Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2014-0256; FRL-9936-77-Region 9]

Approval and Promulgation of Implementation Plans; Arizona; Phased Discontinuation of Stage II Vapor Recovery Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a state implementation plan (SIP) revision from the Arizona Department of Environmental Quality related to the removal of "Stage II" vapor recovery equipment at gasoline dispensing facilities in the Phoenix-Mesa area. Specifically, the EPA is approving a SIP revision that eliminates the requirement to install and operate such equipment at new gasoline dispensing facilities, and that provides for the phased removal of such equipment at existing gasoline dispensing facilities from October 2016 through September 2018. The EPA has previously determined that onboard refueling vapor recovery is in widespread use nationally and waived the stage II vapor recovery requirement. The EPA is approving this SIP revision because the resultant short-term incremental increase in emissions would not interfere with attainment or maintenance of

the national ambient air quality standards or any other requirement of the Clean Air Act and because it would avoid longer-term increases in emissions due to the incompatibilities between onboard refueling vapor recovery equipment on motor vehicles and the predominant type of stage II vapor recovery equipment installed at existing gasoline dispensing facilities in the Phoenix-Mesa area.

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

ADDRESSES: The EPA has established docket number EPA-R09-OAR-2014-0256 for this action. The index to the docket is available electronically at 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: Jeffrey Buss, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (415) 947-4152, e-mail: buss.jeffrey@epa.gov.

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

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I. Background for Final Rule

On September 2, 2015 (80 FR 53086), we proposed this action and provided for a 30-day comment period. On that same date, we issued a direct final rule (80 FR 53001) taking final action effective November 2, 2015 but indicated that, if we received adverse comments by the end of the comment period, we would publish a withdrawal of the direct final rule in the **Federal Register** prior to the effective date informing the public that the direct final rule will not take effect.

We received timely adverse comments, and on October 27, 2015 (80 FR 65660), we withdrew the direct final rule. In

today's action, we provide our responses to the public comments and take final action based on the proposal published on September 2, 2015.

II. Summary of Proposed Action

In our September 2, 2015 proposed rule (80 FR 53086), we directed commenters to the direct final rule for a detailed rationale for the proposed approval of the SIP revision. As such, the following paragraphs summarize the background information and evaluation included in the direct final rule also published on September 2, 2015 (80 FR 53001).

Under the Clean Air Act (CAA or "Act"), the EPA has promulgated national ambient air quality standards (NAAQS or "standards") for certain pervasive air pollutants. The NAAQS are concentration levels the attainment and maintenance of which EPA has determined to be requisite to protect public health (i.e., the "primary" NAAQS) and welfare (i.e., the "secondary" NAAQS). Under the CAA, states are required to develop and submit plans, referred to as state implementation plans (SIPs) to implement, maintain, and enforce the NAAQS.[1]

[1] Under Arizona law, the Arizona Department of Environmental Quality (ADEQ) is responsible for adopting and submitting the Arizona SIP and SIP revisions. Within the Maricopa County portion of the Phoenix-Mesa area, the Maricopa Association of Governments (MAG) is responsible for developing regional ozone air quality plans.

Ozone is one of the air pollutants for which the EPA has established NAAQS.[2] The original NAAQS for ozone was 0.12 parts per million (ppm), 1-hour average ("1-hour ozone standard").[3] In 1997, we revised the ozone NAAQS, setting it at 0.08 ppm averaged over an 8-hour timeframe (referred to herein as the "1997 8-hour ozone standard")(62 FR 33856, July 18, 1997), and in 2008, we lowered the 8-hour ozone standard to 0.075 ppm ("2008 8-hour ozone standard") (73 FR 16436, March 27, 2008). The 1-hour ozone standard and the 1997 8-hour ozone standard have now been revoked. See 69 FR 23951 (April 30, 2004) and 80 FR 12264 (March 6, 2015). Since publication of the direct final rule, the EPA has lowered the ozone standard further, to a level of 0.070 ppm, eight-hour average ("2015 8-hour ozone standard"). 80 FR 65292 (October 26, 2015).

