

January 17, 2013

TO: Members of the MAG Air Quality Technical Advisory Committee

FROM: Oddvar Tveit, Tempe, Chair

SUBJECT: MEETING NOTIFICATION AND TRANSMITTAL OF TENTATIVE AGENDA

Thursday, January 24, 2013 - 1:30 p.m.  
MAG Office, Suite 200 - Saguaro Room  
302 North 1<sup>st</sup> Avenue, Phoenix

A meeting of the MAG Air Quality Technical Advisory Committee has been scheduled for the time and place noted above. Members of the Air Quality Technical Advisory Committee may attend the meeting either in person, by videoconference or by telephone conference call. Those attending by videoconference must notify the MAG site three business days prior to the meeting. If you have any questions regarding the meeting, please contact Chair Tveit or Lindy Bauer at 602-254-6300.

Please park in the garage underneath the building, bring your ticket, and parking will be validated. For those using transit, Valley Metro/Regional Public Transportation Authority will provide transit tickets for your trip. For those using bicycles, please lock your bicycle in the bike rack in the garage.

In 1996, the Regional Council approved a simple majority quorum for all MAG advisory committees. If the MAG Air Quality Technical Advisory Committee does not meet the quorum requirement, members who arrived at the meeting will be instructed a legal meeting cannot occur and subsequently be dismissed. Your attendance at the meeting is strongly encouraged. If you are unable to attend the meeting, please make arrangements for a proxy from your entity to represent you.

Pursuant to Title II of the Americans with Disabilities Act (ADA), MAG does not discriminate on the basis of disability in admissions to or participation in its public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Jason Stephens at the MAG office. Requests should be made as early as possible to allow time to arrange the accommodation.

TENTATIVE AGENDA

COMMITTEE ACTION REQUESTED

1. Call to Order

2. Call to the Audience

An opportunity will be provided to members of the public to address the Air Quality Technical Advisory Committee on items not scheduled on the agenda that fall under the jurisdiction of MAG, or on items on the agenda for discussion but not for action. Members of the public will be requested not to exceed a three minute time period for their comments. A total of 15 minutes will be provided for the Call to the Audience agenda item, unless the Air Quality Technical Advisory Committee requests an exception to this limit. Please note that those wishing to comment on action agenda items will be given an opportunity at the time the item is heard.

3. Approval of the October 25, 2012 Meeting Minutes

4. Update on the MAG 2012 Five Percent Plan for PM-10 and Exceptional Events

By February 14, 2013, EPA must approve the MAG 2012 Five Percent Plan for PM-10 in order to avoid the imposition of a federal implementation plan. The documentation for the remaining 26 exceptional event days that occurred in 2011 and 2012 needs to be completed and concurred with by EPA in time for EPA to approve the plan. According to the Arizona Department of Environmental Quality (ADEQ), ten packages of exceptional events became available for public review on December 3, 2012 and comments were received from the Arizona Center for Law in the Public Interest. The remaining seven packages were completed and available on January 14, 2013 for a thirty day public comment period. A response to comments

2. For information.

3. Review and approve the October 25, 2012 meeting minutes.

4. For information and discussion.

will be prepared and submitted to EPA with the exceptional events documentation.

Also, on August 31, 2012, MAG had submitted extensive comments on the Draft EPA Exceptional Events Guidance that became available in July 2012. Comments were also submitted by the Western States Air Resources Council, ADEQ, Maricopa County, Associated General Contractors, Congressman Flake, and others. While some improvements have been made, the revised guidance includes additional requirements and the documentation remains resource intensive.

On October 25, 2012, MAG received a letter from EPA regarding the MAG comments on the Draft EPA Exceptional Events Guidance Documents. In the letter, EPA discusses their concurrence with the first package of exceptional events for July 2-8, 2011. EPA will now use this package as a model for future events. EPA indicated that after consideration of all the comments submitted, EPA will determine whether to issue final guidance and/or make a decision on whether to proceed with amendments to the EPA Exceptional Events Rule. Please refer to the enclosed material.

5. EPA Revisions to the Particulate Standards

On December 14, 2012, EPA took action to strengthen the annual PM-2.5 standard to 12 micrograms per cubic meter and retain the 24 hour PM-2.5 standard of 35 micrograms per cubic meter. EPA also retained the existing PM-10 standards. On January 15, 2013, the particulate standards were published in the Federal Register. Please refer to the enclosed material.

6. ADEQ Form for Reporting on the Implementation of PM-10 Measures

In 2012, the Arizona Legislature passed H. B. 2798, which required local governments in Area A and state agencies to submit an annual report to the Arizona Department of

5. For information and discussion.

6. For information and discussion.

Environmental Quality by March 30 of every year regarding the implementation of various PM-10 control measures. The ADEQ Director was required to develop a form to be used for the reports. The reporting requirements are included A.R.S. § 49-411. A status report will be provided. Please refer to the enclosed material.

7. Stage II Vapor Recovery and Onboard Refueling Vapor Recovery Widespread Use

On May 16, 2012, EPA published a final rule indicating that Onboard Refueling Vapor Recovery on passenger vehicles was in widespread use nationwide. States may now evaluate the removal of Stage II vapor recovery at gas stations, since they are redundant systems. The Arizona Department of Weights and Measures has been coordinating with the Arizona Department of Environmental Quality and MAG on the implications of removing Stage II vapor recovery in the region. Please refer to the enclosed information.

8. Proposed Funding for an Air Quality Project for the MAG FY 2014 Work Program

Additional funding in the amount of \$130,000 is being proposed for the Air Quality Technical Assistance On-Call Project for the MAG FY 2014 Unified Planning Work Program. In general, the Air Quality Technical Assistance On-Call Project is for technical assistance in the preparation of an Eight-Hour Ozone Plan and supplemental technical analyses and information that may need to be provided to the Environmental Protection Agency for the MAG 2012 Five Percent Plan for PM-10. Technical assistance may also be needed for air quality modeling; air quality monitoring and meteorology; exceptional events; traffic surveys and emissions inventories; dirt road inventories; statistical analysis of data; collection and analysis of field data; analysis of control measures; air quality plan preparation; CMAQ evaluation methodologies; and transportation conformity.

7. For information and discussion.

8. For information and discussion.

9. Call for Future Agenda Items

The next meeting of the Committee has been tentatively scheduled for **Thursday, February 28, 2013 at 1:30 p.m.** The Chairman will invite the Committee members to suggest future agenda items.

9. For information and discussion.

MINUTES OF THE  
MARICOPA ASSOCIATION OF GOVERNMENTS  
AIR QUALITY TECHNICAL ADVISORY COMMITTEE MEETING

Thursday, October 25, 2012  
MAG Office  
Phoenix, Arizona

MEMBERS ATTENDING

- |   |  |
|---|--|
| Oddvar Tveit, Tempe, Chairman                     | Steve Trussell, Arizona Rock Products Association                      |
| # Elizabeth Biggins-Ramer, Buckeye, Vice Chair    | Amy Bratt, Greater Phoenix Chamber of Commerce                         |
| * Kristen Sexton, Avondale                        | Amanda McGennis, Associated General Contractors                        |
| # Jim Weiss, Chandler                             | * Spencer Kamps, Homebuilders Association of Central Arizona           |
| # Jamie McCullough, El Mirage                     | * Mannie Carpenter, Valley Forward                                     |
| Jessica Koberna, Gilbert                          | * Kai Umeda, University of Arizona Cooperative Extension               |
| Doug Kukino, Glendale                             | Beverly Chenausky, Arizona Department of Transportation                |
| * Cato Esquivel, Goodyear                         | Diane Arnst, Arizona Department of Environmental Quality               |
| # Greg Edwards for Scott Bouchie, Mesa            | * Environmental Protection Agency                                      |
| William Mattingly, Peoria                         | Frank Shinzel for Jo Crumbaker, Maricopa County Air Quality Department |
| Philip McNeely, Phoenix                           | * Michelle Wilson, Arizona Department of Weights and Measures          |
| Sam Brown for Tim Conner, Scottsdale              | * Ed Stillings, Federal Highway Administration                         |
| # Margaret Perez for Antonio DeLaCruz, Surprise   | Mary Springer for Judi Nelson, Arizona State University                |
| # Mark Hannah, Youngtown                          | * Christopher Horan, Salt River Pima-Maricopa Indian Community         |
| Ramona Simpson, Queen Creek                       |  |
| * American Lung Association of Arizona            |  |
| Kristin Watt, Salt River Project                  |  |
| Rebecca Hudson, Southwest Gas Corporation         |  |
| * Mark Hajduk, Arizona Public Service Company     |  |
| # Gina Grey, Western States Petroleum Association |  |
| Robert Forrest, Valley Metro/RPTA                 |  |
| * Dave Berry, Arizona Motor Transport Association |  |
| Jeannette Fish, Maricopa County Farm Bureau       |  |

- \*Members neither present nor represented by proxy.
- #Participated via telephone conference call.
- +Participated via video conference call.

OTHERS PRESENT

- |  |  |
|--|--|
| Lindy Bauer, Maricopa Association of Governments           | Mitch Wagner, Maricopa County Department of Transportation |
| Dean Giles, Maricopa Association of Governments            | Lee Jimenez, Maricopa County Department of Transportation  |
| Taejoo Shin, Maricopa Association of Governments           | Shane Kiesow, City of Apache Junction                      |
| Matt Poppen, Maricopa Association of Governments           | # Wendy Crites, Salt River Project                         |
| Julie Hoffman, Maricopa Association of Governments         | David Johnson, Town of Buckeye                             |
| Kara Johnson, Maricopa Association of Governments          | Abigail Cooksey-Williams, State of Arizona                 |
| Teri Kennedy, Maricopa Association of Governments          | Johanna Kuspert, Maricopa County Air Quality Department    |
| Cathy Arthur, Maricopa Association of Governments          | Matt Tsark, Strand Associates Inc.                         |
| Ranjith Dandanayakula, Maricopa Association of Governments | Mike Sabatini, Baker                                       |
| Randy Sedlacek, Maricopa Association of Governments        |  |
| Rubben Lolly, City of Phoenix                              |  |

1. Call to Order

A meeting of the Maricopa Association of Governments (MAG) Air Quality Technical Advisory Committee (AQTAC) was conducted on October 25, 2012. Oddvar Tveit, City of Tempe, Chair, called the meeting to order at approximately 1:30 p.m. Jim Weiss, City of Chandler; Jamie McCullough, City of El Mirage; Greg Edwards, City of Mesa; Wendy Crites, Salt River Project; Mark Hannah, Town of Youngtown; Gina Grey, Western States Petroleum Association; Elizabeth Biggins-Ramer, Town of Buckeye; and Margaret Perez, City of Surprise, attended the meeting via telephone conference call.

2. Call to the Audience

Mr. Tveit stated that according to the MAG public comment process, members of the audience who wish to speak are requested to fill out comment cards, which are available on the tables adjacent to the doorways inside the meeting room. Citizens are asked not to exceed a three minute time period for their comments. Public comment is provided at the beginning of the meeting for nonagenda items and nonaction agenda items. Mr. Tveit noted that no public comment cards had been received.

3. Approval of the July 26, 2012 Meeting Minutes

The Committee reviewed the minutes from the July 26, 2012 meeting. William Mattingly, City of Peoria, moved and Doug Kukino, City of Glendale, seconded, and the motion to approve the July 26, 2012 meeting minutes carried unanimously.

4. Evaluation of Proposed FY 2015, 2016, and 2017 CMAQ Projects for the FY 2014-2018 MAG TIP

Dean Giles, Maricopa Association of Governments, presented the evaluation of proposed FY 2015, 2016, and 2017 Congestion Mitigation and Air Quality Improvement (CMAQ) Projects for the FY 2014-2018 MAG Transportation Improvement Program (TIP). He stated that on August 6, 2012, MAG issued a call for projects for Intelligent Transportation Systems (ITS) projects, Bicycle and Pedestrian Projects, and PM-10 Paving Unpaved Road Projects for fiscal year (FY) 2015, 2016, and 2017. MAG also issued a call for PM-10 Certified Street Sweeper Projects for FY 2013. Mr. Giles indicated that approximately 85 projects were submitted. MAG has conducted an evaluation of those projects since the September 19, 2012 due date. He noted a lot of work has gone into evaluating the projects in the short three week time period. Mr. Giles added that projects frequently require follow up with the member agencies to confirm data that is used to evaluate the projects. The MAG Intelligent Transportation Systems Committee, the MAG Bicycle and Pedestrian Committee, and the MAG Street Committee have worked hard to provide technical reviews of the applications.

For this agenda item, only the ITS, bicycle and pedestrian, and air quality projects are covered. The PM-10 Paving Unpaved Road Projects and FY 2013 Street Sweeper Projects are covered in separate agenda items.

Mr. Giles discussed Attachment A included in the packet. He indicated that Attachment A provides the project evaluations sorted by cost-effectiveness. The projects evaluated for FY 2015 are included in tables one through three. The FY 2016 projects are found in tables four through six. The FY 2017 projects are in tables seven through nine. Mr. Giles stated that the air quality projects have lump sums listed for the purchase of street sweepers in FY 2015, 2016, and 2017. The other air quality projects include the Trip Reduction Program, the Regional Rideshare and Telework Program, and the Travel

Reduction Program. He commented that MAG utilized the latest version of MOVES2010b and AP-42 for calculating the emission reductions in kilograms per day for total organic gases, nitrogen oxides (NOx), and PM-10. In addition, MAG used weighting and seasonal factors. Mr. Giles stated that a priority weight of one has been applied to total organic gases, NOx, and PM-10. However, PM-10 projects located within four miles of a PM-10 monitor received a priority weight of two. Mr. Giles mentioned that a seasonal factor of two has been applied to total organic gases and NOx emission reductions to account for the six month ozone season. No seasonal factor has been applied for PM-10. Mr. Giles indicated the right hand column of the tables display cost effectiveness which is calculated by dividing the annualized CMAQ cost by the annual emission reductions.

Mr. Giles provided the schedule. He stated that approximately 85 CMAQ projects for FY 2015, 2016, and 2017 were received. In October, the MAG ITS Committee, the MAG Bicycle and Pedestrian Committee, and the MAG Street Committee began reviewing the technical factors of the project applications. Mr. Giles indicated that the MAG Air Quality Technical Advisory Committee is requested to forward the CMAQ evaluation to the Transportation Review Committee and modal committees for their use in evaluating projects. He noted that in November, MAG staff will be providing technical assistance and general awareness training of the CMAQ evaluation process to the MAG Intelligent Transportation System Committee and the MAG Bicycle and Pedestrian Committee. In December, the MAG Intelligent Transportation System Committee and the MAG Bicycle and Pedestrian Committee will be requested to forward their ranking of the CMAQ projects to the MAG Transportation Review Committee. He discussed that the MAG Transportation Review Committee will then recommend funding for projects for the draft FY 2014-2018 TIP.

Mr. Giles stated that the Committee is requested to forward the evaluation of proposed FY 2015, 2016, and 2017 CMAQ projects for the FY 2014-2018 MAG Transportation Improvement Program to the MAG Transportation Review Committee and modal committees for use in prioritizing projects. The Committee is also requested to rank the Air Quality Projects in tables one, four, and seven to be forwarded to the MAG Transportation Review Committee.

Mr. Tveit commented that there is enough funding to potentially fund every project on the list. Mr. Giles responded that the technical committees will be forwarding a ranked list to the MAG Transportation Review Committee along with the CMAQ funding available for projects by fiscal year.

Jeannette Fish, Maricopa County Farm Bureau, inquired about the location of project Phoenix#2 on table two. Phil McNeely, City of Phoenix, replied that 32<sup>nd</sup> Street intersects State Route 51 south of Shea Boulevard and then runs parallel until Reach 11.

Steve Trussell, Arizona Rock Products Association, asked how the School Resource Officer Training Program on table two relates to the marked footnote number four. Mr. Giles responded that this project will provide bicycle safety and education to schools.

Amanda McGennis, Associated General Contractors, commented that she has witnessed street sweeper operators stirring up dust because water tanks were not refilled. She indicated that the message of efficiently sweeping the streets with filled water tanks needs to be communicated to organizations with street sweepers to avoid stirring up dust. Ms. McGennis stated that she has alerted the City of Phoenix, in which the City communicated this message to their street sweeper operators. She expressed concern with the issue and indicated that the importance of proper operation of the PM-10 certified street sweepers needs to be communicated. Mr. Tveit thanked Ms. McGennis for her comment. He inquired

if Maricopa County could review training for water truck drivers in response to Ms. McGennis's comment. Frank Shinzel, Maricopa County Air Quality Department, responded yes.

Lindy Bauer, Maricopa Association of Governments, thanked Ms. McGennis for her comments. She stated that MAG was not aware of that situation and will communicate this message to others.

Mr. Trussell inquired how the City of Mesa project on table six relates to air quality. Mr. Giles replied that the Mesa 9-1-1 Call Center Computer Aided Dispatch project works in tandem with their existing ITS communication system that is eligible for CMAQ funding.

Ms. McGennis asked if the Scottsdale Highway Advisory Radio project on table three will be broadcasting air quality information as well. She stated that air quality information ought to be broadcasted, in addition to the travel and safety information. Ms. McGennis added that it should be written into the intergovernmental agreements if not done so already.

Beverly Chenausky, Arizona Department of Transportation, commented that perhaps the tables could flag projects that are eligible for other CMAQ purposes, such as safety, to alleviate confusion. She indicated that projects eligible for CMAQ funding may not necessarily have direct air quality benefit. Ms. Chenausky gave the example of safety projects. Ms. McGennis commented on finding a way to include an air quality element into proposed projects if it would lead to direct air quality benefit. Ms. Chenausky responded that it would depend on the applicant's proposal to include that information. Ms. McGennis asked that potential air quality benefits be communicated to the applicants to include in their proposal.

Ms. Chenausky asked if MAG is updating processes to accommodate the new eligibilities under MAP-21. She gave the example that alternative fuel was not usually included in the CMAQ methodology. Mr. Giles responded that many of the items bulleted under 18 in Attachment C were previously eligible for CMAQ funds under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). He indicated that the Federal Highway Administration guidance issued after the approval of MAP-21 reiterated some of the eligible activities and included some minor changes. Ms. Chenausky asked if the analysis needed to be modified to accommodate the changes. Mr. Giles replied that most project types are covered, however, he stated that MAG staff will look into that again.

Mr. Tveit requested a motion to forward the evaluation of proposed FY 2015, 2016, and 2017 CMAQ projects for the FY 2014-2018 MAG Transportation Improvement Program to the MAG Transportation Review Committee. Mr. Kukino moved and Ms. McGennis seconded, and the motion carried unanimously.

Mr. Mattingly asked about the second requested action. He inquired if the staff recommendation is to rank the projects as listed in the agenda packet. Mr. Giles stated that the projects can be ranked however the Committee decides.

Mr. Tveit called for a vote on the motion to rank the Air Quality Projects in tables one, four, and seven to be forwarded to the MAG Transportation Committee. Mr. Kukino moved and Mr. Mattingly seconded, and the motion to rank the Air Quality Projects carried unanimously.

