable further progress or attainment is not met. The commenter stated that if contingency measures are already being implemented when a milestone is missed, continued implementation will not ensure

[34] E.g., under CAA section 110(k)(5) EPA may require a state to revise its SIP if we find it to be substantially inadequate to maintain the relevant air quality standard. In such a situation, EPA notifies a state of the inadequacies and can allow the state up to 18 months to submit revisions to the SIP to address the problems. See 42 U.S.C. 7410(k)(5).

that the situation will be corrected. The commenter argues that *LEAN v. EPA* is not binding on the 9th Cir. and is contrary to the plain language of the CAA. The commenter stated that approval of the 2012 Five Percent Plan without meaningful and appropriate contingency measures is contrary to law.

Response: EPA disagrees with the comment. Contingency measures must provide for additional emission reductions that are not relied on for RFP or attainment and that are not included in the attainment demonstration. Nothing in the statute precludes a state from implementing such measures before they are triggered. See, e.g., LEAN v. EPA, 382 F.3d 575 (5th Cir. 2004) (upholding contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP).

EPA has approved numerous SIPs under this interpretation—i.e., SIPs that use as contingency measures one or more Federal or local measures that are in place and provide reductions that are in excess of the reductions required by the attainment demonstration or RFP plan. See, e.g., 62 FR 15844 (April 3, 1997) (direct final rule approving an Indiana ozone SIP revision); 62 FR 66279 (December 18, 1997) (final rule approving an Illinois ozone SIP revision); 66 FR 30811 (June 8, 2001) (direct final rule approving a Rhode Island ozone SIP revision); 66 FR 586 (January 3, 2001) (final rule approving District of

Columbia, Maryland, and Virginia ozone SIP revisions); and 66 FR 634 (January 3, 2001) (final rule approving a Connecticut ozone SIP revision).

The scenario described by the commenter that already-implemented contingency measures will be a problem if the Maricopa County PM-10 Nonattainment Area misses a deadline for RFP or attainment is mitigated by the fact that monitoring data for 2010-2012 show that the Area already attained the 24-hour PM-10 NAAQS as of December 12, 2012. See 79 FR 7122. Our approval of the contingency measures is also consistent with EPA guidance that "the potential nature and extent of any attainment shortfall for the area" is relevant to the determining the level of required emission reductions and that contingency measures "should represent a portion of the actual emission reductions necessary to bring about attainment in area." 72 FR 20586, 20643; *see also* PM-10 Addendum at 42015 (the emission reductions anticipated by the contingency measures should be equal to approximately one-year's worth of emission reductions needed to achieve RFP for the area.) EPA's approval of contingency measures that are already being implemented is particularly appropriate where, as is the case for the Maricopa County PM-10 Nonattainment Area, there are no future RFP or attainment deadlines.

H. Other Comments

Comment: ADEQ asked that EPA clarify that this action applies to the entire nonattainment area, including the portion in Pinal County, and not just to the Maricopa County portion.

Response: EPA has made this clarification.

Comment: Several commenters noted that the plan was developed through a cooperative discussion among the many stakeholders in the plan. According to the commenters, this process led to innovative strategies that are appropriate to the local conditions and consistent with EPA requirements.

Response: EPA acknowledges these comments.

Comment: Several commenters expressed concerns about the resources required to demonstrate that measured exceedances of the standard are due to exceptional events. These commenters recommended changing the Exceptional Events Rule to address this issue.

Response: EPA will consider these comments in future rulemakings on the Exceptional Events Rule.

III. EPA's Final Action

As a result of our proposed rule and our response to comments above, we are finalizing our proposal to approve the 2012 Five Percent Plan as meeting the requirements of the CAA for the Maricopa County PM-10 nonattainment area. Specifically, we are approving:

(A) The 2008 baseline emissions inventory and the 2007, 2009, 2010, 2011 and 2012 projected emission inventories as meeting the requirements of CAA section 172(c)(3);

(B) the attainment demonstration as meeting the requirements of CAA sections 189(d) and 179(d)(3);

(C) the five percent demonstration as meeting the requirements of CAA section 189(d);

(D) the reasonable further progress and quantitative milestone demonstrations as meeting the requirements of CAA sections 172(c)(2) and 189(d);

(E) the contingency measures as meeting the requirements of CAA section 172(c)(9); and

(F) the motor vehicle emissions budget as compliant with the budget adequacy requirements of 40 CFR 93.118(e).

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 Clean Air Act. 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);

- 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 Clean Air Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable 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 it does not 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. 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 action and other required information to the U.S. Senate, the U.S. House of

Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: May 30, 2014.

Jared Blumenfeld,
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS.

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

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

Subpart D — Arizona

2. Section 52.120 is amended by adding paragraphs (c)(157)(ii)(A)(*1*) and (*2*) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(157) * * *

(i) * * *

(ii) Additional materials.

(A) Arizona Department of Environmental Quality.

(1) *2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area*, and Appendices Volume One and Volume Two, adopted May 23, 2012.

(2) *2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area*, adopted May 25, 2012.

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[FR Doc. 2014-13495 Filed 06/09/2014 at 8:45 am; Publication Date: 06/10/2014]