Under the CAA, the EPA is also responsible for designating areas of the country as attainment, nonattainment, or unclassifiable for the various NAAQS. We classified the "Phoenix metropolitan area," defined by the Maricopa Association of Governments' (MAGs') urban planning area boundary (but later

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[2] Ground-level ozone is an oxidant that is formed from photochemical reactions in the atmosphere between volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources including on-road motor vehicles (cars, trucks, and buses), nonroad vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

[3] See 44 FR 8202 (February 8, 1979).

revised to exclude the Gila River Indian Community, as a "Moderate," and later "Serious," nonattainment area for the 1-hour ozone standard. We have designated a larger geographic area, referred to as the "Phoenix-Mesa" area,[4] as a "Marginal" nonattainment area for the 1997 8-hour ozone standard and 2008 8-hour ozone standard. While we have redesignated the Phoenix metropolitan area, and the Phoenix-Mesa area as "attainment," for the 1-hour and 1997 8-hour ozone standards, respectively, the Phoenix-Mesa area remains "Marginal" nonattainment for the 2008 ozone standard. More recently, we proposed to reclassify the Phoenix-Mesa area as "Moderate" ozone nonattainment for the 2008 8-hour ozone standard based on ambient data showing that the area did not attain the standard by the applicable attainment date (i.e., July 20, 2015) for such areas. 80 FR 51992 (August 27, 2015). The EPA has not yet issued area designations for the 2015 8-hour ozone standard.

States with "nonattainment" areas are required to submit revisions to their SIPs that include a control strategy necessary to demonstrate how the area will attain the NAAQS. As "Moderate," and later "Serious," nonattainment for the 1-hour

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[4] The Phoenix-Mesa 1997 8-hour ozone nonattainment area covers a much larger portion of Maricopa County than the Phoenix metropolitan 1-hour ozone area and also includes the Apache Junction portion of Pinal County. The precise boundaries of the Phoenix-Mesa 1997 8-hour ozone nonattainment area and the Phoenix metropolitan 1-hour ozone nonattainment are found in 40 CFR 81.303.

ozone standard, the State of Arizona was required under CAA section 182(b)(3) to submit a SIP revision that requires the use of "Stage II" vapor recovery systems at gasoline dispensing facilities (GDFs) located within the Phoenix metropolitan area.[5] In response to this requirement, the State of Arizona promulgated and submitted certain statutes and regulations that require use of Stage II vapor recovery systems in the Phoenix metropolitan area, and later extended the requirements to a larger geographic area referred to as "Area A."[6] The EPA approved the state's Stage-II-related statutes and regulations as a revision to the Arizona SIP. See 59 FR 54521 (November 1, 1994) and 77 FR 35279 (June 13, 2012).

The 1990 amended CAA anticipates that, over time, Stage II vapor recovery requirements at GDFs would be replaced by "onboard refueling vapor recovery" (ORVR) systems that the EPA was to establish for new motor vehicles under CAA section 202(a)(6). ORVR consists of an activated carbon canister

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[5] 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 underground fuel storage tank, preventing them from polluting the air.

[6] "Area A" is defined in Arizona Revised Statutes (ARS) section 49-541, and it includes all of the Phoenix metropolitan 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. Area A roughly approximates the boundaries of the Phoenix-Mesa area designated by the EPA for the 1997 8-hour ozone standard.

installed in a motor vehicle. The carbon canister captures gasoline vapors during refueling. 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. In 1994, the EPA promulgated its ORVR standards,[7] with a minimum 95% vapor capture efficiency, which fully applied to all new light duty vehicles by 2000. The ORVR requirements were phased in to apply to heavier classes of vehicles as well – reaching full effect for all new vehicles with a gross vehicle weight rating of up to 10,000 pounds by 2006.

Recognizing that, over time, the number of vehicles with ORVR as a percentage of the overall motor vehicle fleet would increase with the turnover of older models not equipped with ORVR with newer models equipped with ORVR, CAA section 202(a)(6) permits the EPA to promulgate a determination that ORVR is in "widespread use" throughout the motor vehicle fleet and to revise or waive Stage II vapor recovery requirements for Serious, Severe and Extreme ozone nonattainment areas. The EPA made the determination that ORVR systems are in "widespread use" in the nation's motor vehicle fleet in 2012. 77 FR 28772, May 16, 2012; and 40 CFR 51.126. In the wake of the EPA's

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[7] See 59 FR 16262 (April 6, 1994).

"widespread use" determination, states, such as Arizona, that were required to implement Stage II vapor recovery programs under CAA section 182(b)(3) are now permitted to remove the requirement from their SIPs under certain circumstances.