#### 5. Evaluation of Proposed PM-10 Certified Street Sweeper Projects for FY 2013 CMAQ Funding

Mr. Giles discussed the evaluation of proposed PM-10 Certified Street Sweeper Projects for FY 2013 CMAQ funding. The six street sweeper applications that were evaluated requested \$1.2 million in

CMAQ funds. The FY 2013 Unified Planning Work Program and Annual Budget and FY 2011-2015 MAG Transportation Improvement Program contain \$900,000 in FY 2013 CMAQ funding. Mr. Giles indicated that an additional \$346,973 in CMAQ funding is available from sweeper projects that have been requested to be deleted and from savings on sweepers that have cost less than anticipated. He added that as a result there is funding for all six sweeper projects. A minimum local cash match of 5.7 percent is required for these projects.

Mr. Giles reviewed the street sweeper projects. He noted that these applications were received by the September 19, 2012 deadline. The MAG Street Committee conducted a technical review of the projects at their October 17, 2012 meeting. Mr. Giles indicated that comments from the Street Committee were provided in the agenda packet. He noted that the projects are ranked in terms of cost-effectiveness with the emission reductions of PM-10 specified in kilograms per day for each project. Ms. Giles stated that if recommended by the Committee today, the item would be considered by the MAG Management Committee on November 7, 2012 and then by the MAG Regional Council on December 5, 2012.

Mr. Giles stated that the Committee is requested to recommend a prioritized list of proposed PM-10 Certified Street Sweeper Projects for FY 2013 CMAQ funding.

Ms. McGennis requested that the jurisdictions requesting projects inform street sweeper operators to keep the water tanks filled while servicing the area.

Mr. Tveit requested a motion to recommend a prioritized list of proposed PM-10 Certified Street Sweeper Projects for FY 2013 CMAQ Funding to the MAG Management Committee. Mr. McNeely moved and Mr. Kukino seconded, and the motion to recommend a prioritized list of proposed PM-10 Certified Street Sweeper Projects for FY 2013 CMAQ Funding carried unanimously.

6. Evaluation of Proposed PM-10 Paving Unpaved Road Projects for FY 2015, 2016, and 2017 CMAQ Funding

Mr. Giles reviewed the evaluation of proposed PM-10 Paving Unpaved Road Projects for FY 2015, 2016, and 2017 CMAQ funding. Mr. Giles stated that MAG has evaluated all 12 projects that were received. He noted that approximately \$14.1 million in CMAQ funding was requested for the three years of projects. The estimated CMAQ funding available for all three years is \$17.2 million. The funding remaining after funding the projects does not present an issue since MAP-21 funding levels used to project funding available for 2015, 2016, and 2017 are still unknown.

Mr. Giles discussed the paving unpaved road projects. The MAG Street Committee conducted a technical review of the projects at their October 17, 2012 meeting. Mr. Giles indicated that comments from the Street Committee were provided in the agenda packet. He stated that MAG has used the CMAQ methodology to evaluate the proposed projects for the estimated emission reductions and corresponding cost-effectiveness. Attachment A provides a ranking by cost-effectiveness and Attachment B provides a ranking by PM-10 emission reductions. The Committee is requested to recommend a ranked list of proposed PM-10 Paving Unpaved Road Projects for FY 2015, 2016, and 2017 CMAQ funding to forward to the MAG Transportation Review Committee for inclusion in the FY 2014-2018 MAG Transportation Improvement Program.

Mr. Tveit inquired if the Committee is to recommend one or both attachment tables. Mr. Giles replied in the past both tables have been provided to the Committee for consideration; the Committee has also forwarded the ranked projects based on either cost-effectiveness or emission reductions.

Diane Arnst, Arizona Department of Environmental Quality (ADEQ), commented that the Off-Highway Vehicle Dust Task Force met last week. She noted that the Sheriff's Office and other agencies commented on the City of Surprise location included as a FY 2016 PM-10 Paving Unpaved Road Project. Ms. Arnst inquired if there are any current actions being taken to control dust emissions in the area, Jomax Road from 147<sup>th</sup> Avenue to East City (133<sup>rd</sup> Avenue), given that the paving project is not until 2016. Many complaints have been issued about dust in this area. Ms. Arnst indicated that it was not an official dirt road, but now has become a popular shortcut. She noted that she is unaware if the location is under the City of Surprise jurisdiction or another entity, like a private development. Ms. Arnst asked about dust suppression for the interim years until it is paved. Margaret Perez, City of Surprise, responded that she will forward the question to Committee member Tony DeLaCruz who can answer the question.

Ms. Arnst stated that ADEQ is in favor of using CMAQ funds on paving unpaved road projects because it is the most effective use of CMAQ dollars.

Ms. Fish responded with agreement on Ms. Arnst's comment. She noted that the cost-effectiveness for PM-10 paving unpaved road projects is higher than bicycle and pedestrian projects. She noted that the dollar cost per metric ton is lower.

Mr. Tveit called for a vote on the motion to recommend a ranked list of proposed PM-10 Paving Unpaved Road Projects for FY 2015, 2016, and 2017 to be forwarded to the MAG Transportation Committee. Mr. Kukino moved and Mr. Mattingly seconded, and the motion carried unanimously.

#### 7. Update on PM-10 Exceedances and Exceptional Events

Ms. Bauer provided an update on PM-10 exceedances and exceptional events. She stated that there have been 13 days of PM-10 exceedances in 2012. Ms. Bauer indicated that most of the exceedances appear to be exceptional events. She discussed that three years of clean data is required at the monitors to attain the standard. Ms. Bauer mentioned that there were no violating monitors in 2010. She indicated that there were several exceptional events in 2011. Ms. Bauer added that there are 16 days of exceptional events where documentation still needs to be prepared. In 2012, there are 10 days of exceptional events to document. The Arizona Department of Environmental Quality has allocated \$500,000 for consultant assistance in compiling the exceptional event documentation. Ms. Bauer stated that MAG staff is also preparing some of the exceptional event documentation and will continue to provide support to ADEQ. She added that Maricopa County is assisting as well. She noted the tremendous workload. Ms. Bauer stated that the 200-page exceptional events documentation package for events dating July 2, 2011 to July 8, 2011 has been approved by the Environmental Protection Agency (EPA), however, documentation for 26 additional exceptional event days is required. She added that ADEQ efforts to expedite the documentation is appreciated. The documentation for these days needs to be submitted to EPA in time for them to review and concur with the exceptional event days prior to EPA approval action of the MAG 2012 Five Percent Plan for PM-10. EPA is scheduled to take action on the plan by February 14, 2013. Ms. Bauer encouraged the Committee members to help the region stay clean at the monitors and keep the dust down. She stated that the region is in a critical time period due to EPA action on the plan expected in February. If the plan is not approved EPA would be required to implement a Federal Implementation Plan. Ms. Bauer thanked the Committee.

Ms. Tveit commented that it is encouraging that EPA has approved the exceptional events documentation for events dating July 2, 2011 to July 8, 2011.

#### 8. Status Report on Eight Hour Ozone Monitoring Data

Julie Hoffman, Maricopa Association of Governments, presented a status report on the eight-hour ozone monitoring data. She indicated that three tables of ozone monitoring data were provided at each place. She noted that the ozone exceedances in 2012 have been provided by date and by monitor. Ms. Hoffman stated that in 2012 the region has experienced 28 days where at least one monitor exceeded the 2008 eight-hour ozone standard of 0.075 parts per million (ppm). The Committee was also provided a table that included the three year average of the annual fourth high, which is how the standard is calculated. Ms. Hoffman noted that three year averages of the fourth high exceeding 0.075 ppm are shown in bold since these are violating monitors. She added that there are nine violating monitors in 2012. The North Phoenix monitor has the highest three year average with a value of 0.081 ppm. Ms. Hoffman mentioned that the North Phoenix monitor has been the only violating monitor for the last three years. The value for the highest three year average has increased from 0.077 ppm for the past two years to 0.081 ppm for 2012.

Ms. Hoffman discussed the attainment date for the eight-hour ozone standard. She indicated that the Maricopa ozone nonattainment area is currently classified as a Marginal Area for the 0.075 ppm eight-hour ozone standard established by EPA in 2008. Therefore, the region has a December 31, 2015 attainment date. Ms. Hoffman explained that attainment for the region will be determined using years 2013, 2014, and 2015.

Ms. McGennis inquired about the location of the North Phoenix monitor. Ms. Hoffman responded that it is located at approximately Butler Drive and 7<sup>th</sup> Street near North Mountain. Cathy Arthur, Maricopa Association of Governments, replied that it is on the south side of North Mountain.

Ms. Bauer commented that MAG will be looking into why the ozone concentrations at the monitors have increased in 2012. She stated that vehicle miles of travel have been down since 2008 and the fuel usage is flat. Ms. Bauer indicated that MAG will explore ideas to determine why nine monitors are now violating the eight-hour ozone standard. She gave the example that the region is sensitive to reductions in NO<sub>x</sub> in the centralized area that can cause ozone to increase. The reduction in vehicle miles traveled leads to a reduction in NO<sub>x</sub>, which could lead to the increase in ozone production. Ms. Bauer also commented that the increase to year-round fuel with 10 percent ethanol blends could be impacting the ozone levels. She stated that according to the Arizona Department of Weights and Measures, a 10 percent ethanol blend is now being used in the summer, not just in the winter as it was previously. The Reid Vapor Pressure has been checked and it appears to be in compliance with the State requirement of seven or under. However, Ms. Bauer stated that constituents associated with ethanol, like aldehydes, are very reactive in ozone formation. Ozone transport will also be evaluated. She mentioned that it is still unclear what may have caused the increase in ozone this year. These are just some of the ideas to be reviewed regarding the increase.

#### 9. Call for Future Agenda Items

Mr. Tveit requested suggestions for future agenda items. He indicated that the next meeting of the Committee has been tentatively scheduled for Tuesday, November 27, 2012.

Mr. Trussell inquired if information has been received from EPA with regard to the comments submitted on the Revised Draft EPA Exceptional Events Guidance. Ms. Bauer replied that no response from EPA has been received on the Revised Draft EPA Exceptional Events Guidance comments. However, she stated that positive assistance has been provided by EPA to MAG, ADEQ, and Maricopa County on exceptional events.

With no further comments, the meeting was adjourned at 2:25 p.m.

W E S T E R N   S T A T E S   A I R   R E S O U R C E S   C O U N C I L



August 31, 2012

Air and Radiation Docket and Information Center  
U.S. Environmental Protection Agency  
Mail Code 6102T  
1200 Pennsylvania Ave., NW  
Washington DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2011-0887

Dear Sir or Madam:

The Western States Air Resources Council (WESTAR), an association of 15 western state air quality management agencies, is pleased to offer the following comments on the Environmental Protection Agency's (EPA) "Draft Guidance To Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events". WESTAR appreciates the effort EPA has made in preparing guidance to assist State and local agencies in the development of approvable exceptional events demonstrations. However, the draft guidance fails to address several fundamental issues we have raised over the years, as summarized below. Please note that the California Air Resources Board is submitting separate comments on its own behalf.

WESTAR previously commented on a preliminary draft of the subject guidance, highlighting four areas of particular concern: The level of effort needed to support an exceptional events request, including the need for a dispute resolution process; EPA's use of guidance to impose requirements on state and local agencies; The imposition of escalating emission control programs in areas subject to chronic exceptional events and; The requirement that state and local agencies show that, but for the event, there would not have been an exceedance or violation. With regard to this last issue, WESTAR reiterates its view that EPA should revise the exceptional events rule to either remove the "but for" test, or promulgate techniques that State and local agencies can use to adjust monitored data so as to remove the impact of an exceptional event.

#### Workload

WESTAR initially reached out to EPA regarding the need to streamline the demonstration process to lessen the burden on air agencies and to define uniform methods to determine the

impact of exceptional events on downwind concentrations, recognizing technical limitations and limited resources. We appreciate the effort EPA has made to address the challenges faced by State and local agencies in the implementation of the exceptional events rule, and fully support the goal of the guidance to allow air agencies to “better manage resources” given acknowledged limitations.

We think that the voluntary prospective controls analysis introduced in the June 2012 guidance has potential for significant process streamlining, both for states as well as EPA. However, a state that prepares a prospective controls analysis may not realize any benefits from such an effort if the scope of work to prepare the prospective controls analysis is not substantially less than the demonstration analysis. Other concerns include: 1.) changing circumstances, such as a controls analysis that is deemed out-of-date, causing the pre-approved analysis to be unusable as reference for the “Not Controllable or Preventable” demonstration; 2.) the review triggers a requirement to revise the prospective controls analysis.

In addition, while the draft guidance provides suggested methodology for an approvable technical demonstration, air agencies with limited resources or infrastructure will be hard pressed to submit a reasonable demonstration similar to examples cited in the guidance. For example, the sample apportionment analysis presented on page 46 of the guidance would require tremendous resource commitment for a local event and would be unattainable for a regional annual event that might occur in the desert southwest. In other places the guidance uses examples that many air agencies simply do not have the resources or technical expertise to replicate.

### Dispute Resolution

In previous comments on ways to streamline implementation of the exceptional events rule, WESTAR requested that EPA establish an administrative dispute resolution process to resolve disagreements over concurrence or approvals before a significant regulatory action is taken. The Q and A section of the draft guidance states that existing remedies are available, such as more communication with Regional Office staff, elevation to senior management, and reconsideration where errors are discovered. Inconsistencies between EPA Regional Offices in evaluating and acting on substantially similar exceptional events demonstrations have been and remain a concern - an aspect that the guidance is meant to address. While we appreciate the knowledge and abilities of Regional Office staff, we do not think the existing remedies suggested in the Q and A would be particularly effective. We reiterate our recommendation for EPA to develop an administrative dispute resolution process that could involve a third party with technical expertise.

### Guidance in Lieu of Rules

At several locations in the new guidance material, (e.g. the disclaimers in the guidance documents and Part 6 of the “Responses to First Round Significant Comments...”) EPA states that the purpose of the draft guidance is to assist states in complying with the exceptional events rule, and that the guidance documents do not change, increase, or decrease rule

requirements, and are not binding. We wholeheartedly agree. However, a number of western states have cited cases of Regional Office reviewers expecting strict adherence to the guidance, or requiring extensive additional analyses from the submitting agency to justify deviation from the guidance.

#### Not Reasonably Controllable or Preventable

WESTAR believes that the option for states to develop a prospective controls analysis is a step in the right direction. This would provide a positive mechanism to ensure that an assessment of reasonable controls does not need to be revisited with each individual event request. However, WESTAR remains concerned that the prospective controls analysis may still represent a significant workload for the states, as discussed in the workload paragraph above. In addition, it is not clear what EPA's expectations are for demonstrating the adequacy of existing state or local rules, or what the process would be for rule/program revisions suggested by EPA beyond those approved in SIPs. WESTAR is also concerned that there is a presumption by EPA that each recurring event suggests a need for increasingly more stringent controls on sources of windblown dust as a condition of concurrence. The frequency of chronically occurring natural windblown dust events in the west should not change the assessment of what constitutes reasonable controls for anthropogenic windblown dust sources.

#### The "No Exceedance But For" Demonstration

WESTAR reiterates its view that revisions to the exceptional events rule are needed to address issues related to the requirement that States demonstrate there would have been "no exceedance but for" the event (NEBF). The draft guidance includes a new recommendation that the NEBF demonstration should follow and build upon the technical demonstrations of the other required elements of the submittal, especially "Clear Causal Relationship." We agree that using these earlier analyses as the basis for the NEBF demonstration would streamline the process for *qualitative* NEBF assessments as well as for events occurring in urban areas with more extensive monitoring, as illustrated in the examples. However, the guidance is much less helpful where the event concentrations are close to the NAAQS, calling for *quantitative* NEBF analysis. Many states do not have the resources or the expertise to perform the types of refined and highly technical analyses suggested in the draft guidance. Accordingly, WESTAR believes that the NEBF test should be removed from the rule until EPA promulgates acceptable methodologies for quantifying event-caused concentrations, and examples are available.

There is a clear need to find an acceptable method or methods to quantify PM concentrations that are solely due to high wind events. We urge EPA to work with state and local agencies in a joint effort to develop commonly recognized default methodologies to separate exceedance concentrations due to high wind events from concentrations that would have occurred otherwise. By promulgating approved methods to determine event-caused contributions to downwind concentrations, the preparation of exceptional events requests by state and local agencies would be greatly simplified in most cases, as would EPA's review and approval of the request.

## Additional Comments

*Dust from Agriculture Sources:* The draft high winds guidance draws a distinction between BACM/RACM for non-agricultural sources and wind erosion best management practices (BMPs) developed by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) to prevent the loss of soil during high winds (p. 15 of the draft guidance). NRCS is just part of the larger agricultural community involved in the development and the implementation of wind erosion BMPs. This larger community includes the Agricultural Research Service, university researchers, the state conservation commission, conservation districts, the cooperative extension service, and farmers. EPA would benefit by using expertise available in the agricultural communities for addressing reasonable controls on agricultural lands. WESTAR urges EPA to collaborate with the agricultural community on the implementation of the Exceptional Events Rule.

*Wildfire Events:* While we understand that the primary focus of this draft guidance is dust from high wind events, there is an urgent need for EPA to work with State and local agencies on guidance for other types of exceptional events, most especially smoke impacts from fires. Likewise, we are eager to work with EPA on updates to the Interim Air Quality Policy on Wildland and Prescribed Fires.

If you have any questions or require further clarification of our comments, please contact WESTAR Executive Director Dan Johnson at 206-254-9145.

Sincerely,



Greg Remer, President  
Western States Air Resources Council



Janice K. Brewer  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • [www.azdeq.gov](http://www.azdeq.gov)



Henry R. Darwin  
Director

August 31, 2012

U.S. Environmental Protection Agency  
Attention Docket ID No. EPA-HQ-OAR-2011-0887  
1200 Pennsylvania Avenue, NW  
Mail Code: 6102T  
Washington, DC 20460

Re: Comments to the Exceptional Event Guidance Documents

To Whom it may concern,

The Arizona Department of Environmental Quality (ADEQ) has long been a proponent for changes to EPA's Exceptional Events Rule (EER) and we appreciate the opportunity to provide comment on the *Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events* that EPA released on July 12, 2012.

ADEQ supports EPA's overall efforts to add clarity to the agency's interpretation of the existing rule and the creation of a process for reviewing exceptional events along with deadlines for action. We also agree with the guiding principle that States should not be held accountable for exceedances due to events that were beyond their control at the time of the event. Exclusion of exceptional events that overwhelm reasonable control measures from regulatory decisions enables the state to focus its resources on sources of pollution that can be controlled.

In this submittal ADEQ also incorporates by reference our June 30, 2011 comments pertaining to the May 2, 2011 version of the *Draft Guidance on the Implementation of the Exceptional Events Rule* release by EPA. ADEQ appreciates consideration of our prior comments in the latest review but believes that many comments need additional review by EPA.

ADEQ maintains that additional rulemaking remains necessary. While the draft guidance represents much needed progress, it is ultimately limited in its usefulness, as guidance can not carry the weight of rule. ADEQ believes that several of the approaches in EPA's guidance, described fully in this letter, require rule revisions before the guidance can be fully implemented.

ADEQ also supports the comments submitted by the Western States Air Resources Council (WESTAR). ADEQ is a member of WESTAR so those specific comments are not repeated in

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this letter. Instead, this letter contains ADEQ's comments about how the proposed guidance will impact the review of Exceptional Events within its jurisdiction.