On August 7, 2012, the EPA released its "Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures"[8] ("Stage II Guidance") to aid in the development of SIP revisions to remove Stage II controls from GDFs. The EPA's Stage II Guidance projects that, by 2015, over 84% of all the gasoline dispensed in the nation will be dispensed to ORVR-equipped motor vehicles.[9] As such, Stage II and ORVR have become largely redundant technologies, and Stage II control systems are achieving an ever-declining emissions benefit as more ORVR-equipped vehicle continue to enter the on-road motor vehicle fleet. In addition, the EPA's Stage II Guidance recognizes that, in areas where certain types of vacuum-assist Stage II control systems are used, the limited compatibility between ORVR and some configurations of this Stage II hardware may ultimately result in an area-wide emissions disbenefit. The disbenefit can result when the Stage II controls pull air into the underground tank

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[8] "Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures," EPA Office of Air Quality Planning and Standards, August 7, 2012.

[9] See Table A-1 of the Stage II Guidance.

instead of gasoline vapors when both vacuum-assist Stage II controls and ORVR are active during refueling. This increases the pressure in the underground tank and can cause venting of excess emissions into the air. The Phoenix-Mesa ozone nonattainment area is an area where the vast majority of Stage II systems that have been installed use vacuum assist technologies.[10]

In light of EPA's national "widespread use" determination allowing states to revise their SIPs to remove Stage II vapor recovery requirements and the potential for a disbenefit from continuation of the Stage II vapor recovery program, MAG developed emissions estimates based on information from the EPA's Stage II guidance and based on Phoenix-area-specific motor vehicle fleet data to determine the impact of continuation of the program and the impact of the phased removal of Stage II vapor recovery in the Phoenix-Mesa area. The emissions estimates demonstrated that the emissions reduction benefit from the Stage II vapor recovery program would continue to provide marginal but diminishing emissions reductions through 2017 and that the disbenefit from continuation of the Stage II vapor recovery

[10] Table A-6 of the EPA's Stage II Guidance cites the percentages of State/Area GDF using vacuum assist Stage II technology. The listed percentage for the Phoenix-Mesa area is 85%.

program would begin in 2018 and increase in the years thereafter. See table 1 on page 53005 of the direct final rule.

In response to these findings, the Arizona Legislature adopted changes in the specific statutory provisions establishing the Stage II vapor recovery program to eliminate the requirement to install Stage II equipment at new GDFs and to provide for a phased decommissioning process to remove Stage II equipment at existing GDFs beginning in October 2016 and ending in September 2018.[11]

Subsequent to legislative action, on September 2, 2014, ADEQ submitted a SIP revision, titled "MAG State Implementation Plan Revision for the Removal of Stage II Vapor Recovery Controls in the Maricopa Eight-Hour Ozone Nonattainment Area" ("Stage II Vapor Recovery SIP Revision" or "SIP Revision"), including the statutory revisions and related emissions impact documentation.

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[11] Effective for State law purposes upon the Governor's signature (i.e., on April 22, 2014), House Bill (HB) 2128 (in relevant part) amends Arizona Revised Statutes (ARS) sections 41-2131 ("Definitions"), 41-2132 ("Stage I vapor recovery systems"), 41-2133 ("Compliance schedules"), and adds new section 41-2135 ("Stage II vapor recovery systems"). The new section ARS 41-2135 retains the existing Stage II control requirements for existing GDFs and establishes a phased decommissioning process to remove Stage II controls beginning October 1, 2016 and ending September 30, 2018.

After review of the SIP Revision, on September 2, 2015 (80 FR 53086), the EPA proposed approval based on the following conclusions:

- ADEQ has met the procedural requirements for SIP revisions under section 110(l);
- Pursuant to the EPA's determination of "widespread use" (of ORVR systems in the motor vehicle fleet), states are allowed to rescind Stage II vapor recovery control requirements in their SIPs if doing so is consistent with the general SIP revision requirements of CAA section 110(l) and section 193;
- CAA section 193 does not apply to this particular SIP revision because the Stage II vapor recovery controls were not in effect prior to the 1990 CAA Amendments;
- MAG's year-by-year estimates of areawide VOC emissions with and without the SIP Revision reflect reasonable methods and assumptions, and provide a reasonable basis upon which to evaluate the ozone impacts of the SIP Revision;
- MAG's emissions estimates conclude that the temporary emissions increases due to the SIP Revision (relative to the scenario in which Stage II requirements remain fully implemented) will occur during years 2014 through 2017 and will range from 0.015 metric tons per day (mtpd) to 0.031

mtpd, and that beginning in 2018 and increasing in magnitude thereafter, the SIP Revision will result in fewer VOC emissions than would otherwise have occurred if Stage II requirements were to remain fully implemented in the Phoenix-Mesa area (due to the incompatibility of ORVR-equipped vehicles and vacuum-assist Stage II technologies);

- The temporary increases in VOC emissions during years 2014 through 2017 due to the SIP Revision would represent an approximate 0.002 percent to 0.005 percent increase in the overall VOC emissions inventory in the Phoenix-Mesa area;[12] and
- The SIP Revision would not interfere with reasonable further progress or attainment of the ozone NAAQS for the purposes of CAA section 110(l) because: (1) the increases in VOC emissions from 2014 through 2017 would have negligible impacts on ozone concentrations in the area; (2) the schedule for the phase-out of Stage II controls under the SIP Revision will maintain most of the emissions reductions benefits associated with Stage II control through 2017; (3) the scheduled phase-out will reduce the

[12] The EPA-approved MAG Eight-Hour Ozone Maintenance Plan anticipates VOC emissions between 653.9 mtpd (June ozone episode, 2005) and 659.0 mtpd (June ozone episode, 2015) during the relevant period. See our proposed approval of the maintenance plan and redesignation request at 79 FR 16734, at 16744 (March 26, 2014).

emissions increase (due to ORVR and Stage II incompatibilities) that would otherwise be expected in 2018 but would not entirely avoid an emissions increase in that year because some existing GDFs will not yet have removed Stage II controls by the beginning of the 2018 ozone season; and (4) the phase-out of Stage II controls by the end of the 2018 ozone season will support longer-term regional efforts to attain or maintain the ozone standards in the Phoenix-Mesa area.

For further information about the SIP Revision and our corresponding evaluation, please see the direct final rule (80 FR 53001, September 2, 2015).

III. Public Comments and EPA Responses

In response to September 2, 2015 proposed rule, we received four comments. In the following paragraphs, we provide our responses to these comments.

Comment #1: While supportive of our proposed action, a commenter suggests that the EPA eliminate the Arizona vehicle inspection and maintenance (VEI) program as well.

Response #1: The State of Arizona's VEI program is an approved element of the Arizona SIP. A state may submit revisions to its SIP, but such revisions do not become effective until the EPA approves them under section 110(k) of the CAA. No VEI SIP

revision submittal is pending at this time. If the State of Arizona were to submit a revision to the SIP-approved VEI program, or rescission of the program, the EPA is authorized to approve such a revision only if such revision were consistent with all CAA requirements such as section 110(l), which prohibits the EPA from approving a SIP revision if the revision would interfere with any applicable requirement concerning reasonable further progress towards, and attainment of, the NAAQS.

Comment #2: A commenter was not opposed to the removal of Stage II vapor recovery equipment at GDFs so long as the fuel pump dispensing nozzle is properly covered to capture vapors during refueling.

Response #2: We disagree that such covers are necessary to capture vapors during refueling with ORVR-equipped motor vehicles. While Stage II vapor recovery systems rely upon a rubber boot around the nozzle to create a seal between the nozzle and the vehicle, ORVR prevents vapors from escaping during refueling by employing a seal in the fill pipe. In most instances, these seals are created by the incoming gasoline backing slightly near the bottom of the fill pipe. When the engine is started, the vapors are purged from the activated carbon canister and into the engine where they are burned as

fuel. See 77 FR 28772 at 28774 (May 16, 2012). Because ORVR uses a seal within the fill pipe of the vehicle, a rubber boot or cover is not required to prevent vapors from escaping during refueling.

Comment #3: A commenter objects to our proposal, and asks the EPA to reconsider its proposed approval of the SIP revision, contending that the revision will cause adverse effects particularly in the summer months. This commenter also questions whether there would be any benefit from the revision and asks the EPA to identify to whom the revision applies.