I. Need for Rule Revision

The Draft Guidance frequently presents new "optional" analyses that appear to be quasi-requirements that need to be addressed through a rule revision. Rather than requiring submitting agencies make qualifying statements about the reasonability of controls on natural sources, ADEQ suggests a rule revision stating "due to the cost of applying controls over such large land areas and the potential to disturb those areas, and because of the detrimental effect on the natural ecosystem that could result, controls on natural, undisturbed sources are not expected and no investigation of controls on natural, undisturbed sources is required."

II. Investigation of Controls on Natural Sources

The Revised Draft Guidance for High Wind Exceptional Events continues to contain language that implies that submitting agencies would need to investigate whether natural sources could have been reasonably controlled during a high wind dust event. It should be apparent that in all cases once a natural, undisturbed source is determined to have been a contributing source of particulate matter during a high wind event, not having controls on that natural, undisturbed source is reasonable and therefore, no investigation of or statements about controls on natural sources should be required as a part of an exceptional event demonstration.

EPA's response to comment 7.5.22 regarding EPA's stance on controls on natural sources states that "for a high wind event implicating only natural, undisturbed and non-anthropogenic sources, not having controls on these sources may be reasonable and therefore considered to meet the not reasonably controllable or preventable requirement". Natural sources, whether the only implicated potential sources of particulate matter for an event or not, should not require controls or any control investigation. Additionally, the use of "may be" in EPA's response to comment 7.5.22 implies that there are situations where natural, undisturbed non-anthropogenic sources may require controls in EPA's view. If this is the case, EPA should clarify in what situations they foresee requiring controls on natural undisturbed sources and why this requirement is reasonable. On page 43 of the main Guidance document, EPA seems to require that states include a statement in submittals indicating emissions from given natural sources were not reasonably controllable "due to the cost of applying controls over such a large land area and because of the detrimental effect on the natural ecosystem that could result." Additionally, as was stated in comment 7.5.22, attempting to place controls on natural sources might inherently disturb those sources, rendering them "disturbed" and thus anthropogenic in EPA's view. EPA did not address this portion of the comment in their initial response. As a part of streamlining submittals, rather than requiring submitting agencies to go through the time consuming exercise of investigating controls on natural sources and

making the sort of qualifying statement suggested on page 43, EPA should revise the rule to make it clear that controls on natural, undisturbed sources are not expected or required.

III. The Control and “Extinguishing” of Wildfires

EPA’s response to comment 1.1.9 addressing the not reasonably controllable or preventable aspect of wildfire emissions states that reasonable action should be taken to control a fire once it has started in order to meet the NRCP criteria. Additionally, EPA’s response suggests that for unplanned and unwanted fires, submitting agencies should be able to make a statement to show that they “did their reasonable best to control the extent of and extinguish the fire by taking the following actions...” The word “extinguish” is not appropriate and should be removed, as fire managers work to contain wildfires, not necessarily to extinguish them. There are times where the most reasonable action a wildfire manager can take is to remove fire crews from the ground near a wildfire for safety, and work on creating containment barriers for the fire a safe distance away and/or from the air using air resources. Due to concerns involving firefighter safety, cost, resource management, and resource objectives, it is often prudent for fire managers to monitor, confine, or contain a wildfire while allowing it to burn itself out or play its natural role until adequate precipitation ends the wildfire. These sorts of management actions should not exclude submitting agencies from pursuing Exceptional Event Demonstrations related to wildfires.

IV. Hourly Averaged winds vs. NWS 2-minute Winds and Wind Gusts

On page 40 of the Revised Draft Guidance document, EPA states in footnote 47 that “while the National Weather Service defines a “sustained wind” as the speed determined by averaging observed value over a two-minute period, the EPA believes that it would take a longer period of high wind speeds to raise enough dust to significantly influence measured 24-hour average values of PM10 or PM2.5”. Studies that may have led the EPA to this belief are not cited. ADEQ believes that such citations are necessary to support inclusion of this approach in the guidance. Short lived strong winds carrying vast amounts of PM can cause exceedances. During some of Arizona’s monsoonal outflow dominated dust events, five minute values of PM10 at monitors can reach over 10,000 micrograms, and it can only take a few extremely elevated 5-minute values to cause a 24 hour PM10 exceedance. Some studies have found that wind gusts are more strongly correlated to the onset of saltation and dust entrainment and that maximum wind gusts are a very important factor in dust generation (Holcombe et al., 1996; Zobeck and Van Pelt, 2006).

V. Interstate and International Transport and Investigating Out-of-State Controls

In EPA's response to comment 6.4.1 regarding intra-state, interstate, and international transport, it is suggested that for situations where out of state emissions contributed to an exceedance submitting states should “provide available information on the status of

control measures” and that they also may make a determination based on available information that “controls on out-of-state sources constitute reasonable controls” and that the “not reasonably controllable or preventable” criterion is satisfied. Based on jurisdictional boundaries alone, contributions from out-of-state sources are not reasonably controllable or preventable by the impacted state. Regardless of any controls on out-of-state sources, once it is determined and shown that emissions from sources outside of the submitting state contributed to an exceedance, the emissions from that contribution should be classified as not reasonably controllable or preventable and no investigation of controls or the reasonableness of controls on out-of-state sources should be required. ADEQ suggests the guidance not include a requirement for the affected state to investigate controls or the reasonableness of controls in neighboring states or countries with emissions contributing to an exceedance.

VI. Area Specific Wind Threshold Establishment

The development of area specific High Wind Thresholds will be very resource intensive and costly to develop. Additionally, High Wind Thresholds may vary over time due to changes in ground cover, soil moisture, and countless other variables.

Wind speed (default 25 mph threshold) appears to be EPA’s only criterion for the expected rigor of analysis needed in EE submittals, but numerous other variables are involved and should be considered in determining the rigor of analyses. Regarding the default 25 mile per hour threshold, ADEQ requests, as in our June 20, 2011 comments, that EPA provide literature citations or analytical process used to establish the 25 mile per hour threshold.

VII. Resource Intensity

Some of the optional components put forth in the Draft Guidance are quasi-requirements and have the potential to add significant resource commitments to develop an approvable exceptional events package. The development of area specific High Wind Thresholds will be very resource intensive and costly to develop. This also applies to development of area specific Prospective Controls Analyses, a portion of which is the development of High Wind Thresholds. Another portion (#4) of the Prospective Controls Analysis requires information on whether natural sources are reasonably controlled. ADEQ believes that no investigation of or statements about controls on natural sources should be required as a part of an exceptional event demonstration. Attempting to place controls on natural sources might inherently disturb those sources, rendering them “disturbed” and thus anthropogenic in EPA’s view. ADEQ is currently utilizing the services of a contractor to assist in the development of exceptional event submittals. The anticipated contractor cost for the Maricopa County and Yuma area exceptional events demonstrations in 2011 is estimated to be \$500,000. These additional analyses have the potential to increase that cost.

VIII. Timeframe and Resources for EPA Review

Given the resource intensity and resource commitments being put forward by submitting agencies in researching and putting together an approvable exceptional event package, will EPA have available similar resource commitments in order to ensure the timely review of submitted packages? ADEQ will be developing and submitting EE packages on a very ambitious schedule and is concerned that concurrence may be hindered or delayed with the increased volume of exceptional event packages.

The Draft Guidance states that EPA anticipates completing their initial review of a submitted package and will provide submitting agencies with a letter outlining the preliminary assessment of completeness and whether there is a need for additional information within 120 days of submittal. However, this timing is not specified by the Exceptional Events Rule and unless adequate EPA resources are designated to completing this task, it is not clear that EPA can meet such a schedule. Additionally, the Guidance states that EPA's final decision regarding concurrence on a submitted package (for packages impacting regulatory decisions) is expected to be made within 18 months of the initial submittal. This is about 420 days or 14 months after EPA's initial (120 day) review. This timing seems excessive, particularly for packages deemed complete and requiring no supplemental information based on EPA's initial (120 day) review.

IX. Historic Land Use

On page 11, "artificially exposed beds of natural lakes and rivers" are not eligible for exceptional event concurrence, but "naturally dry" beds of lakes and rivers are eligible. After long term drought (more than 6 months as shown with "L" for most of Arizona on the U.S. Department of Agriculture's Drought Monitor <http://droughtmonitor.unl.edu/>) it is logical to conclude that most riverbeds in Arizona become "naturally dry" no matter if they were originally dammed or not.

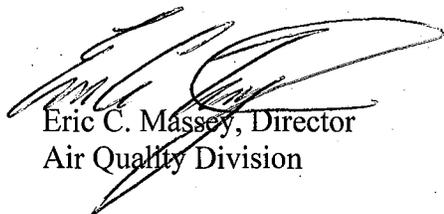
In closing, the preparation of the exceptional event demonstration packages requires extensive time and resource investments by State and Local agencies. This draft guidance appears to include more reliance on continuous ambient monitors, requires additional meteorological data collection, increased data storage and processing capabilities, independent research to establish appropriate local wind speed thresholds, inspection and enforcement databases capable of localized queries, meteorological expertise for evaluating weather phenomenon, expertise capable of producing event specific back trajectories and date specific source emission inventories, and possibly additional resources for the development of ever evolving High Wind Action Plans. Many agencies are at historically low staffing levels due to budgetary constraints. The complex data packages supporting exceptional event demonstrations often consist of 50-100 pages of technical data (tables, graphs, maps and diagrams). For each package prepared, hundred

of hours of staff time have been invested. Most agencies are already making priority decisions on which events to pursue simply based on manpower availability.

The draft guidance seems to acknowledge that EPA has similar constraints, as it discusses how EPA will prioritize review of exceptional events, and spend the most time looking at those packages that relate to regulatory decisions. In Arizona's experience, most of the exceptional event demonstrations that are submitted are related to regulatory decisions. While this guidance was meant to streamline the process for submitting and reviewing exceptional event demonstrations, ADEQ's application of the guidance to its existing exceptional events indicates that the draft guidance, as currently written, provides little or no added efficiency for ADEQ or EPA.

ADEQ appreciates EPA's efforts in this matter, and looks forward to continuing a partnership to better achieve the underlying goals of the draft guidance. If you have any questions, please contact me at (602) 771-2308.

Sincerely,



Eric C. Massey, Director  
Air Quality Division

Enclosures

cc: Deborah Jordan, EPA Region IX  
Colleen McKaughan, EPA Region IX  
William Wiley, Maricopa County Air Quality Department  
Lindy Bauer, Maricopa Association of Governments  
Don Gabrielson, Pinal County Air Quality Management District  
Ursula Kramer, Pima County Department of Environmental Quality



# Maricopa County

Air Quality Department

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September 4, 2012

Air Docket

Attention Docket Id No: EPA-HQ-OAR-2011-0887

Mail Code 6102T

U.S. Environmental Protection Agency

1200 Pennsylvania Ave. NW.,

Washington, DC 20640

To Whom It May Concern:

Maricopa County Air Quality Department (MCAQD) welcomes the opportunity to provide the following comments on EPA's draft guidance implementing the Exceptional Events Rule (EER) specifically *Draft Guidance on Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule* (high Wind Guidance). This is in response to the U.S. Environmental Protection Agency's (EPA) solicitation for public comment published in Federal Register on July 6, 2012 (77 FR 39959).

MCAQD supports EPA's effort to clarify its interpretation of the existing EER and to provide an efficient and effective process to make determinations regarding air quality data affected by high-wind events over which an agency has little, if any, control. Exclusion of exceptional events that overwhelm reasonable control measures from regulatory decisions enables our agency to focus our resources on sources of pollution that can be controlled. We believe the draft guidance represents movement in the right direction, but that the guidance does not yet provide a streamlined, predictable process that can be performed by state and local agencies. As a result, MCAQD still has several key concerns.

MCAQD also supports the comments submitted by the Arizona Department of Environmental Quality (ADEQ), the Maricopa Association of Governments (MAG), and the Western States Air Resources Council (WESTAR). While we may refer to those specific comments, we are not repeating them in this letter.

## I. Level of Resources and Timeframes

Various components, including some of the optional components, put forth in the draft High Winds Guidance require significant resource commitments to develop an approvable exceptional events demonstration. Based on Arizona agencies' experiences completing exceptional event demonstrations, significant manpower and technical expertise, including thousands of dollars of consultant assistance, were required to complete the multi-day demonstration submitted for July 2 through July 8, 2011. All of this effort was necessary to document a series of weather-related events and subsequent impacts including a July 5, 2012, haboob pictured in a National Geographic article on extreme weather events (September 2012). That level of effort should not be necessary to document a request for an event of that magnitude. EPA needs to substantially streamline what air agencies must include in order for an exceptional event request to be approved.

While the July 2011 demonstrations were prepared in consultation with EPA and the agency indicated they will take action in less than the 18 months allowed in the guidance, the amount of time that has elapsed for agency preparation and EPA review still extends beyond six months. We mention six months to illustrate the disconnect between the exceptional event process as laid out by the EER / High Winds Guidance and the Clean Air Act (CAA) deadlines for determining attainment of the National Ambient Air Quality Standards (NAAQS). This is just one of several exceptional events demonstrations that must be submitted by the State and acted on by EPA to meet this impending deadline. MCAQD urges EPA to synchronize the EER and guidance with the requirements of the CAA.

## II. Wind Speed Threshold

Maricopa County has a range of soil types and textures in the complex terrain of a desert valley in which metropolitan Phoenix resides. Consequently, wind speeds and the ability of wind to overwhelm reasonable controls can vary greatly. A wind speed threshold may vary over time due to changes in ground cover, soil moisture and other variables. As a result, the development of a Maricopa County specific wind speed threshold may be event specific and will be very resource intensive, costly, and not practical to develop. MCAQD supports the analysis and recommendations of both ADEQ and MAG on wind speed threshold analyses and the related topic of hourly versus "sustained" winds.

## III. Controls on Natural Sources

The draft guidance document and EPA's response to comments document still contain language implying that agencies need to investigate where natural sources could have been reasonably controlled during a high wind event. MCAQD believes that it is neither reasonable nor required that an analysis of controls on natural, undisturbed sources of particulate matter be prepared as part of an exceptional events demonstration. Control of natural undisturbed surfaces is beyond the current authority of MCAQD. Further, MCAQD also believes that attempting to control natural, undisturbed sources could render them disturbed and thus anthropogenic under EPA's current definitions.

## IV. Optional Streamlining Mechanisms

EPA has proposed optional streamlining mechanisms for exceptional event demonstrations that include "High Wind Action Plans", "Prospective Controls Analysis", and area specific "Wind Speed Threshold" analysis. However, the level of effort necessary to develop these documents would be substantial. The "High Wind Action Plans" and "Prospective Controls Analysis" are SIP-like documents and the resources required to produce these documents as outlined in the draft guidance would tax our already limited resources and are duplicative of the SIP. Likewise, the underlying science behind a "Wind Speed Threshold" analysis is complex and would consume

extensive resources. MCAQD supports ADEQ's and MAG's comments regarding these optional streamlining mechanisms.

V. Reasonable Controls Determination

As a long time PM-10 nonattainment area, the Maricopa County PM-10 State Implementation Plan (SIP) contains an exhaustive list of control measures analyzed to meet the CAA requirements to demonstrate the implementation of Reasonably Available Control Measures (RACM), Best Available Control Measures (BACM), and Most Stringent Measures (MSM) for moderate and serious PM-10 nonattainment areas. The guidance documents, however, do not recognize these measures as reasonable and continue to link recurrence with potential additional control measure feasibility even though the event is overwhelming. EPA should offer more certainty to agencies by recognizing the extensive work included in the SIP by not requiring significant control analysis for each event.

In closing, MCAQD appreciates EPA's efforts in this area and looks forward to continuing to work with the agency on improving the guidance. In this effort, please recognize the implications of this guidance on our local citizens, economy and agencies' resources. We do not look forward to being showcased in the Natural Geographic for our Exceptional Events, but neither do we relish the work required to document them. If you have any questions, please do not hesitate to contact me at (602) 506-6443.

Sincerely,



William D. Wiley, P.E.  
Director

cc: Deborah Jordan, EPA Region IX  
Colleen McKaughan, EPA Region IX  
Eric Massey, Arizona Department of Environmental Quality  
Lindy Bauer, Maricopa Association of Governments  
Don Gabrielson, Pinal County Air Quality management District  
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September 4, 2012

Air Docket  
Attention Docket ID No. EPA-HQ-OAR-2011-0887  
U.S. Environmental Protection Agency  
Mail Code: 6102T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**RE: Comments on EPA's Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events; Docket ID No. EPA-HQ-OAR-2011-0887**

Dear Sir or Madam:

The Associated General Contractors of America (AGC) appreciates this opportunity to provide comments on the *Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events* (Draft Guidance) published in the *Federal Register* on July 6, 2012.<sup>1</sup>

EPA's Exceptional Events Rule (EER) allows the Agency to exclude certain air-quality monitoring data when determining whether or not an area violates a National Ambient Air Quality Standard(s) (NAAQS). Under the EER, EPA may flag certain air monitoring readings as "exceptional" and exclude data from nonattainment determinations if a local air agency demonstrates that an exceptional event, such as a wildfire or dust storm, caused an air quality violation.

AGC chapters and members in arid western states face significant air quality challenges brought on by chronic wildfires, dust storms and high winds; they report that EPA has not consistently applied its Exceptional Events Rule. Many of the concerns and criticism over the EER center around the lack of clarity on what a state should include in its demonstration package, a lack of consistency between the preamble and the rule itself, as well as delays in processing and approving exceptional event submissions.

AGC is concerned that the Draft Guidance does little to reduce the overall burden required in producing and approving exceptional event documentation and – in some cases – may actually increase the effort and documentation required.

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<sup>1</sup> AGC support the comments of its Arizona Chapter and incorporates those comments herein by reference.

## About AGC

AGC is the leading trade association in the construction industry. It dates back to 1918, and it currently represents 33,000 firms in nearly 100 chapters across the United States. AGC's members include 7,500 of the nation's leading general contractors, nearly 12,500 specialty contractors and more than 13,000 material suppliers and service providers to the construction industry. These members engage in the construction of commercial buildings, hospitals and laboratories, schools, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, levees, water works facilities and multi-family housing units, and they prepare sites and install the utilities necessary for housing development.

AGC members are directly impacted by the implementation of the EER and EPA's Draft Guidance. If an event is ruled an exceptional event, then a NAAQS exceedance caused by high winds, for example, would not be counted in determining whether to reclassify the attainment area as nonattainment. Additional nonattainment areas would result in additional requirements and restrictions on the business of construction. AGC is most concerned about the potential restriction on the use and operation of construction equipment that is currently out in the field, the loss of federal highway funding and the loss of economic development opportunities in urban areas. AGC and its members therefore have a great interest in the outcome of this proposed rulemaking.

The active phase of construction and the equipment used to perform this work is heavily regulated by both federal and state agencies to reduce particulate matter emissions. States with PM<sub>10</sub> non-attainment areas have fugitive dust regulations in place that apply directly to the construction industry. In many cases, construction firms must obtain permits and submit dust management plans for each active construction site, and the permits are reviewed and approved by local air pollution control officers.