Response #3: We recognize that the Stage II vapor recovery controls have provided significant reductions of VOC emissions in the Phoenix-Mesa area since they were implemented in the mid-1990s. These controls have done so by taking the vapors normally emitted directly into the atmosphere when pumping gas and recycling them back into the underground fuel storage tank, preventing them from polluting the air. However, as discussed in more detail in the direct final rule at 80 FR 53002 and 52003 (September 2, 2015), the 1990 amended CAA anticipated that, over time, Stage II vapor recovery requirements at gasoline stations would be replaced by ORVR systems installed on motor vehicles, and authorized the EPA to revise or waive Stage II vapor recovery requirements for ozone nonattainment areas, including

such areas as the Phoenix-Mesa area, once the EPA determines that ORVR is in "widespread use" throughout the motor vehicle fleet. The EPA published its "widespread use" determination in 2012 at 77 FR 28772 (May 16, 2012), and as a result, the Stage II vapor recovery controls are no longer required in ozone nonattainment areas.

Moreover, as described further in our direct final rule at 53004, with certain types of vacuum-assist Stage II control systems, the limited compatibility between ORVR and some configurations of this Stage II hardware may ultimately result in an area-wide emissions disbenefit. This is because the Stage II controls pull air into the underground tank instead of gasoline vapors when both vacuum-assist Stage II control and ORVR are active during refueling, increasing the pressure in the underground tank and causing venting of excess emission into the air. The Phoenix-Mesa ozone nonattainament area is an area where the vast majority of Stage II systems that have been installed use vacuum assist technologies, and MAG has estimated that 2018 is the first year in which the disbenefit from implementation of Stage II controls would occur if Stage II control requirements were to remain in place given the motor vehicle fleet in the Phoenix-Mesa area. The disbenefit (i.e., the increase in emissions if Stage II control were to be retained) grows quickly

after that year as shown in table 1 of our direct final rule at 53005.

Thus, from the perspective of summertime ozone conditions in the Phoenix-Mesa area, the issue is not whether to remove the Stage II vapor recovery equipment but when and how. The state has submitted a SIP revision that eliminates the requirement for installation of Stage II vapor recovery equipment at new GDFs, and that establishes a phased decommissioning process to remove Stage II controls at existing GDFs over a two-year period beginning October 1, 2016 and ending September 30, 2018. As explained on page 53003 of the direct final rule, the two-year period for decommissioning is based on the expectation of the Arizona Department of Weights and Measures of the time necessary to safely decommission Stage II controls at the over 1,000 existing GDFs in the Phoenix-Mesa area. Decommissioning is expected to be spread evenly over each of the 24 months from October 2016 through September 2018 and to occur for existing GDFs during the month when the annual scheduled Stage II control test would have occurred.

We believe that the two-year decommissioning process established by the state minimizes the temporary adverse effect of increased VOC emissions (i.e., from foregone emissions reductions from elimination of the Stage II requirement at new

GDFs and the phase-out of Stage II equipment at existing GDFs) while avoiding the longer-term adverse impact due to the disbenefit associated with retaining the Stage II vapor recovery controls. As noted on page 53005 of the direct final rule, the temporary adverse effect during years 2014 through 2017 would represent an approximate 0.002 percent to 0.005 percent increase in the overall VOC emission inventory in the Phoenix-Mesa area. Based on the small magnitude of this impact, its temporary nature, and the avoidance of the long-term disbenefit, we have concluded that the SIP revision would not interfere with attainment or maintenance of the ozone NAAQS in the Phoenix-Mesa area.

Comment #4: A commenter objects to our proposal, stating that it does not take into account those individuals who are chemically sensitive to vapors and would be harmed if the SIP revision were to be approved. This commenter also noted that there are communities where most of the drivers operate older vehicles and that those living in such areas would be at higher risk than those in areas where the vehicle models are newer, and suggested that the EPA defer the approval of the Stage II vapor recovery phase-out for a couple of years to allow for a greater percentage of ORVR-equipped vehicles to replace the older vehicles without ORVR.

Response #4: The commenter is correct that, in reviewing the Stage II SIP Revision, the EPA did not take into account the particular sensitivities of individuals to gasoline vapors or the percentage of ORVR-equipped vehicles refueling at individual GDFs in the Phoenix-Mesa area. Our role in a reviewing SIP revision is to approve state choices, provided that they meet the criteria of the CAA. None of the applicable CAA criteria calls for evaluating the sensitivities of individuals to gasoline vapors nor do the criteria require a GDF-specific ORVR evaluation.

Rather, as described on pages 53004 and 53004 of the direct final rule, we evaluated the SIP revision for compliance with CAA section 110(l), which prohibits the EPA from approving a SIP revision if that revision would interfere with any applicable requirement concerning reasonable further progress towards, or attainment of, any of the NAAQS, or any applicable requirement of the CAA. In this instance, because the Stage II SIP revision would affect VOC emissions, and because VOC is a precursor to ozone, we focused on ozone NAAQS impacts. Ozone is a regional pollutant and thus our evaluation of the SIP revision is appropriately based on area-wide VOC emissions estimates and considers those emissions in the context of regional, not local, ozone concentrations.

Lastly, deferral by the EPA of action on the Stage II SIP revision is not appropriate because CAA section 110(k)(2) establishes a deadline of at most 18 months from the date a SIP revision is submitted for the EPA to take final action. Moreover, we have concluded that the two-year decommissioning process established by the state would minimize the temporary adverse impact on regional VOC emissions while avoiding the longer term disbenefit associated with implementation of Stage II vapor recovery controls at GDFs in the Phoenix-Mesa area. Deferral by the state of the two-year decommissioning process would be less advantageous from a regional ozone perspective because it would only serve to lengthen the period in which the area would experience the disbenefit from Stage II vapor recovery due to the increasing percentage of motor vehicles with ORVR and accompanying incompatibilities with the Stage II vapor recovery equipment.

IV. Final Action

Under CAA section 110(k) and for the reasons set forth in our September 2, 2015 direct final rule and summarized above, the EPA is taking final action to approve the Stage II Vapor Recovery SIP Revision submitted by ADEQ on September 2, 2014 to provide for the phased removal of "Stage II" vapor recovery equipment at GDFs in the Phoenix-Mesa area. Specifically, the

EPA is approving a SIP revision that eliminates the requirement to install and operate such equipment at new GDFs, and that provides for the phased removal of such equipment at existing GDFs from October 2016 through September 2018.

The EPA is approving this SIP revision because Stage II vapor recovery controls are no longer a SIP requirement under CAA section 182(b)(3) due to EPA's "widespread use determination" for ORVR. Additionally, we are approving this SIP revision because the temporary incremental increase in VOC emissions from 2014 through 2017 would not interfere with reasonable further progress toward, or attainment of, any of the NAAQS, and because this SIP revision avoids the longer-term VOC emissions increases associated with continued implementation of Stage II controls in the Phoenix-Mesa area. As part of this final action, the EPA is approving the specific statutory provisions that provide for the phase-out of Stage II controls in Area A, i.e., sections 5 through 8, and 10 through 12 of House Bill 2128, amending ARS sections 41-2131, 41-2132, 41-2133 and adding section 41-2135.[13]

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[13] Approval of these statutory provisions as revisions to the Arizona SIP supersedes the following existing SIP provisions in the Arizona SIP: ARS section 41-2131, as approved at 77 FR 35279 (June 13, 2012); ARS section 41-2132, as approved at 77 FR 35279 (June 13, 2012); and ARS section 41-2133, as approved at 77 FR 35279 (June 13, 2012). As noted previously, "Area A" is roughly the same geographic area as the Phoenix-Mesa 8-hour ozone nonattainment area.

V. Incorporation by reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of certain sections of House Bill 2128 amending various sections of the Arizona Revised Statutes related to stage II vapor recovery systems in Area A, effective April 22, 2014, as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 (Public Law 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 the 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, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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. The 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 28, 2015.

Jared Blumenfeld,
Regional Administrator,
Region IX.

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 paragraph (c)(171) to read as follows:

§ 52.120 Identification of plan.

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(c) * * *

(171) The following plan was submitted on September 2, 2014 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) House Bill 2128, effective April 22, 2014, excluding sections 1 through 4, and 9 (including the text that appears in all capital letters and excluding the text that appears in strikethrough).

(ii) Additional materials.

(A) Arizona Department of Environmental Quality.

(1) *MAG 2014 State Implementation Plan Revision for the Removal of Stage II Vapor Recovery Controls in the Maricopa Eight-Hour Ozone Nonattainment Area* (August 2014), adopted by the Regional Council of the Maricopa Association of Governments on August 27, 2014, excluding appendix A, exhibit 2 ("Arizona Revised Statutes Listed in Table 1-1").

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[FR Doc. 2015-28909 Filed: 11/13/2015 8:45 am; Publication Date: 11/16/2015]