As discussed above, failure by any state to prove compliance with federal air standards can have serious repercussions for construction in the area(s) so designated – including potential restriction on the use and operation of equipment, the loss of federal highway funding and the loss of economic development opportunities.

The Draft Guidance would leave several well-documented concerns unresolved—

- It would set a “wind threshold” for what constitutes high wind events for all arid areas and anything below the threshold would require extensive information and data to show that the event was not reasonably controllable or preventable. But depending on local circumstances and conditions, the actual wind speed required to cause dust exceedances from undisturbed and reasonably controlled surfaces will vary greatly.
- A lack of precipitation would be excluded from the definition of exceptional events.

- To establish an exceptional event, a state would need to show that the event caused a specific concentration, at a specific place. Doing so is difficult, for example, given the lack of particulate matter (PM) monitors and the high spatial variability of PM.
- Furthermore, in many rural areas, insufficient monitoring is available to demonstrate the “clear causal” relationships between an exceptional event and a measured exceedance even when simple visual observations would establish such a relationship.

## **EPA Should Implement “Specific, Broadly Applicable, Streamlining Mechanisms”**

States face strict deadlines to make attainment determinations that could hinge on whether or not data affected by exceptional events are included or excluded. However, EPA is under no pressure to review this paperwork in a timely manner. The EPA review process as outlined in the Draft Guidance would provide for a total of 667 days of Agency review time once a demonstration package was submitted (presuming that such a package was considered to be “complete” by the Agency).<sup>2</sup> This timeline is far too long. AGC urges EPA to work with states and local air agencies to accelerate the review and approval process for exceptional events.

AGC urges EPA to take more meaningful steps to streamline the process for producing and reviewing exceptional event demonstrations. A state must submit costly and complicated demonstration projects to EPA for its review (and for public comment) before it may exclude any exceedance(s) of any air quality standard(s) caused by naturally-occurring events such as dust storms. AGC understands that many states do not have the resources or the time required to meet the demonstration requirements for an exceptional event.

## **EPA Should Give Greater Deference to State and Local Determinations**

AGC recommends that EPA adopt additional measures (using forms, check-off lists and other straightforward mechanisms) to rely on to the judgment of air pollution officials who are responsible for the day-to-day implementation of CAA measures.

Section 319 of the CAA (42 U.S.C. § 7619) requires the Administrator to determine that an event is an exceptional event. While the Administrator is required under this section to promulgate

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<sup>2</sup> EPA is allowing itself 120 days from the initial submission of a package for responding via letter on a completeness determination and whether there is a need for additional information to be submitted. Following this process, the Draft Guidance allows EPA 547 days in order for the Agency to actually make a decision regarding an exceptional event.

regulations to “govern[ ] the review and handling of air monitoring data influenced by an exceptional event,”<sup>3</sup> the requirement for such regulations does not constrain the degree of deference that the Administrator may afford to state or local determinations regarding exceptional events. EPA is also not prevented under current regulations from providing much greater latitude to state submissions on exceptional events than is contained in the Draft Guidance. Current regulations provide only that various demonstrations to justify data exclusion be “to EPA’s satisfaction” with regard to whether air pollution concentrations in excess of a NAAQS were directly due and caused by an exceptional event.<sup>4</sup>

## Dispute Resolution

The current regulations governing exceptional events demonstrations leave the decision entirely at the discretion of the EPA, and the decisions are not subject to appeal.<sup>5</sup>

Neither the EER nor the Draft Guidance provides for a mechanism to challenge an EPA non-concurrence determination on a submission by an air regulatory agency. There is no opportunity or clear direction for a state or locality to challenge an EPA denial. This can lead to inconsistency in how EPA regional offices evaluate and act upon similar events and circumstances. AGC recommends a path for a formal appeal process to address non-action or denial by EPA.

In light of likely adoption of a more stringent federal particulate matter and ozone standards expected to drastically increase the number of non-attainment areas across the nation, it is critical that EPA streamline the information required for demonstration submittals, the processing of requests and the underlying ambiguities in the rule. But moving ahead with guidance rather than a formal revision to the rule would mean less regulatory certainty and could violate federal rulemaking procedures under the Administrative Procedures Act.

While EPA “is deferring a decision on whether to revise the Exceptional Events Rule,” AGC urges the agency to carefully consider the key concept included in legislation that Rep. Jeff Flake (R-Ariz.) recently introduced a bill in the U.S. House of Representatives intended to help states prove more efficiently and effectively that their violations of dust-pollution (i.e., particulate matter) standards qualify as “exceptional events.” AGC and its Arizona Chapter have expressed support for the Commonsense Legislative Exceptional Events Reform Act of 2012, or CLEER Act, which proposes certain changes to the federal Clean Air Act’s requirements for demonstrating exceptional events. Specifically, the bill would (1) require EPA to work with states to develop criteria for proving exceptional events; (2) create a deadline for EPA to approve

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<sup>3</sup> CAA section 319(b)(2)(B).

<sup>4</sup> See 40 C.F.R. § 50.14(a)-(b) generally and 40 C.F.R. § 50.14(b)(2) and (b)(3) with respect to fireworks and prescribed fires.

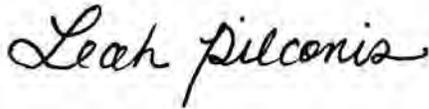
<sup>5</sup> See 42 U.S.C. § 7619(b)(A)(iv) and 40 C.F.R. § 50.149.

Docket ID No. EPA-HQ-OAR-2011-0887  
AGC of America Comments  
September 4, 2012

a state's exceptional-events documentation; (3) make EPA's decisions on exceptional events appealable; and (4) require EPA to make its decisions based on the evidence that states provide.

AGC appreciates the opportunity to comment. Thank you for taking our concerns into account. If you have any questions, please contact me at [pilconisl@agc.org](mailto:pilconisl@agc.org) or (703) 837-5332.

Sincerely,

A handwritten signature in black ink that reads "Leah Pilconis". The signature is written in a cursive, flowing style.

Leah F. Pilconis  
Senior Environmental Advisor to AGC of America

JEFF FLAKE  
6TH DISTRICT, ARIZONA

240 CANNON HOUSE OFFICE BUILDING  
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PHONE (202) 225-2635  
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DISTRICT OFFICE:

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SUITE 215  
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COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEES:  
INTERIOR, ENVIRONMENT, AND  
RELATED AGENCIES  
LABOR, HEALTH AND HUMAN SERVICES,  
EDUCATION AND RELATED AGENCIES  
MILITARY CONSTRUCTION, VETERANS AFFAIRS,  
AND RELATED AGENCIES

Congress of the United States  
House of Representatives

September 4, 2012

U.S. Environmental Protection Agency  
Mail Code: 6102T  
1200 Pennsylvania Ave. NW  
Washington, DC 20406

Re: Docket ID No. EPA-HQ-OAR-2011-0887

To whom it may concern,

I write to provide comments on the Environmental Protection Agency's "Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events." EPA's handling of exceptional events has been problematic to say the least, with the agency's review timeframe unpredictable, decisions arbitrary, and approach cumbersome for even routine events. Unfortunately, it appears unlikely that draft guidance will provide much in the way of a solution to these problems even if finalized.

These issues are far from academic for Arizona, specifically when it comes to additional regulatory burdens and costs. With the Phoenix area having failed to meet the dust standard since the Clean Air Act amendments of 1990, the area is one of the hardest hit when it comes to issues pertaining to particulate matter. Yet, in January of last year due to a regulatory approach that does little to account for naturally occurring dust events in the desert, the Arizona Department of Environmental Quality (ADEQ) was forced to withdraw the *MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area*. Beyond the regulatory implications, the procedural hurdles for excluding air quality data from events that cannot be prevented or controlled are staggering. For example, the San Joaquin Valley Unified Air Pollution Control District has suggested that the paperwork for just one high wind exceptional event takes more than 400 staff hours to prepare. According to ADEQ, the anticipated cost for the necessary exceptional events demonstrations for 2011 is \$500,000.

To the extent that it is intended to produce a more streamlined and predictable process for exceptional events, the draft guidance being contemplated by the agency falls woefully short. EPA noted that regional officials "worked with agencies in Arizona to incorporate approaches presented in the draft guidance documents," and that the resulting demonstration "could be transferable and serve as a model for future events for both Arizona and areas experiencing high wind dust events." However, ADEQ submitted comments critical of what appears to be an increase in time and resources necessary to prepare such a demonstration under the draft guidance, noting specifically that:

"This draft guidance appears to include more reliance on continuous ambient monitors, requires additional meteorological data collection, increased data storage and processing capabilities, independent research to establish appropriate local wind speed thresholds, inspection and enforcement database capable of localized queries, meteorological expertise for evaluating weather phenomenon,

expertise capable of producing event specific back trajectories and date specific emissions inventories, and possibly additional resources for the development of ever evolving High Wind Action Plans.”

Beyond remaining a convoluted and expensive process for states and localities to endure simply for the chance of EPA taking them off the regulatory hook for events they could not possibly control or prevent, it would appear that EPA’s decisions remain final under the draft guidance. The Western States Air Resources Council has consistently called for a “process to resolve disagreements over concurrence or approvals before significant regulatory action is taken.” There should be a process to hold EPA accountable when it comes to exceptional event demonstrations approvals. In addition, rather than leaving the decisions entirely in the hands of the agency, states should be afforded wide deference in determining which events are truly exceptional in nature and which are not.

It is unfortunate that EPA has invested in a time-consuming process of multiple rounds of reviews that appear on track to produce guidance that will not address the persistent issues associated with the exceptional events process and even lacks the enforceability of a rule. While EPA “is deferring a decision on whether to revise the Exceptional Events Rule,” I would urge the agency to take a supportive posture towards legislation I have introduced and that would provide the legislative authority for a greater degree of transparency, predictability, accountability, and state deference for the exceptional events process. Enjoying widespread support among Arizona-based, regional, and national air quality stakeholders, H.R. 5381, the Commonsense Legislative Exceptional Events Reform Act of 2012 (CLEER Act), would:

- Require EPA to review states’ exceptional events documentations within 90 days of submission, with an optional 90 days available for a one-time request for more information;
- Require EPA to do a rulemaking providing specific and publically-disclosed criteria, developed with the states, on which exceptional events demonstrations will be evaluated (that reflect the varying levels of expertise and resources available at the state and local levels, monitoring data in rural areas, and the need for an expedited approval process);
- Make EPA’s decisions on exceptional events demonstrations judicially reviewable like other Clean Air Act regulatory requirements; and
- Require EPA’s decisions on exceptional event demonstrations to be based on the preponderance of the evidence and to accord substantial deference to the analysis and findings provided by the states.

I commend EPA for recognizing that the current exceptional events approach is untenable. However, I join with Arizona state, local, and regional stakeholders in concluding that the draft guidance falls far short. It is time to provide meaningful reforms to the exceptional events process and I urge the agency to support the much needed legislative remedies found in H.R. 5381. I appreciate your attention to these comments, in accordance with existing agency rules, regulations, and ethical guidelines. For additional information on the CLEER Act, please contact Chandler C. Morse on my staff at 202-225-2635.

Sincerely,



JEFF FLAKE  
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 19 2012

OFFICE OF  
AIR AND RADIATION

Mr. Dennis Smith  
Executive Director  
Maricopa Association of Governments  
302 North 1<sup>st</sup> Avenue, Suite 300  
Phoenix, Arizona 85003

Dear Mr. Smith:

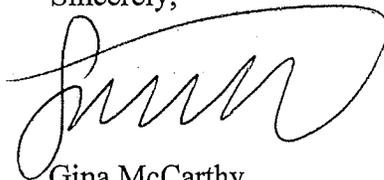
Thank you for your letter of August 31, 2012, which provides comments on the U.S. Environmental Protection Agency's Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events. I appreciate your review of the original guidance documents released on May 2, 2011, and the most recent revised draft guidance documents released for public comment via a Notice of Availability in the *Federal Register* on July 6, 2012. I also appreciate your suggestions for streamlining the exceptional events demonstration development and review process.

As you are aware, on September 6, 2012, the EPA Region 9 Administrator, Jared Blumenfeld, concurred on exceptional event flags submitted by the Arizona Department of Environmental Quality (ADEQ) for 29 exceedances of the particulate matter (PM<sub>10</sub>) standard in the Phoenix PM<sub>10</sub> nonattainment area at numerous monitoring locations from July 3 – July 8, 2011. Staff in the EPA Region 9 office worked closely with staff at ADEQ, Maricopa County, and Maricopa Association of Governments (MAG) to develop a consolidated exceptional events demonstration package for the identified event days. This demonstration package incorporated some of the streamlining approaches presented in the draft guidance documents and will serve as a model for future events. Much of the information included in the demonstration package will be directly transferable to future exceptional events demonstrations, which will substantially reduce the resources needed to prepare them. The EPA Region 9 staff continues to work with ADEQ, MAG, and Maricopa County to further streamline the process and reduce the resource burden of developing exceptional events demonstrations. The EPA truly appreciates the Arizona agencies' leadership on these efforts.

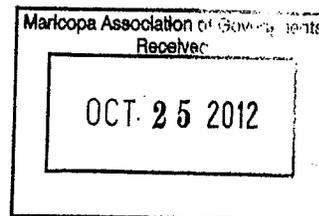
The public comment period on the recently released draft exceptional events guidance documents ended on September 4, 2012, and we are currently compiling submitted comments and revising the draft guidance documents. We will consider your comments during our compilation, review, and revision process. At the conclusion of this process, we will determine whether to issue final guidance and/or make a decision on whether to proceed with rule amendments. We will keep you and your staff involved in the development of the guidance and/or rule as we proceed. I recognize the importance of this issue for your community and region and appreciate your thoughtful input.

Again, thank you for your letter and for your review and interest in the EPA's draft exceptional events guidance documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy". The signature is fluid and cursive, with a large loop at the end.

Gina McCarthy  
Assistant Administrator



## The National Ambient Air Quality Standards

**OVERVIEW OF EPA'S REVISIONS TO THE AIR QUALITY STANDARDS  
FOR PARTICLE POLLUTION (PARTICULATE MATTER)**

---

- On Dec. 14, 2012, the U.S. Environmental Protection Agency (EPA) took important steps to protect the health of Americans from fine particle pollution by strengthening the annual health National Ambient Air Quality Standard (NAAQS) for fine particles to 12.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) and retaining the 24-hour fine particle standard of  $35 \mu\text{g}/\text{m}^3$ . The agency also retained the existing standards for coarse particle pollution ( $\text{PM}_{10}$ ).
- An extensive body of scientific evidence shows that long- and short-term exposures to fine particle pollution, also known as fine particulate matter ( $\text{PM}_{2.5}$ ), can cause premature death and harmful effects on the cardiovascular system, including increased hospital admissions and emergency department visits for heart attacks and strokes. Scientific evidence also links PM to harmful respiratory effects, including asthma attacks.
- People most at risk from particle pollution exposure include people with heart or lung disease (including asthma), older adults, children and people of lower socioeconomic status. Research indicates that pregnant women, newborns and people with certain health conditions, such as obesity or diabetes, also may be more susceptible to PM-related effects.
- Particle pollution also causes haze in cities and some of our nation's most treasured national parks.
- Fine particles are 2.5 micrometers in diameter and smaller. They can be emitted directly from a variety of sources, including vehicles, smokestacks and fires. They also form when gases emitted by power plants, industrial processes, and gasoline and diesel engines react in the atmosphere. Sources of inhalable coarse particles, which have diameters between 2.5 and 10 micrometers, include road dust that is kicked up by traffic, some agricultural operations, construction and demolition operations, industrial processes and biomass burning.
- Emission reductions from EPA and states rules already on the books will help 99 percent of counties with monitors meet the revised  $\text{PM}_{2.5}$  standards without additional emission reductions. These rules include clean diesel rules for vehicles and fuels, and rules to reduce pollution from power plants, locomotives, marine vessels and power plants, among others.
- EPA estimates that meeting the annual primary fine particle standard of  $12.0 \mu\text{g}/\text{m}^3$  will provide health benefits worth an estimated \$4 billion to \$9.1 billion per year in 2020 -- a return of \$12 to \$171 for every dollar invested in pollution reduction. Estimated annual costs of implementing the standard are \$53 million to \$350 million.

- For fine particles, EPA is:
  - **Strengthening the annual health standard** (primary standard) for PM<sub>2.5</sub> by setting the standard at 12.0 µg/m<sup>3</sup>. The existing annual standard, 15.0 µg/m<sup>3</sup>, was set in 1997.
  - **Retaining the existing 24-hour health standard** (primary standard) for PM<sub>2.5</sub>, at 35 µg/m<sup>3</sup>. EPA issued the 24-hour standard in 2006.
    - **Retaining the existing secondary standards** for PM<sub>2.5</sub> to address PM-related effects such as visibility impairment, ecological effects, damage to materials and climate impacts. This includes an annual standard of 15.0 µg/m<sup>3</sup> and a 24-hour standard of 35 µg/m<sup>3</sup>. The agency is relying on the existing secondary 24-hour PM<sub>2.5</sub> standard to protect against visibility impairment, and is not finalizing the separate standard to protect visibility the EPA proposed in June 2012.
    - EPA had proposed to set a separate secondary 24-hour standard to provide protection against PM-related visibility effects; however, after considering public comment on the proposal and further analyzing recent air quality monitoring data, the agency has concluded that the current secondary 24-hour PM<sub>2.5</sub> standard of 35µg/m<sup>3</sup> will provide visibility protection that is equal to, or greater than, 30 deciviews, the target level of protection the agency is setting today. (A deciview is a yardstick for measuring visibility.)
- **For coarse particles, EPA is retaining the existing 24-hour PM<sub>10</sub> standards for health and environmental effects (primary and secondary standards).** These standards, set at a level of 150 µg/m<sup>3</sup>, have been in place since 1987.
- EPA examined thousands of studies as part of this review of the standards, including hundreds of new studies published since EPA completed the last review of the standards in 2006. The new evidence includes more than 300 new epidemiological studies, many of which report adverse health effects even in areas that meet the current PM<sub>2.5</sub> standards. EPA also considered analyses by agency experts, along with advice from the Clean Air Scientific Advisory Committee and public comments.
- As part of EPA's commitment to a transparent, open government, the agency sought and received broad public input in setting this standard that provides critical health protection to tens of millions of Americans. EPA held two public hearings on the proposed standards, and received more than 230,000 written comments.
- The Clean Air Act requires EPA to review the particle pollution standards every five years. The revisions, which are a result of that review, also respond to a court remand of portions of the agency's 2006 decision on the PM<sub>2.5</sub> standards.

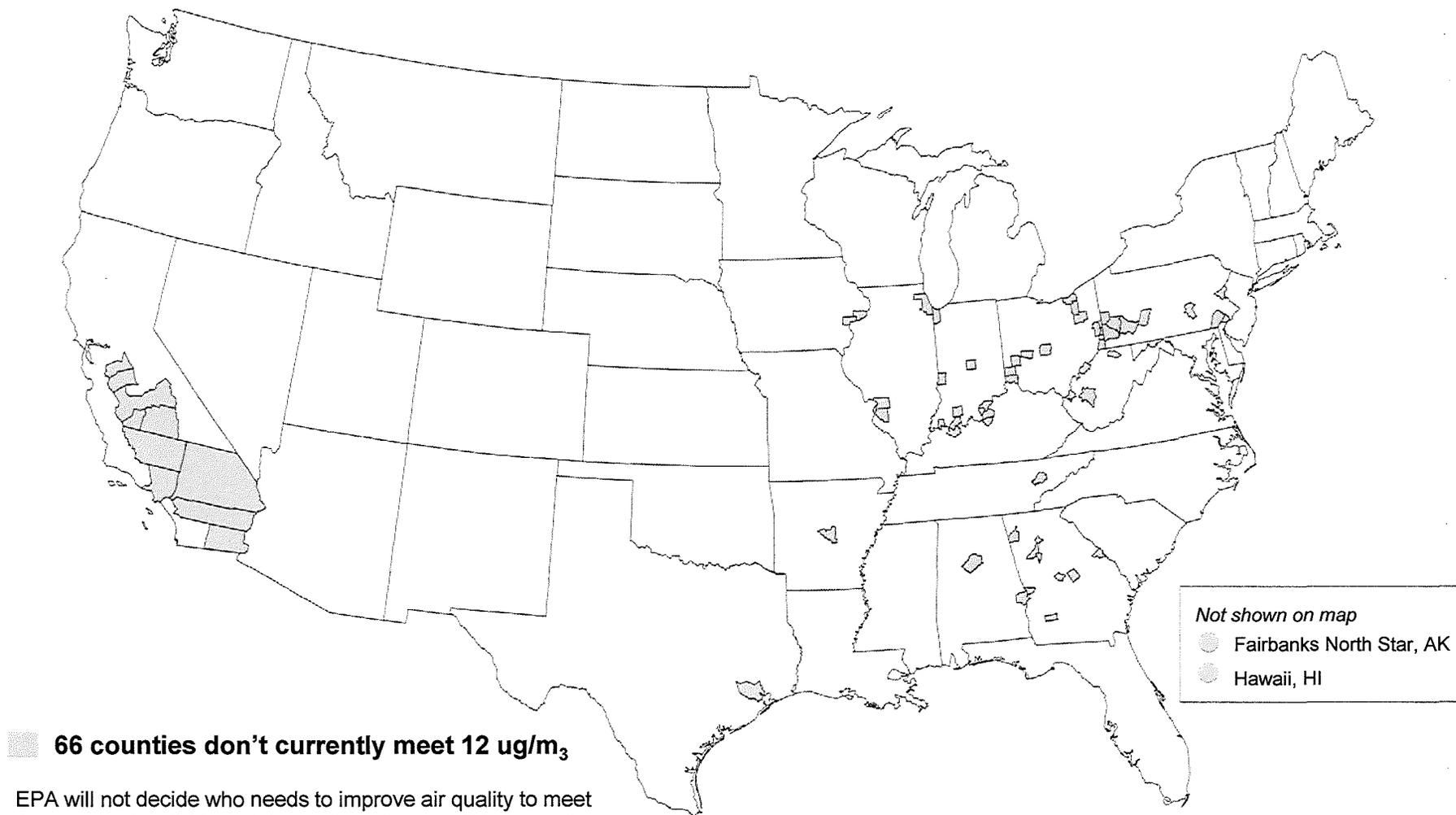
More details about today's action:

- Today's rule also addresses several issues related to implementation of the revised standards. Among them:
  - To ensure a smooth transition to the revised standards, EPA will grandfather pending preconstruction permitting applications if either:
    - The permitting agency has deemed the application complete. This must occur by Dec. 14, 2012.
    - The public notice for a draft permit or preliminary determination has been published prior to the date the revised PM standards become effective (60 days after publication in the Federal Register).
  - The agency is making updates and improvements to the nation's PM<sub>2.5</sub> monitoring network that include relocating a small number of monitors to measure fine particles near heavily traveled roads in areas with populations of 1 million or more. These relocations will be phased in over two years (2015-2017) and will not require additional monitors.
  - In addition, EPA is updating the Air Quality Index (AQI) for PM<sub>2.5</sub> to be consistent with the final health standards.
- EPA anticipates making initial attainment/nonattainment designations by December 2014, with those designations likely becoming effective in early 2015.
- States would have until 2020 (five years after designations are effective) to meet the revised annual PM<sub>2.5</sub> health standard. Most states are familiar with this process and can build off work they are already doing to reduce pollution to help them meet the standards.
  - A state may request a possible extension to 2025, depending on the severity of an area's fine particle pollution problems and the availability of pollution controls.
- By law, EPA cannot consider costs in setting or revising national ambient air quality standards. However, to inform the public, EPA analyzes the benefits and costs of implementing the standards as required by Executive Orders 12866 and 13563 and guidance from the White House Office of Management and Budget.

#### **FOR MORE INFORMATION**

- To read the final standards and additional summaries, visit <http://www.epa.gov/airquality/particlepollution/actions.html>

## Most of the U.S. Already Meets the Annual Fine Particle Health Standard of 12 $\mu\text{g}/\text{m}^3$



Source: 2009-2011 air quality data as of July 15, 2012  
For more information: [www.epa.gov/pm](http://www.epa.gov/pm)

## EPA Projections Show 99% of U.S. Counties with Monitors Would Meet the Annual Fine Particle Health Standard of $12 \mu\text{g}/\text{m}^3$ in 2020



■ 7 counties are projected not to meet  $12.0 \mu\text{g}/\text{m}^3$  in 2020.

All of these are already under requirements to reduce  $\text{PM}_{2.5}$ .

Source: PM NAAQS RIA  
For more information: [www.epa.gov/pm](http://www.epa.gov/pm)

House Engrossed

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

**CHAPTER 308**  
**HOUSE BILL 2798**

AN ACT

AMENDING TITLE 49, CHAPTER 3, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-411; RELATING TO AIR QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 49, chapter 3, article 1, Arizona Revised Statutes,  
3 is amended by adding section 49-411, to read:

4 49-411. Particulate measures; cities, towns, counties,  
5 departments; implementation; report

6 A. ON OR BEFORE MARCH 30 OF EACH CALENDAR YEAR, CITIES AND TOWNS IN  
7 AREA A AS DEFINED IN SECTION 49-541 SHALL SUBMIT A REPORT REGARDING THE  
8 FOLLOWING ACTIVITIES TO THE DEPARTMENT ON A FORM DEVELOPED BY THE DIRECTOR AS  
9 PRESCRIBED IN SUBSECTION F OF THIS SECTION:

10 1. PAVING OF UNPAVED ROADS AND SHOULDERS AS PRESCRIBED IN SECTION  
11 9-500.04, SUBSECTION A, PARAGRAPH 3.

12 2. RESTRICTIONS ON THE USE OF LEAF BLOWERS AS PRESCRIBED IN SECTION  
13 9-500.04, SUBSECTION A, PARAGRAPH 5, EXCEPT THOSE ACTIVITIES EXEMPTED UNDER  
14 SECTION 9-500.04, SUBSECTION H.

15 3. RESTRICTIONS ON PARKING, MANEUVERING, INGRESS AND EGRESS AREAS AND  
16 VACANT LOTS AS PRESCRIBED IN SECTION 9-500.04, SUBSECTION A, PARAGRAPHS 6, 7  
17 AND 8, EXCEPT THOSE ACTIVITIES EXEMPTED UNDER SECTION 9-500.04, SUBSECTION H.

18 4. CERTIFICATION AND USE OF STREET SWEEPERS AS PRESCRIBED IN SECTION  
19 9-500.04, SUBSECTION A, PARAGRAPH 9.

20 5. OFF-ROAD VEHICLE ORDINANCES AND COMPLIANCE AS PRESCRIBED IN SECTION  
21 9-500.27.

22 B. ON OR BEFORE MARCH 30 OF EACH CALENDAR YEAR, EACH COUNTY IN AREA A  
23 AS DEFINED IN SECTION 49-541 THAT HAS ADOPTED RULES PURSUANT TO SECTION  
24 49-479 REGARDING THE FOLLOWING ACTIVITIES SHALL SUBMIT A REPORT TO THE  
25 DEPARTMENT ON A FORM DEVELOPED BY THE DIRECTOR AS PRESCRIBED IN SUBSECTION F  
26 OF THIS SECTION:

27 1. NO BURN RESTRICTIONS FOR ANY HIGH POLLUTION ADVISORY DAY AS  
28 PRESCRIBED IN SECTION 11-871, SUBSECTIONS B AND D.

29 2. RESTRICTIONS ON THE USE OF LEAF BLOWERS BY COUNTY EMPLOYEES AND  
30 CONTRACTORS AND USE BY PRIVATE PERSONS IN THAT COUNTY AS PRESCRIBED IN  
31 SECTION 11-877.

32 3. PAVING OF UNPAVED ROADS AND SHOULDERS AS PRESCRIBED IN SECTION  
33 49-474.01, SUBSECTION A, PARAGRAPH 4.

34 4. RESTRICTIONS ON PARKING, MANEUVERING, INGRESS AND EGRESS AREAS AND  
35 VACANT LOTS AS PRESCRIBED IN SECTION 49-474.01, SUBSECTION A, PARAGRAPHS 5, 6  
36 AND 7.

37 5. CERTIFICATION AND USE OF STREET SWEEPERS AS PRESCRIBED IN SECTION  
38 49-474.01, SUBSECTION A, PARAGRAPH 8.

39 6. REQUIREMENTS FOR DUST CONTROL TRAINING AND SITE COORDINATORS FOR  
40 DUST CONTROL AT LOCATIONS AT WHICH DUST CONTROL PERMITS ARE REQUIRED AS  
41 PRESCRIBED IN SECTION 49-474.05.

42 7. REQUIREMENTS FOR DUST CONTROL PERMIT SUBCONTRACTOR REGISTRATION AS  
43 PRESCRIBED IN SECTION 49-474.06.

1 C. ON OR BEFORE MARCH 30 OF EACH CALENDAR YEAR, THE DEPARTMENT OF  
2 TRANSPORTATION SHALL SUBMIT A REPORT TO THE DEPARTMENT OF ENVIRONMENTAL  
3 QUALITY ON A FORM DEVELOPED BY THE DIRECTOR PURSUANT TO SUBSECTION F OF THIS  
4 SECTION. THE REPORT SHALL COVER RESTRICTIONS OR REQUIREMENTS IN CONTRACTS OR  
5 REQUESTS FOR PROPOSALS, BIDS OR OTHER CONSTRUCTION AND SERVICE ACTIVITIES  
6 OVERSEEN BY THE DEPARTMENT IN AREA A AS DEFINED IN SECTION 49-541 INCLUDING  
7 ANY REQUIREMENTS INCORPORATED BY REFERENCE TO STATE LAW, COUNTY ORDINANCE OR  
8 RULE OR TO A CITY OR TOWN ORDINANCE OR RULE AND REQUIRED TO BE CONTAINED IN  
9 BIDS, REQUESTS OR CONTRACTS OR IN THE ADMINISTRATION OF OTHER DEPARTMENT  
10 MATTERS.

11 D. ON OR BEFORE MARCH 30 OF EACH CALENDAR YEAR, THE APPROPRIATE  
12 DEPARTMENTS OR AGENCIES RESPONSIBLE FOR ENFORCING RESTRICTIONS ON OFF-HIGHWAY  
13 VEHICLES, ALL-TERRAIN VEHICLES AND OFF-ROAD RECREATIONAL MOTOR VEHICLES  
14 DURING HIGH POLLUTION ADVISORY DAYS AS PRESCRIBED IN SECTION 49-457.03 SHALL  
15 SUBMIT A REPORT REGARDING THOSE ACTIVITIES TO THE DEPARTMENT ON A FORM  
16 DEVELOPED BY THE DIRECTOR PURSUANT TO SUBSECTION F OF THIS SECTION.

17 E. ON OR BEFORE MARCH 30 OF EACH CALENDAR YEAR THE DEPARTMENT OF  
18 ENVIRONMENTAL QUALITY SHALL PREPARE A REPORT OF ITS ACTIVITIES RELATED TO THE  
19 FOLLOWING:

20 1. DEVELOPMENT AND DISSEMINATION OF AIR QUALITY DUST FORECASTS AS  
21 PRESCRIBED IN SECTION 49-424, PARAGRAPH 11.

22 2. PRODUCTION AND DISTRIBUTION OF PRINTED MATERIALS TO PERSONS WHO  
23 SELL OR RENT LEAF BLOWERS AS PRESCRIBED IN SECTION 49-457.01, SUBSECTION F.

24 3. PRODUCTION AND DISTRIBUTION OF PRINTED MATERIALS TO PERSONS WHO  
25 SELL OR RENT OFF-HIGHWAY VEHICLES, ALL-TERRAIN VEHICLES AND OFF-ROAD  
26 RECREATIONAL MOTOR VEHICLES AS PRESCRIBED IN SECTION 49-457.04, SUBSECTIONS B  
27 AND C.

28 4. DUST ACTION GENERAL PERMITS INCLUDING BEST MANAGEMENT PRACTICES FOR  
29 REGULATED ACTIVITIES BEFORE AND DURING A DAY THAT IS FORECAST TO BE AT HIGH  
30 RISK OF DUST GENERATION AND AT MODERATE RISK OF DUST GENERATION AS PRESCRIBED  
31 IN SECTION 49-457.05, SUBSECTIONS B, C AND D.

32 F. THE DIRECTOR SHALL DEVELOP A FORM TO BE USED FOR REPORTS REQUIRED  
33 PURSUANT TO THIS SECTION. THE REPORTS PRESCRIBED BY THIS SECTION SHALL  
34 CONTAIN A NARRATIVE DESCRIPTION THAT IDENTIFIES THE TYPE OF EMPLOYEE OR  
35 CONTRACTOR WHO PERFORMS ANY INSPECTION, ENFORCEMENT, TRAINING OR OTHER  
36 ACTIONS RELATED TO THE LISTED ACTIVITY AND A NARRATIVE DESCRIPTION OF THE  
37 SCOPE AND FREQUENCY OF THE ACTIVITY.

APPROVED BY THE GOVERNOR MAY 7, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 8, 2012.

**FACT SHEET****FINAL RULE DETERMINING WIDESPREAD USE OF ONBOARD REFUELING VAPOR RECOVERY AND WAIVER OF STAGE II REQUIREMENTS****ACTION**

- On May 9, 2012, the U.S. Environmental Protection Agency (EPA) determined that the use of onboard refueling vapor recovery (ORVR) for capturing gasoline vapor when gasoline-powered vehicles are refueled is in widespread use throughout the highway motor vehicle fleet.
- EPA also is waiving the requirement that current and former ozone nonattainment areas classified Serious and above must implement Stage II vapor recovery systems on gasoline pumps. Given the widespread use of ORVR, Stage II control systems now provide increasingly less air pollution reduction beyond what is provided by ORVR and therefore are increasing less cost-effective.
- Both ORVR and Stage II vapor recovery are systems that capture gasoline emissions that would otherwise be emitted into the air. Gasoline-rich vapors in an empty automobile fuel tank are forced out when liquid gasoline is pumped into the tank. Stage II vapor recovery systems capture these vapors at the gasoline pump nozzle and carry them back into the underground storage tank at the service station. ORVR systems are carbon canisters installed in automobiles to capture gasoline vapors evacuated from the gasoline tank before they reach the pump nozzle.
- EPA's Stage II vapor recovery program was required in approximately 40 areas, including ozone nonattainment areas and in the ozone transport region (OTR). The OTR includes twelve northeastern states and the District of Columbia. Stage II vapor recovery systems have provided significant air quality benefit, but are now becoming less effective.
- The Clean Air Act still requires states in the OTR to adopt and implement control measures that are capable of achieving emissions reductions comparable to those achievable by Stage II systems. EPA will provide guidance to OTR states to help them meet the independent "comparable measures" requirement, in light of this final ORVR widespread use determination.
- States that have implemented Stage II vapor recovery programs in ozone nonattainment areas may now revise their plans to attain and maintain ozone air quality standards seeking EPA's approval for gasoline service stations to remove their Stage II control equipment. EPA will provide guidance on calculating the emission impacts of removing this equipment.
- Removing Stage II control equipment will also eliminate expenses associated with operating Stage II systems. EPA estimates the potential national cost savings for facilities decommissioning Stage II vapor recovery systems to be over \$91 million annually.

- This final rule does not require states to remove their Stage II systems. It allows states to retain their Stage II requirements if so desired.
- The Administrator's finding that the use of ORVR is in widespread use throughout the highway motor vehicle fleet will be effective upon publication in the *Federal Register*.

## **BACKGROUND**

- The Clean Air Act allows the EPA to revise or waive certain requirements of the Stage II vapor recovery program in ozone nonattainment areas when the EPA Administrator finds that ORVR systems are in widespread use in the highway vehicle fleet.
- Over time, non-ORVR vehicles will continue to be replaced with ORVR vehicles. The ORVR control measure is expected to result in a significant decrease in emissions over time until all subject vehicle classes in the highway vehicle fleet are ORVR-equipped. Stage II and ORVR emission control systems are redundant, and, EPA has determined that ORVR emission reductions are essentially equal to and will soon surpass the emission reductions achieved by Stage II alone. By waiving the Stage II requirement, EPA is reducing regulatory burdens on the gasoline service station industry.
- The CAA required many ozone nonattainment areas to adopt Stage II systems in the early 1990's. The CAA also required automobile makers to add ORVR systems to automobiles and other vehicles in a phased approach starting in 1998. Since 2006, all new automobiles and light and medium duty cars, vans and trucks are equipped with ORVR.
- The EPA's Stage I air toxics rule limits emissions of hazardous air pollutants from gasoline distribution terminals nationwide. Stage I requirements remain in effect.

## **FOR MORE INFORMATION**

- To download this final rule from the EPA's website, go to Recent Actions at <http://www.epa.gov/ttn/oarpg/>
- Today's action and other background information are also available either electronically at <http://www.regulations.gov>, the EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room.
  - The Public Reading Room is located at EPA Headquarters, room number 3334 in the EPA West Building, 1301 Constitution Avenue, NW, Washington, D.C. Hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays.

- Visitors are required to show photographic identification, pass through a metal detector and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
  - Materials for this proposed action can be accessed using Docket ID No. EPA-HQ-OAR-2010-1076
- For further information about the final rule, contact Mr. H. Lynn Dail of EPA's Office of Air Quality Planning and Standards, at (919) 541-2363 or by email at [dail.lynn@epa.gov](mailto:dail.lynn@epa.gov).

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 51**

[EPA-HQ-OAR-2010-1076; FRL-9671-3]

RIN 2060-AQ97

**Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA has determined that onboard refueling vapor recovery (ORVR) technology is in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions, and, therefore, by this action, the EPA is waiving the requirement for states to implement Stage II gasoline vapor recovery systems at gasoline dispensing facilities in nonattainment areas classified as Serious and above for the ozone national ambient air quality standards (NAAQS). This finding will be effective as noted below in the **DATES** section. After the effective date of this notice, a state previously required to implement a Stage II program may take appropriate action to remove the program from its State Implementation Plan (SIP). Phasing out the use of Stage II systems may lead to long-term cost savings for gas station owners and operators while air quality protections are maintained. **DATES:** This rule is effective on May 16, 2012.

**ADDRESSES:** The EPA has established a docket for this rule, identified by Docket ID No. EPA-HQ-OAR-2010-1076. All documents in the docket are listed in [www.regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lynn Dail, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail code C539-01, Research Triangle Park, NC 27711, telephone (919) 541-2363; fax number: 919-541-0824; email address: [dail.lynn@epa.gov](mailto:dail.lynn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Purpose of Regulatory Action**

Since 1990, Stage II gasoline vapor recovery systems have been a required emissions control measure in Serious, Severe, and Extreme ozone nonattainment areas. Beginning with model year 1998, ORVR equipment has been phased in for new vehicles, and has been a required control on nearly all new highway vehicles since 2006. Over time, non-ORVR vehicles will continue to be replaced with ORVR vehicles. Stage II and ORVR emission control systems are redundant, and the EPA has determined that emission reductions from ORVR are essentially equal to and will soon surpass the emission reductions achieved by Stage II alone. In this action, the EPA is eliminating the largely redundant Stage II requirement in order to ensure that refueling vapor control regulations are beneficial without being unnecessarily burdensome to American business. This action allows, but does not require, states to discontinue Stage II vapor recovery programs.

**II. Summary of the Major Provisions of This Final Rule**

Clean Air Act (CAA) section 202(a)(6) provides discretionary authority to the EPA Administrator to, by rule, revise or waive the section 182(b)(3) Stage II requirement for Serious, Severe and Extreme ozone nonattainment areas after the Administrator determines that ORVR is in widespread use throughout the motor vehicle fleet. Based on criteria that the EPA proposed last year (76 FR 41731, July 15, 2011), the EPA is determining that ORVR is in widespread use. As of the effective date of today's action, states that are implementing mandatory Stage II programs under section 182(b)(3) of the CAA may submit revisions to their SIPs to remove this program.

The EPA will also be issuing non-binding guidance on developing and submitting approvable SIP revisions.<sup>1</sup>

<sup>1</sup> "Phasing Out Stage II Gasoline Refueling Vapor Recovery Programs: Guidance on Satisfying Requirements of Clean Air Act Sections 110(c), 193, and 184(b)(2) (tentative title)." U.S. EPA Office of Air and Radiation, forthcoming. This guidance will provide the EPA's recommendations for states to consider when developing SIP revisions following today's rulemaking. Unlike the final rule, the

This guidance will address SIP requirements for states in the Ozone Transport Region (OTR), which are separately required under section 184(b)(2) of the CAA to adopt and implement control measures capable of achieving emissions reductions comparable to those achievable by Stage II. The EPA is updating its guidance for estimating what Stage II comparable emissions reductions could be, in light of the ORVR widespread use determination. The EPA now expects Stage II comparable emissions reductions to be substantially less than what was estimated in the past before ORVR use became widespread. Therefore, the EPA encourages states to consult the updated guidance before submitting a SIP revision removing Stage II controls.

**III. Costs and Benefits**

The primary purpose of this final rule is to promulgate a determination that ORVR is in widespread use as permitted in section 202(a)(6) of the CAA. In this final rule, EPA is exercising the authority provided by section 202(a)(6) of the CAA to, by rule, revise or waive the section 182(b)(3) Stage II requirement for Serious, Severe, and Extreme ozone nonattainment areas after the Administrator determines that ORVR is in widespread use throughout the motor vehicle fleet. This in turn gives states that were required to implement Stage II vapor recovery under section 182(b)(3) of the CAA the option to submit for the EPA's review and approval revised ozone SIPs that will remove this requirement. The EPA projects that during 2013-2015, gasoline-dispensing facilities (GDFs) in up to 19 states and the District of Columbia could seek to decommission and remove Stage II systems from their dispensers. There are about 30,600 GDFs with Stage II in these 20 areas. If the states submit and EPA approves SIP revisions to remove Stage II systems from these GDFs, the EPA projects savings of about \$10.2 million in the first year, \$40.5 million in the second year, and \$70.9 million in the third year. Long-term savings are projected to be about \$91 million per year, compared to the current use of Stage II systems in these areas. No significant emission

guidance is not final agency action, and is not binding on or enforceable against any person. Consequently, it is subject to possible revision without additional rulemaking. In addition, the approaches suggested in the guidance (or in any changes thereto) will not represent final agency action unless and until the EPA takes a final SIP approval or disapproval action implementing those approaches.

increases or decreases are expected from this action.

#### IV. General Information

##### A. Does this action apply to me?

Entities directly affected by this action include states (typically state air pollution control agencies) and, in some cases, local governments that develop air pollution control rules that apply to areas classified as Serious and above for nonattainment of the ozone NAAQS. Individuals and companies that operate gasoline dispensing facilities may be indirectly affected by virtue of state action in SIPs that implement provisions resulting from final rulemaking on this action; many of these sources are in the following groups:

| Industry group    | SIC <sup>a</sup> | NAICS <sup>b</sup> |
|-------------------|------------------|--------------------|
| Gasoline stations | 5541             | 447110, 447190     |

<sup>a</sup> Standard Industrial Classification.

<sup>b</sup> North American Industry Classification System.

##### B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will be posted at <http://www.epa.gov/air/ozonepollution/actions.html#impl> under "recent actions."

##### C. How is this notice organized?

The information presented in this preamble is organized as follows.

#### I. Purpose of Regulatory Action

#### II. Summary of the Major Provisions of This Final Rule

#### III. Costs and Benefits

#### IV. General Information

##### A. Does this action apply to me?

##### B. Where can I get a copy of this document and other related information?

##### C. How is this notice organized?

#### V. Background

##### A. What requirements for Stage II gasoline vapor recovery apply for ozone nonattainment areas?

##### B. Stage II Vapor Recovery Systems

##### C. Onboard Refueling Vapor Recovery (ORVR) Systems

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##### E. Executive Order 13132: Federalism

##### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

##### G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

##### H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

##### I. National Technology Transfer and Advancement Act

##### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

##### K. Congressional Review Act

#### IX. Statutory Authority

#### V. Background

##### A. What requirements for Stage II gasoline vapor recovery apply in ozone nonattainment areas?

The requirements in the 1990 CAA Amendments regarding Stage II vapor recovery are contained in Title I: Provisions for Attainment and Maintenance of National Ambient Air Quality Standards. Under CAA section 182(b)(3), Stage II gasoline vapor recovery systems are required to be used at higher throughput GDFs located in Serious, Severe, and Extreme nonattainment areas for ozone.<sup>2</sup> States were required to adopt a Stage II program into their SIPs, and the controls were to be installed according to specified deadlines following state rule adoption.<sup>3</sup> Since the early 1990s, Stage 2 gasoline vapor controls have provided

<sup>2</sup> Originally, the section 182(b)(3) Stage II requirement also applied in all Moderate ozone nonattainment areas. However, under section 202(a)(6) of the CAA, 42 U.S.C. 7521(a)(6), the requirements of section 182(b)(3) no longer apply in Moderate ozone nonattainment areas after the EPA promulgated ORVR standards on April 6, 1994, 59 FR 16262, codified at 40 CFR parts 86 (including 86.098–8), 88 and 600. Under implementation rules issued in 2002 for the 1997 8-hour ozone standard, the EPA retained the Stage II-related requirements under section 182(b)(3) as they applied for the now-revoked 1-hour ozone standard. 40 CFR 51.900(f)(5) and 40 CFR 51.916(a).

<sup>3</sup> This requirement only applies to facilities that sell more than a specified number of gallons per month and is set forth in sections 182(b)(3)(A)–(C) and 324(a)–(c). Section 182(b)(3)(B) has the following effective date requirements for implementation of Stage II after the adoption date by a state of a Stage II rule: 6 months after adoption of the state rule, for GDFs built after the enactment date (which for newly designated areas would be the designation date); 1 year after adoption date, for gas stations pumping at least 100,000 gal/month based on average monthly sales over 2-year period before adoption date; 2 years after adoption, for all others.

substantial emissions reductions and have contributed to improved air quality over time.

##### B. Stage II Vapor Recovery Systems

When a gasoline-powered automobile or other vehicle is brought into a GDF to be refueled, the empty portion of the fuel tank on the vehicle contains gasoline vapors. When liquid gasoline is pumped into the partially empty gas tank, gasoline vapors are forced out of the tank and fill pipe as the tank fills with liquid gasoline. Where air pollution control technology is not used, these vapors are emitted into the ambient air. In the atmosphere, these vapors can react with sunlight, nitrogen oxides and other volatile organic compounds to form ozone.

There are two basic technical approaches to Stage II vapor recovery: A "balance" system, and a vacuum assist system. A balance type Stage II control system has a rubber boot around the gasoline nozzle spout that fits snugly up to a vehicle's gasoline fill pipe during refueling of the vehicle. With a balance system, when gasoline in the underground storage tank (UST) is pumped into a vehicle, a positive pressure differential is created between the vehicle tank and the UST. This pressure differential draws the gasoline vapors from the vehicle fill pipe through the rubber boot and the concentric hoses and underground piping into the UST. This is known as a balance system because gasoline vapors from the vehicle tank flow into the UST tank to balance pressures. About 30 percent of Stage II GDFs nationwide use the balance type Stage II system.

The vacuum assist system is the other primary type of Stage II system currently in operation. This type of Stage II system uses a vacuum pump on the vapor return line to help draw vapors from the vehicle fill pipe into the UST. An advantage of this type of system is that the rubber boot around the nozzle can be smaller and lighter (or not used at all) and still draw the vapors into the vapor return hose. This makes for an easier-to-handle nozzle, which is popular with customers. About 70 percent of Stage II GDFs nationwide use the vacuum assist approach.

New Stage II equipment is normally required to achieve 95 percent control effectiveness at certification. However, studies have shown that in-use control efficiency depends on the proper installation, operation, and maintenance of the control equipment at the GDF.<sup>4</sup>

<sup>4</sup> The Petroleum Equipment Institute has published recommended installation practices (PEI/Continued

Damaged, missing, or improperly operating components or systems can significantly degrade the control effectiveness of a Stage II system.

In-use effectiveness ultimately depends on the consistency of inspections, follow-up review by state agencies, and actions by operators to perform inspections and field tests and conduct maintenance in a correct and timely manner. The EPA's early guidance for Stage II discussed expected training, inspection, and testing criteria, and most states have adopted and supplemented these criteria as deemed necessary for balance and vacuum assist systems.<sup>5</sup> In some cases, states have strictly followed the EPA guidance but other states have required a lesser level of inspection and enforcement efforts. Past EPA studies have estimated Stage II in-use efficiencies of 92 percent with semi-annual inspections, 86 percent with annual inspections and 62 percent with minimal or less frequent state inspections.<sup>6</sup> The in-use effectiveness of Stage II control systems may vary from state to state, and may vary over time within any state or nonattainment area because the in-use efficiency of Stage II vapor recovery systems depends heavily on the ongoing maintenance and oversight by GDF owners/operators and the state/local agencies.

### C. Onboard Refueling Vapor Recovery (ORVR) Systems

In addition to Stage II controls, the 1990 CAA Amendments required another method of controlling emissions from dispensing gasoline. Section 202(a)(6) of the CAA requires an onboard system of capturing vehicle-refueling emissions, commonly referred to as an ORVR system.<sup>7</sup> ORVR consists of an activated carbon canister installed on the vehicle into which vapors are routed from the vehicle fuel tank during refueling. There the vapors are captured by the activated carbon in the canister. To prevent the vapors from escaping through the fill pipe opening, the vehicle employs a seal in the fill pipe which allows liquid gasoline to enter but blocks vapor escape. In most cases,

RP300-93) and most states require inspection, testing, and evaluation before a system is commissioned for use.

<sup>5</sup> "Enforcement Guidance for Stage II Vehicle Refueling Control Programs," U.S. EPA, Office of Air and Radiation, Office of Mobile Sources, December 1991.

<sup>6</sup> "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling at Gasoline Dispensing Facilities Volume I: Chapters," EPA-450/3-91-022a, November 1991. This study is a composite of multiple studies.

<sup>7</sup> Unlike Stage II, which is a requirement only in ozone nonattainment areas, ORVR requirements apply to vehicles everywhere. More detail on ORVR is available at <http://www.epa.gov/otaq/orvr.htm>.

these are "liquid seals" created by the incoming liquid gasoline slightly backing near the bottom of the fill pipe. When the engine is started, the vapors are purged from the activated carbon and into the engine where they are burned as fuel.

The EPA promulgated ORVR standards on April 6, 1994 (59 FR 16262). Section 202(a)(6) of the CAA required that the EPA's ORVR standards apply to light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards were promulgated, and that ORVR systems provide a minimum evaporative emission capture efficiency of 95 percent.

Automobile manufacturers began installing ORVR on new passenger cars in 1998 when 40 percent of new cars were required to have ORVR. The regulation required the percentage of new cars with ORVR increase to 80 percent in 1999 and 100 percent in 2000. The regulation also required that ORVR for light duty trucks and vans (<6000 pounds (lbs) gross vehicle weight rating (GVWR)) was to be phased-in during 2001 with 40 percent of such new vehicles required to have ORVR in 2001, 80 percent in 2002 and 100 percent in 2003. New heavier light-duty trucks (6001–8500 lbs GVWR) were required to have 40 percent with ORVR by 2004, 80 percent by 2005 and 100 percent by 2006. New trucks up to 10,000 lbs GVWR manufactured as a complete chassis were all required to have ORVR by 2006.<sup>8</sup> Complete vehicle chassis for heavy-duty gasoline vehicles between 10,001 and 14,000 lbs GVWR (Class 3) are very similar to those between 8,501 and 10,000 lbs GVWR. For model consistency purposes, manufacturers began installing ORVR on Class 3 complete chassis in 2006 as well. So, after 2006, essentially all new gasoline-powered vehicles less than 14,000 lbs GVWR are ORVR-equipped.

ORVR does not apply to all vehicles, but those not covered by the ORVR requirement comprise a small percentage of the gasoline-powered highway vehicle fleet (approximately 1.5 percent of gasoline consumption). The EPA estimates that by the end of 2012, more than 71 percent of vehicles currently on the road will have ORVR.<sup>9</sup> This percentage will increase over time as older cars and trucks are replaced by

<sup>8</sup> The EPA promulgated ORVR standards for light duty vehicles and trucks on April 6, 1994, 59 FR 16262, codified at 40CFR parts 86 (including 86.098–8), 88 and 600.

<sup>9</sup> See EPA Memorandum "Onboard Refueling Vapor Recovery Widespread Use Assessment." A copy of this memorandum is located in the docket for this action EPA-HQ-OAR-2010-1076.

new models. However, under the current regulatory construct, motorcycles and heavy-duty gasoline vehicles not manufactured as a complete chassis are not required to install ORVR, so it is likely that there will be some very small percentage of gasoline refueling emissions not captured by ORVR controls.

Even prior to the EPA's adoption of ORVR requirements, in 1993 EPA adopted Onboard Diagnostic (OBD) System requirements for passenger cars and light trucks, and eventually did so for heavy-duty gasoline vehicles up to 14,000 lbs GVWR.<sup>10</sup> These systems are designed to monitor the in-use performance of various vehicle emission control systems and components, including protocols for finding problems in the purge systems and large and small vapor leaks in ORVR/evaporative emission controls.<sup>11</sup> OBD II systems were phased in for these vehicle classes over the period from 1994–1996 for lighter vehicles and 2005–2007 for heavy-duty gasoline vehicles, so, during the same time frame that manufacturers were implementing ORVR into their vehicles, they already had implemented or were implementing OBD II systems.

In 2000, the EPA published a report addressing the effectiveness of OBD II control systems.<sup>12</sup> This study concluded that enhanced evaporative and ORVR emission control systems are durable and low emitting relative to the FTP (Federal Test Procedure) enhanced evaporative emission standards, and that OBD II evaporative emissions checks are a suitable replacement for functional evaporative emission tests in state inspection and maintenance (I/M) programs. OBD system codes are interrogated and evaluated in a 30-vehicle emission I/M program. A recent EPA review of OBD data gathered from I/M programs from five states<sup>13</sup> indicated relatively few vehicles had any evaporative system-related OBD codes that would indicate a potential

<sup>10</sup> See *Federal Register* at 58 FR 9468 published February 19, 1993, and subsequent amendments and the latest OBD regulations at 40 CFR part 86.1806–05 for program requirements in various years.

<sup>11</sup> ORVR systems are basically a subset of evaporative emission systems because they share the same vapor lines, purge valves, purge lines, and activated carbon canister.

<sup>12</sup> "Effectiveness of OBD II Evaporative Emission Monitors—30 Vehicle Study," EPA 420-R-00-018, October 2000.

<sup>13</sup> See EPA Memorandum, "Review of Frequency of Evaporative System Related OBD Codes for Five State I/M Programs." A copy of this memorandum is located in the docket for this action EPA-HQ-OAR-2010-1076.

problem with the vapor management system.

Based on emissions tests of over 1,100 in-use ORVR-equipped vehicles, EPA concluded that the average in-use efficiency of ORVR is 98 percent. The legal requirement for ORVR is 95 percent efficiency. Thus, the actual reported control achieved in practice is greater than the statutorily required level of control.

#### *D. Compatibility Between Some Vapor Recovery Systems*

Even though the per-vehicle vapor recovery efficiency of ORVR exceeds that of Stage II, Stage II vapor recovery systems have provided valuable reductions in ozone precursors and air toxics as ORVR has been phased into the motor vehicle fleet. In fact, overall refueling emissions from vehicle fuel tanks are minimized by having both ORVR and Stage II in place, but the incremental gain from retaining Stage II decreases relatively quickly as ORVR penetration surpasses 75 percent of dispensed gasoline. Please see Table 2 below. This occurs not only because of a decreasing amount of gasoline being dispensed to non-ORVR equipped vehicles, but also because differences in operational design characteristics between ORVR and vacuum assist Stage II systems may in some cases cause a reduction in the overall control system efficiency compared to what could have been achieved relative to the individual control efficiencies of either ORVR or Stage II emissions from the vehicle fuel tank. The problem arises because the ORVR canister captures the gasoline vapor emissions from the motor vehicle fuel tank rather than the vapors being drawn off by the vacuum assist Stage II system. This occurs because the fill pipe seal blocks the vapor from reaching the Stage II nozzle. Thus, instead of drawing vapor-laden air from the vehicle fuel tank into the underground storage tank (UST), the vacuum pump of the Stage II system draws mostly fresh air into the UST. This fresh air causes gasoline in the UST to evaporate inside the UST and creates an internal increase in UST pressure. As the proportion of ORVR vehicles increases, the amount of fresh air, void of gasoline vapors, pumped into the UST also increases. Even with pressure/vacuum valves in place this eventually leads to gasoline vapors being forced out of the UST vent pipe

into the ambient air. These new UST vent-stack emissions detract from the overall recovery efficiency at the GDF. As discussed in the proposed rule, the level of these UST vent stack emissions varies based on several factors but can result in a net 1 to 10 percent decrease in overall control efficiency of vehicle fuel tank emissions at any given GDF.<sup>14</sup> The decrease in efficiency varies depending on the vacuum assist technology design (including the use of a mini-boot for the nozzle and the ratio of volume of air drawn into the UST compared to the volume of gasoline dispensed (A/L) ratio), the gasoline Reid vapor pressure, the air and gasoline temperatures, and the fraction of throughput dispensed to ORVR vehicles. There are various technologies that address these UST vent-stack emissions and can extend the utility of Stage II to further minimize the overall control of gasoline vapor emissions at the GDF. These technologies include nozzles that sense when fresh air is being drawn into the UST and stop or reduce the air flow. These ORVR-compatible nozzles are now required in California and Texas. Another solution is the addition of processors on the UST vent pipe that capture or destroy the gasoline vapor emissions from the vent pipe. A number of these systems were presented in comments on the proposed rule. While they may have merit, installing these technologies adds to the expense of the control systems.

#### *E. Proposed Rule To Determine Widespread Use of ORVR*

Section 202(a)(6) of the CAA provides discretionary authority to the EPA Administrator to, by rule, revise or waive the section 182(b)(3) Stage II

<sup>14</sup> See EPA Memorandum "Onboard Refueling Vapor Recovery Widespread Use Assessment." A copy of this memorandum is located in the docket for this action EPA-HQ-OAR-2010-1076. The level of these UST vent stack emissions varies based on several factors; EPA estimates a 5.4 to 6.4 percentage point decrease in Stage II control efficiency in the 2011-2015 time frame at GDFs employing non-ORVR compatible vacuum assist Stage II nozzles. The decrease in efficiency varies depending on the vacuum assist technology design (including the use of a mini-boot for the nozzle and the ratio of volume of air drawn into the UST compared to the volume of gasoline dispensed (A/L) ratio), the gasoline Reid vapor pressure, the air and gasoline temperatures, and the fraction of throughput dispensed to ORVR vehicles. The values will increase over time as the fraction of total gasoline dispensed to ORVR vehicles at Stage II GDFs increases.

requirement for Serious, Severe, and Extreme ozone nonattainment areas after the Administrator determines that ORVR is in widespread use throughout the motor vehicle fleet. The percentage of non-ORVR vehicles and the percentage of gasoline dispensed to those vehicles grow smaller each year as these older vehicles wear out and are replaced by new ORVR-equipped models. Given the predictable nature of this trend, the EPA proposed a date for ORVR widespread use.

In the Notice of Proposed Rulemaking (NPRM) (76 FR 41731, July 15, 2011), the EPA proposed that ORVR widespread use will occur at the mid-point in the 2013 calendar year, relying upon certain criteria outlined in the proposed rule. This date was also proposed as the effective date for the waiver of the CAA section 182(b)(3) Stage II requirements for Serious, Severe and Extreme ozone nonattainment areas.

The EPA used two basic approaches in determining when ORVR would be in widespread use in the motor vehicle fleet. Both approaches focused on the penetration of ORVR-equipped vehicles in the gasoline-powered highway motor vehicle fleet. The first proposed approach focused on the volume of gasoline that is dispensed into vehicles equipped with ORVR, and compared the emissions reductions achieved by ORVR alone to the reductions that can be achieved by Stage II controls alone. The second approach focused on the fraction of highway motor gasoline dispensed to ORVR-equipped vehicles.

In the proposal, the EPA included Table 1 (republished below). This work was based on outputs from EPA's MOVES 2010 motor vehicle emissions model, which showed information related to the penetration of ORVR in the national motor vehicle fleet projected to 2020. These model outputs have been updated for the final rule to be consistent with the latest public release of the model (MOVES 2010a) since that is the version of the model states would use in any future inventory assessment work related to refueling emissions control. Overall, ORVR efficiency was shown in column 5 of Table 1 and was determined by multiplying the fraction of gasoline dispensed into ORVR-equipped vehicles by ORVR's 98 percent in-use control efficiency.

TABLE 1—PROJECTED PENETRATION OF ORVR IN THE NATIONAL VEHICLE FLEET BY YEAR—BASED ON MOVES 2010

| Calendar year<br>1 | Vehicle population percentage<br>2 | VMT Percentage<br>3 | Gasoline dispensed percentage<br>4 | ORVR Efficiency percentage<br>5 |
|--------------------|------------------------------------|---------------------|------------------------------------|---------------------------------|
| 2006               | 39.5                               | 48.7                | 46.2                               | 45.3                            |
| 2007               | 45.3                               | 54.9                | 52.5                               | 51.5                            |
| 2008               | 50.1                               | 60.0                | 57.6                               | 56.4                            |
| 2009               | 54.3                               | 64.5                | 62.1                               | 60.9                            |
| 2010               | 59.0                               | 69.3                | 66.9                               | 65.6                            |
| 2011               | 63.6                               | 73.9                | 71.5                               | 70.1                            |
| 2012               | 67.9                               | 78.0                | 75.6                               | 74.1                            |
| 2013               | 71.7                               | 81.6                | 79.3                               | 77.7                            |
| 2014               | 75.2                               | 84.6                | 82.6                               | 80.9                            |
| 2015               | 78.4                               | 87.2                | 85.3                               | 83.6                            |
| 2016               | 81.2                               | 89.4                | 87.7                               | 85.9                            |
| 2017               | 83.6                               | 91.2                | 89.7                               | 87.9                            |
| 2018               | 85.6                               | 92.7                | 91.3                               | 89.5                            |
| 2019               | 87.5                               | 93.9                | 92.7                               | 90.8                            |
| 2020               | 89.0                               | 94.9                | 93.9                               | 92.0                            |

See EPA Memorandum "Onboard Refueling Vapor Recovery Widespread Use Assessment" in the docket (number EPA-HQ-OAR-2010-1076) addressing details on issues related to values in this table.

**Note:** In this table, the columns have the following meaning.

1. Calendar year that corresponds to the percentages in the row associated with the year.
2. Percentage of the gasoline-powered highway vehicle fleet that have ORVR.
3. Percentage of vehicle miles traveled (VMT) by vehicles equipped with ORVR.
4. Amount of gasoline dispensed into ORVR-equipped vehicles as a percentage of all gasoline dispensed to highway motor vehicles.
5. Percentage from the same row in column 4 multiplied by 0.98.

In the proposal, the EPA estimated that ORVR would need to achieve in-use emission reductions of about 77.4 percent to be equivalent to the amount of control Stage II alone would achieve. This estimate was based on the in-use control efficiency of Stage II systems and exemptions for Stage II for lower throughput GDFs. In the NPRM, the EPA assumed that in areas where basic Stage II systems are used the control efficiency of Stage II gasoline vapor control systems is 86 percent. The use of this value depends on the assumption that daily and annual inspections, periodic testing, and appropriate maintenance are conducted in a correct and timely manner. In addressing comments, we have stated that this efficiency could be nearer to 60% if inspections testing and maintenance are not conducted and there is minimal enforcement.<sup>15</sup>

In the NPRM, the EPA estimated that the percentage of gasoline dispensed in an area that is covered by Stage II controls is 90 percent. Multiplying the estimated efficiency of Stage II systems (86 percent) by the estimated fraction of gasoline dispensed in nonattainment areas from Stage II-equipped gasoline pumps yielded an estimate of the area-wide control efficiency of Stage II

<sup>15</sup> See, "Determination of Widespread Use of Onboard Refueling Vapor Recovery (ORVR) and Waiver of Stage II Vapor Recovery Requirements: Summary of Public Comments and Responses," March 2012. Document contained in docket EPA-HQ-OAR-2010-1076.

programs of 77.4 percent ( $0.90 \times 0.86 = 0.774$  or 77.4 percent) for emissions displaced from vehicle fuel tanks.<sup>16</sup> Table 1 indicated this level of ORVR control efficiency is expected to be achieved during calendar year 2013.

In the second approach for estimating when ORVR is in widespread use, we also observed from Table 1 that by the end of calendar year 2012 more than 75 percent of gasoline will be dispensed into ORVR-equipped vehicles. As discussed in the NPRM, the EPA believed that this percentage of ORVR coverage ( $\geq 75$  percent) is substantial enough to inherently be viewed as "widespread" under any ordinary

<sup>16</sup> See section 4.4.3 (especially Figure 4-14 and Table 4-4) in "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume I: Chapters," EPA-450/3-91-022a, November 1991. A copy of this document is located in the docket for this action EPA-HQ-OAR-2010-1076. This is based on annual enforcement inspections and on allowable exemptions of 10,000/50,000 gallons per month as described in section 324(a) of the CAA. The EPA recognizes that these two values vary by state and that in some cases actual in-use efficiencies, prescribed exemption levels, or both may be either higher or lower.

<sup>17</sup> AP-42, The EPA's emission factors document, identifies three sources of refueling emissions: Displacement, spillage, and breathing losses. In the EPA Memorandum "Onboard Refueling Vapor Recovery Widespread Use Assessment" (available in the public docket), the EPA determined that for separate Stage II and ORVR refueling events, spillage and breathing loss emission rates are similar. Thus, this analysis focuses on differences in controlled displacement emissions. Compatibility effects related to ORVR and Stage II vacuum assist systems are addressed separately.

understanding of that term. Furthermore, in Table 1, the percentage of VMT by ORVR-equipped vehicles (column 3) and the amount of gasoline dispensed into ORVR-equipped vehicles (column 4) reached or exceeded 75 percent between the end of year 2011 and end of 2012. The EPA believed this provided further support for establishing a widespread use date after the end of calendar year 2012. Based on the dates derived from these two basic approaches, the EPA proposed to determine that ORVR will be in widespread use by June 30, 2013, or the midpoint of calendar year 2013.

## VI. This Action

### A. Analytical Rationale for Final Rule

Section 202(a)(6) of the CAA provides discretionary authority to the EPA Administrator to, by rule, revise or waive the section 182(b)(3) Stage II requirement after the Administrator determines that ORVR is in widespread use throughout the motor vehicle fleet. As discussed in the NPRM, the EPA has broad discretion in how it defines widespread use and the manner in which any final determination is implemented. In our review of the public comments received on the proposal, no commenter indicated that a widespread use determination was inappropriate or took issue with the EPA's two-pronged analytical approach. We have integrated responses to many comments throughout the preamble to

this final rule. A more detailed set of responses is in a document titled, "Determination of Widespread Use of Onboard Refueling Vapor Recovery (ORVR) and Waiver of Stage II Vapor Recovery, Summary of Public Comments and Responses" that can be found in the docket, EPA-HQ-OAR-2010-1076.

The analytical approaches used by the EPA to determine the widespread use date are influenced by several key input parameters that affect the estimates of the emission reduction benefits of Stage II alone versus the benefits of ORVR alone and the phase-in of ORVR-equipped vehicles. We received several comments on the assumptions and parameters used by the EPA in the NPRM, and in some cases we have updated the information used in calculations that support the final rule, as discussed in the following paragraphs.

#### 1. ORVR Parameters

- *ORVR efficiency.* The EPA used an in-use control efficiency of ORVR of 98 percent in the proposal. This was based on the testing of 1,160 vehicles drawn from the field. EPA has updated its analysis to include an additional 478 refueling emission test results for ORVR-equipped vehicles that were conducted in calendar years 2010 and 2011. The data set, which now includes over 1,600 vehicle tests for vehicles from model years 2000–2010 with mileages ranging from 10,000 to over 100,000, continues to support the conclusion that the 98 percent in-use efficiency values remain appropriate.<sup>18</sup>

- *Modeling program inputs.* The NPRM relied on EPA's MOVES 2010 model for estimating ORVR vehicle fleet penetration, VMT by ORVR vehicles, and gallons of gasoline dispensed to ORVR vehicles. Since the development of the NPRM, the EPA has publicly released MOVES 2010a. The updated model incorporates many improvements. Those relevant here include updates in ORVR vehicle sales, sales projections, scrappage, fleet mix, annual VMT, and fuel efficiency. The EPA believes that the modeling undertaken to determine the widespread use date for the final rule should employ the EPA's latest MOVES modeling program because it contains updated information that bears on the subject of this rulemaking, and because the EPA expects states to also use it in any state-specific demonstrations

<sup>18</sup> See the EPA memorandum "Updated ORVR In-Use Efficiency." A copy of this memorandum is located in the docket for this action EPA-HQ-OAR-2010-1076.

supporting future SIP revisions, including revisions that seek to remove Stage II programs.

#### 2. Stage II Parameters

- *Stage II efficiency.* The EPA used an in-use control efficiency of 86 percent for Stage II in the proposal. As discussed above, Stage II control efficiency depends on inspection, testing, and maintenance by GDF owner/operators, and inspection and enforcement by state/local agencies. Typical values range from 62 percent to 86 percent. The public comments referred the EPA to additional reported information directly related to in-use effectiveness of Stage II vapor recovery.<sup>19</sup> The reports indicate that for balance and vacuum-assist type Stage II systems in use in many states today, the in-use effectiveness of Stage II is typically near 70 percent. Nonetheless, the EPA has elected to retain the use of an 86 percent efficiency value in the analyses supporting the final rule. This is because many state programs have included the maintenance and inspection provisions recommended by EPA to achieve this level of efficiency in their initial SIPs that originally incorporated Stage II controls.<sup>20</sup> Current in-use efficiency values may well be lower based on the performance of the Stage II technology itself or for other reasons related to maintenance and enforcement. We are not rejecting the additional information from commenters or the possibility that Stage II efficiency may be lower in some states or nonattainment areas. However, the EPA believes these issues are best examined in the SIP review process. If real in-use efficiency across all existing Stage II programs is, in fact, lower than 86 percent, the EPA's final analysis overestimates the length of time required for emissions reductions from ORVR alone to eclipse the reductions that can be achieved by Stage II alone.

- *Stage II exemption rate.* In sections 182(b)(3) and 324 of the CAA, Congress permitted exemptions from Stage II controls for GDFs of less than 10,000 gallons/month (privates) and 50,000 gallons/month (independent small

<sup>19</sup> See "Draft Vapor Recovery Test Report," April 1999 by CARB and CAPCOA (now cleared for public use), and "Performance of Balance Vapor Recovery Systems at Gasoline Dispensing Facilities," prepared by the San Diego Air Pollution Control District, May 18, 2000. Both reports are available in the public docket.

<sup>20</sup> The EPA report, "Enforcement Guidance for Stage II Vehicle Refueling Control Programs," U.S. EPA, Office of Air and Radiation, Office of Mobile Sources, December 1991, provides basic EPA guidance on what a state SIP and accompanying regulations should include to achieve high efficiency.

business marketers). The EPA analysis indicated that these GDF throughput values exempted about 10 percent of annual throughput in any given area. Some states included more strict exemption rates, most commonly 10,000 gallons per month (3 percent of throughput) for both privates and independent small business marketers. A few other states' exemption provisions used values that fell within or outside this range.<sup>21</sup> Of the 21 states and the District of Columbia with areas classified as Serious, Severe, or Extreme for ozone and/or within the Ozone Transport Region, the plurality incorporated exemption provisions in their state regulations, which exempted about 10 percent of throughput.<sup>22</sup> Therefore, we believe it remains reasonable to use that value within this analysis.

- *Compatibility factor for vacuum assist Stage II systems.* The EPA discussed the compatibility factor at length in the NPRM and provided relevant materials in the docket. Several commenters asked that the EPA provide guidance on how the compatibility factor should be incorporated into any similar analysis conducted by a state for purposes of future SIP revisions involving Stage II programs. The magnitude of the compatibility factor for any given area varies depending on ORVR penetration, fraction of vacuum assist nozzles relative to balance nozzles, and excess A/L for vacuum assist nozzles. Two states have adopted measures to reduce this effect through the use of ORVR-compatible nozzles and one state prohibits vacuum assist nozzles completely. Due to these significant variables, the EPA is electing not to include the compatibility factor in the widespread use date determination analysis, but will provide the guidance requested by the commenters for use in making future SIP revisions. To the extent that compatibility emissions across all existing Stage II programs as a whole are significant, the EPA's final analysis overestimates the length of time required for emissions reductions from ORVR alone to eclipse the reductions that can be achieved by Stage II alone.

#### B. Updated Analysis of Widespread Use

As discussed previously, the EPA has used two approaches for determining

<sup>21</sup> There are a few states that limit Stage II exemptions to only GDFs with less than 10,000 gpm throughput, which would exempt about three to five percent of area-wide throughput.

<sup>22</sup> See the EPA memorandum "Summary of Stage II Exemption Program Values." A copy of this memorandum is located in the docket for this action in EPA-HQ-OAR-2010-1076.

when ORVR is in widespread use on a nationwide basis. After reviewing our methodology and reviewing the related comments on the NPRM, we are retaining three of the four basic

analytical input parameters and updating one. The in-use ORVR efficiency, the in-use Stage II efficiency, and the Stage II exemption rate parameters are the same as in the

NPRM. However, we have updated the modeling program inputs as discussed previously, and the results are reflected in Table 2.

TABLE 2—PROJECTED PENETRATION OF ORVR IN THE NATIONAL VEHICLE FLEET BY YEAR—BASED ON MOVES 2010(a)

| End of calendar year<br>1 | Vehicle population percentage<br>2 | VMT Percentage<br>3 | Gasoline dispensed percentage<br>4 | ORVR Efficiency percentage<br>5 |
|---------------------------|------------------------------------|---------------------|------------------------------------|---------------------------------|
| 2006                      | 42.6                               | 51.2                | 49.2                               | 48.2                            |
| 2007                      | 48.4                               | 57.3                | 55.5                               | 54.4                            |
| 2008                      | 53.3                               | 62.3                | 60.5                               | 59.2                            |
| 2009                      | 57.7                               | 66.8                | 64.8                               | 63.5                            |
| 2010                      | 62.4                               | 71.6                | 69.5                               | 68.1                            |
| 2011                      | 67.1                               | 76.0                | 73.9                               | 72.4                            |
| 2012                      | 71.4                               | 80.0                | 77.7                               | 76.1                            |
| 2013                      | 75.3                               | 83.4                | 81.0                               | 79.4                            |
| 2014                      | 78.7                               | 86.3                | 84.0                               | 82.3                            |
| 2015                      | 81.8                               | 88.8                | 86.5                               | 84.8                            |
| 2016                      | 84.5                               | 90.9                | 88.6                               | 86.8                            |
| 2017                      | 86.8                               | 92.5                | 90.3                               | 88.5                            |
| 2018                      | 88.8                               | 93.9                | 91.9                               | 90.0                            |
| 2019                      | 90.5                               | 95.0                | 93.2                               | 91.3                            |
| 2020                      | 92.0                               | 95.9                | 94.3                               | 92.4                            |

See EPA Memorandum “Onboard Refueling Vapor Recovery Widespread Use Assessment” in the docket (number EPA-HQ-OAR-2010-1076) addressing details on issues related to values in this table.

Note: In this table, the columns have the following meaning.

1. Calendar year that corresponds to the percentages in the row associated with the year.
2. Percentage of the gasoline-powered highway vehicle fleet that have ORVR.
3. Percentage of vehicle miles traveled (VMT) by vehicles equipped with ORVR.
4. Amount of gasoline dispensed into ORVR-equipped vehicles as a percentage of all gasoline dispensed to highway motor vehicles.
5. Percentage from the same row in column 4 multiplied by 0.98.

The results in Table 2 are applied in the context of the two basic analytical approaches used in the NPRM for supporting the final date associated with the EPA’s widespread use determination. First, using the analysis based on equal reductions for Stage II and ORVR, the 77.4 percent in-use emission reduction efficiency for ORVR will occur in May 2013 (See column 5 of Table 2). Second, 75 percent of gasoline will be dispensed to ORVR-equipped vehicles by April 2012 (See column 4 of Table 2).

C. Widespread Use Date

The updated analysis indicates that the two benchmarks will occur about a year apart, and that one benchmark of April 2012 has already passed. At the time of the NPRM, both of the benchmark dates for the ORVR widespread use determination were in the future, many months after the EPA’s expected final action. Thus, given the basic merits of both approaches, the EPA believed it was reasonable to propose a date between the dates associated with the two analytical approaches.

The EPA’s updated analysis presents a somewhat different picture. The April 2012 benchmark date has already

passed, and the May 2013 benchmark date is less than 1 year away. We believe it is reasonable for the EPA Administrator to determine that ORVR is in widespread use in the motor vehicle fleet as of the date this final action is published in the **Federal Register** because this final rule is being promulgated within the window bounded by the two benchmark dates derived from the updated analyses.

As discussed previously in this notice and in the NPRM, the EPA has discretion in setting the widespread use date. It is evident from the public comments on the NPRM from states and members of the regulated industry, and from recent state actions, that there is a desire to curtail Stage II installations at newly constructed GDFs, and to initiate an orderly phase-out of Stage II controls at existing GDFs.<sup>23</sup> Since one of the two analytical benchmark dates (April 2012)

<sup>23</sup> For example, in November 2011, New Hampshire put new regulations in place that eliminate the need for new GDFs to install Stage II, allows current GDFs with Stage II to decommission the systems, and requires all systems to be decommissioned by December 22, 2015. In May of 2011, New York issued an enforcement discretion directive which curtailed the need for new stations to install Stage II and permitted current installations to be decommissioned. These actions remain under review of EPA.

has passed, and we expect in most cases the second analytical benchmark date (May 2013) will have passed by the time the EPA is able to complete approvals of SIP revisions removing Stage II programs and pass any revised regulations, then in response to comments asking us to expedite the ORVR widespread use finding, the EPA Administrator is determining that ORVR is in widespread use in the motor vehicle fleet as of May 16, 2012. Accordingly, as of May 16, 2012 the requirement to implement a Stage II emissions control program under section 182(b)(3) of the CAA is waived.

D. Implementation of the Rule Provisions

In this final action, the ORVR widespread use determination and waiver of the section 182(b)(3) requirement applies to the entire country. This includes areas that are now classified as Serious or above for ozone nonattainment, as well as those that may be classified or reclassified as Serious or above in the future.

In the NPRM, we indicated that states could potentially demonstrate that ORVR was in widespread use in specific areas sooner than the general, national date. Such a provision is no longer

needed because today's action provides for a nationwide determination of widespread use effective on May 16, 2012.

As stated in this final action and as pointed out by several commenters, the ORVR widespread use determination and section 182(b)(3) waiver determination does not obligate states to remove any existing Stage II vapor recovery requirements. It is possible that a state would determine it beneficial to continue implementation of a Stage II program. For example, in an area where ORVR-equipped fleet penetration is considerably less than the national average, or where Stage II exemptions are significantly more restrictive than the national assumptions used in this analysis, a state may determine that it would not be appropriate to modify its program immediately, but that it would be more appropriate to do so at a later date. In assessing whether and how to phase out Stage II requirements, states are encouraged to review, and as needed revise the area-specific assumptions about taking into consideration their inspection and enforcement resource commitments as well as ORVR/vacuum-assist Stage II compatibility.

A state that chooses to remove the program must submit a SIP revision requesting EPA to approve such action and provide, as appropriate, a demonstration that the SIP revision is consistent with CAA section 110(1), and in some cases consistent with CAA section 193. The EPA will provide additional guidance on conducting assessments to support Stage II-related SIP revisions.<sup>24</sup> The EPA encourages states to review this guidance and consult with the EPA Regional Offices on developing SIP revisions seeking EPA approval for phasing out existing Stage II programs in a manner that ensures air quality protections are maintained.

Section 110(l) precludes the Administrator from approving a SIP revision if it would interfere with applicable CAA requirements (including, but not limited to, attainment and maintenance of the ozone NAAQS and achieving reasonable further progress). A state may demonstrate through analysis that removing a Stage II program in an area as of a specific date will not result in an emissions increase in the area, or that the small and ever-declining increase is offset by other simultaneous changes in the implementation plan. However, a

state may find that by removing Stage II requirements, they are reducing the overall level of emissions reductions they have previously applied toward meeting CAA rate of progress (ROP) or reasonable further progress (RFP) requirements, or demonstrating attainment. If so, the state should explain how removing Stage II controls in the area would not interfere with attaining and maintaining the ozone NAAQS in the area. In such circumstances, it is possible that additional emissions reductions from other measures may be needed to offset the removal of Stage II.

If EPA has approved a state's adoption of Stage II requirements into a SIP before November 15, 1990, section 193 would also apply. Section 193 provides that removal of an emissions control program cannot result in any emissions increase unless the increase is offset. Section 193 only applies if an area is nonattainment for the standard.

State and local agencies should also consider any transportation conformity impacts related to removing Stage II if emissions reductions from Stage II are included in a SIP-approved on-road motor vehicle emissions budget. States may need to adjust conformity budgets or the components of the budget if removing Stage II requirements would alter expected air quality benefits.

In previous memoranda, the EPA provided guidance to states on removing Stage II at refueling facilities dedicated to certain segments of the motor vehicle fleet (e.g., new automobile assembly plants, rental car facilities, E85 dispensing pumps, and corporate fleet facilities). In these specific cases where all or nearly all of the vehicles being refueled are ORVR-equipped, the EPA could conservatively conclude that widespread use of ORVR had occurred in these fleets.<sup>25</sup>

#### *E. Implementation of Rule Provisions in the Ozone Transport Region*

States and the District of Columbia in the OTR in the northeastern U.S. are also subject to a separate Stage II-related requirement. Under section 184(b)(2) of the CAA (42 U.S.C. 7511c(b)(2)), all areas in the OTR, both attainment and nonattainment areas, must implement control measures capable of achieving emissions reductions comparable to those achievable through Stage II controls. The CAA does not contain specific provisions giving authority to the EPA Administrator to waive this

independent requirement. The section 184(b)(2) requirement does not impose Stage II *per se*, but rather is a requirement that OTR states achieve an amount of emissions reductions comparable to the amount that Stage II would achieve. Moreover, section 202(a)(6), in allowing for a waiver of the section 182(b)(3) Stage II requirement for nonattainment areas, does not refer to the independent section 184(b)(2) requirements. Therefore, the section 184(b)(2) Stage II-related requirement for the OTR will continue to remain in place even after the ORVR widespread use determination and section 182(b)(3) waiver effective date.

In the mid-1990s, the EPA issued guidance on estimating what levels of emissions reductions would be "comparable" to those reductions achieved by Stage II.<sup>26</sup> In response, most OTR states simply adopted Stage II programs rather than identify other measures that got the same degree of emissions reductions. Given the continued penetration of ORVR-equipped vehicles into the overall vehicle fleet, Stage II-comparable emissions are significantly less than in the past, and continue to decline. Accordingly, the EPA is issuing updated guidance on determining "comparable measures." States in the OTR should refer to that guidance if preparing a SIP revision to remove Stage II programs in areas of the OTR.<sup>27</sup>

Commenters on the NPRM urged the EPA to revise its previous interpretation of section 184(b)(2) to permit ORVR to be recognized as a Stage II comparable emission reduction measure. This issue is not within the scope of this rulemaking, and EPA is not taking final agency action implementing section 184(b)(2) or an interpretation thereof. However, for informational purposes, we point out that simply treating the ORVR requirements under section 202(a)(6) as a comparable measure that an OTR SIP must additionally contain would arguably render the 184(b)(2) requirement a nullity, which could be an impermissible statutory interpretation. If commenters wish to further address this issue, we ask that they raise their concerns in any future SIP actions under section 184(b)(2) regarding OTR states that may affect them. In addition, we note that the expected level of emissions reductions

<sup>26</sup> "Stage II Comparability Study for the Northeast Ozone Transport Region," (EPA-452/R-94-011; January 1995).

<sup>27</sup> "Phasing Out Stage II Gasoline Refueling Vapor Recovery Programs: Guidance on Satisfying Requirements of Clean Air Act Sections 110(l), 193, and 184(b)(2) (tentative title)." U.S. EPA Office of Air and Radiation, forthcoming.

<sup>24</sup> "Phasing Out Stage II Gasoline Refueling Vapor Recovery Programs: Guidance on Satisfying Requirements of Clean Air Act Sections 110(l), 193, and 184(b)(2) (tentative title)." U.S. EPA Office of Air and Radiation, forthcoming.

<sup>25</sup> "Removal of Stage II Vapor Recovery in Situation where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated," from Stephen D. Page and Margo Tsigiritis Oge, EPA, December 12, 2006.

that Stage II programs can obtain has changed significantly in the past 15 years with ORVR-equipped vehicles phasing in at the rate of 3–4 percent of the fleet each calendar year. Therefore, the EPA is issuing updated guidance on estimating the emissions reductions needed to be comparable to those achievable through Stage II controls. Theoretically, comparable measures could in some areas mean no additional control beyond ORVR is required if Stage II is achieving no additional emission reduction benefit in the area, or has reached a point of providing only a declining *de minimis* benefit.

#### F. Comments on Other Waiver Implementation Issues

Numerous commenters on the NPRM urged the EPA to adopt provisions in the final rule that would exempt new gasoline dispensing facilities with construction occurring between the final rule publication and the effective Stage II waiver date from installing Stage II equipment. The timing issue is now largely moot since widespread use is deemed to have occurred on the effective date of this action. However, under the CAA, states adopt state-specific or area-specific rules, which are then submitted to the EPA for approval into the SIP. These rules are independently enforceable under state law, and also become federally enforceable when the EPA approves them into the SIP. The EPA cannot unilaterally change legally-adopted state statutes or rules or otherwise revise an approved SIP that was not erroneously approved. The EPA's only authority to establish requirements that would apply in lieu of approved SIPs is its authority under CAA section 110(c) to promulgate a Federal Implementation Plan (FIP). To trigger FIP authority, the EPA must first determine that a state has failed to submit a required SIP or that the state's SIP must be disapproved. The circumstances of this ORVR widespread use finding and waiver of the section 182(b)(3) Stage II requirement to do not present either of those situations. According to requirements established by the CAA that are applicable here, states will need to develop and submit SIP revisions to the EPA in order to change or eliminate SIP-approved state rules that set forth the compliance dates for newly constructed GDFs.

Commenters also urged EPA to simply allow states to eliminate all active Stage II programs from certain nonattainment areas after the widespread use date, without requiring SIP revisions from states. While the EPA has discretion to determine the widespread use date, the EPA cannot simply nullify states' rules

that are binding and enforceable under state law. In order to change the federal enforceability of SIPs, states must go through the SIP revision process, and the EPA can approve the SIP revision only if the provisions of section 110(l) and any other applicable requirements, such as the requirements of section 193 and the comparable measures requirement for OTR states, are satisfied. Today's final rule takes no action in implementing CAA sections 110(l), 193, or 184(b)(2), and any future final actions regarding "comparable measures" SIPs will be fact-specific in response to individual state submissions. Also, subsequent to the effective waiver date of the section 182(b)(3) Stage II requirements, areas currently implementing the EPA-approved Stage II programs in their SIPs as a result of obligations under the 1-hour or 1997 8-hour ozone NAAQS, would be required to continue implementing these programs until the EPA approves a SIP revision adopted under state law removing the requirement from the state's ozone implementation plan.

#### VII. Estimated Cost

As part of the NPRM, the EPA conducted an initial assessment of the costs and savings to gasoline dispensing facility owners related to this proposed action. The report titled, "Draft Regulatory Support Document, Decommissioning Stage II Vapor Recovery, Financial Benefits and Costs," is available in the public docket for this action. The report examines the initial costs and savings to facility owners incurred in the decommissioning of Stage II vapor recovery systems, as well as changes in recurring costs associated with above ground hardware maintenance, operations, and administrative tasks. The EPA received no substantive comment on the draft report, other than a concern that the savings identified therein may not come to pass as quickly as envisioned in the draft report if the EPA does not provide updated guidance on comparable measures for the OTR states. We intend to address this concern by issuing separate guidance for the states.<sup>28</sup> EPA will post this action at the following web site address: <http://www.epa.gov/glo/actions.html>.

As part of the re-analysis following the NPRM, the EPA reviewed the input values used for the proposal draft. Most input values were confirmed as

<sup>28</sup> "Phasing Out Stage II Gasoline Refueling Vapor Recovery Programs: Guidance on Satisfying Requirements of Clean Air Act Sections 110(l), 193, and 184(b)(2) (tentative title)." U.S. EPA Office of Air and Radiation, forthcoming.

reasonable and representative but it was concluded that two of the values should be updated. These include: (1) The pre-tax price of gasoline used in the foregone vapor recovery savings calculation, which increased from \$2.30 in 2010 to \$3.04 in 2011 (average price per gallon), and (2) the number of Stage II facilities potentially affected by SIP revisions removing Stage II requirements in non-California Serious, Severe and Extreme ozone nonattainment areas which increased from 26,900 to 30,600 in 19 states and the District of Columbia. As discussed in our final regulatory support document, the EPA estimates recurring cost savings of about \$3,000 per year for a typical gasoline dispensing facility, and an annual nationwide savings of up to \$91 million if Stage II is phased out of the approximately 30,600 dispensing facilities outside of California that are required to have Stage II vapor recovery systems under section 182(b)(3) of the CAA.<sup>29</sup> This analysis assumes that Stage II is removed from GDFs over a three year time frame in an equal number each year. What actually occurs will depend on actions by the individual states. If the states submit and EPA approves SIP revisions to remove Stage II systems from these GDFs, the EPA projects savings of about \$10.2 million in the first year, \$40.5 million in the second year, and \$70.9 million in the third year. Long term savings are projected to be about \$91 million per year, compared to the current use of Stage II systems in these areas.

#### VIII. Statutory and Executive Order Reviews

##### A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

<sup>29</sup> See "Final Regulatory Support Document, Decommissioning Stage II Vapor Recovery, Financial Benefits and Costs," available in public docket, EPA-HQ-OAR-2010-1076.

*B. Paperwork Reduction Act*

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

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any new requirements on small entities. Rather, it provides criteria for reducing existing regulatory requirements on gasoline dispensing facilities, some of which may qualify as small businesses.

*D. Unfunded Mandates Reform Act*

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments, or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action addresses the removal of a requirement regarding gasoline vapor

recovery equipment, but does not impose any obligations to remove these programs.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action does not impose any new mandates on state or local governments. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It does not impose additional costs on gasoline distribution, but rather promises to lower operating and maintenance costs for gasoline dispensing facilities by facilitating removal of redundant gasoline refueling vapor controls.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment under the EPA's NAAQS for ozone. This action proposes to waive the requirement for states to adopt largely redundant Stage II programs, based on a determination of widespread use of ORVR in the motor vehicle fleet.

*K. Congressional Review Act*

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

#### IX. Statutory Authority

The statutory authority for this action is provided by the CAA, as amended (42 U.S.C. 7401, et seq.); relevant provisions of the CAA include, but are not limited to sections 182(b)(3), 202(a)(6), 301(a)(1), and 307(b), and 307(d)(2) U.S.C. 7511a(b)(3), 7521(a)(6), 7601(a)(1), 7607(b), and 7607(d).

#### List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Particulate matter, Volatile organic compounds.

Dated: May 9, 2012.

**Lisa P. Jackson**,  
Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

#### PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS.

- 1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

#### Subpart G—[Amended]

- 2. Section 51.126 is added to read as follows:

##### § 51.126 Determination of widespread use of ORVR and waiver of CAA section 182(b)(3) Stage II gasoline vapor recovery requirements.

(a) Pursuant to section 202(a)(6) of the Clean Air Act, the Administrator has determined that, effective May 16, 2012, onboard refueling vapor recovery (ORVR) systems are in widespread use in the motor vehicle fleet within the United States.

(b) Effective May 16, 2012, the Administrator waives the requirement of Clean Air Act section 182(b)(3) for Stage II vapor recovery systems in ozone nonattainment areas regardless of

classification. States must submit and receive EPA approval of a revision to their approved State Implementation Plans before removing Stage II requirements that are contained therein.

[FR Doc. 2012–11846 Filed 5–15–12; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R03–OAR–2011–0714; FRL–9670–3]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware, New Jersey, and Pennsylvania; Determinations of Attainment of the 1997 Annual Fine Particulate Standard for the Philadelphia-Wilmington Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** EPA is making two determinations regarding the Philadelphia-Wilmington, PA-NJ-DE fine particulate (PM<sub>2.5</sub>) nonattainment area (the Philadelphia Area). First, EPA is making a determination that the Philadelphia Area has attained the 1997 annual PM<sub>2.5</sub> national ambient air quality standard (NAAQS) by its attainment date of April 5, 2010. This determination is based upon quality assured and certified ambient air monitoring data that show the area monitored attainment of the 1997 annual PM<sub>2.5</sub> NAAQS for the 2007–2009 monitoring period. Second, EPA is making a clean data determination, finding that the Philadelphia Area has attained the 1997 PM<sub>2.5</sub> NAAQS, based on quality assured and certified ambient air monitoring data for the 2007–2009 and 2008–2010 monitoring periods. In accordance with EPA's applicable PM<sub>2.5</sub> implementation rule, this determination suspends the requirement for the Philadelphia Area to submit an attainment demonstration, reasonably available control measures/reasonably available control technology (RACM/RACT), a reasonable further progress (RFP) plan, and contingency measures related to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS for so long as the area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS. These actions are being taken under the Clean Air Act (CAA).

**DATES:** This rule is effective on June 15, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID

Number EPA–R03–OAR–2011–0714. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning EPA's action related to Delaware or Pennsylvania, please contact Maria A. Pino, (215) 814–2181, or by email at [pino.maria@epa.gov](mailto:pino.maria@epa.gov). If you have questions concerning EPA's action related to New Jersey, please contact Henry Feingersh, (212) 637–3382, or by email at [feingersh.henry@epa.gov](mailto:feingersh.henry@epa.gov).

**SUPPLEMENTARY INFORMATION:** The following outline is provided to aid in locating information in this action.

- I. Background
- II. Summary of Actions
- III. Summary of Public Comments and EPA Responses
- IV. Final Actions
- V. Statutory and Executive Order Reviews

#### I. Background

On January 23, 2012, EPA published a direct final rulemaking (77 FR 3147) and companion notice of proposed rulemaking (NPR) (77 FR 3223) for the States of Delaware and New Jersey and the Commonwealth of Pennsylvania (the States). In the January 23, 2012 rulemaking action, EPA proposed to determine that the Philadelphia Area attained the 1997 PM<sub>2.5</sub> NAAQS by its attainment date, April 5, 2010. EPA also proposed to make a clean data determination, finding that the Philadelphia Area has attained the 1997 PM<sub>2.5</sub> NAAQS.

Because EPA received adverse comment, EPA withdrew the direct final rule on March 13, 2012 (77 FR 14697), and the direct final rule was converted to a proposed rule.

#### II. Summary of Actions

These actions do not constitute a redesignation to attainment under section 107(d)(3) of the CAA. The designation status of the Philadelphia Area will remain nonattainment for the 1997 annual PM<sub>2.5</sub> NAAQS until such