

The revision to a 20% opacity standard in the submitted rule corrects the cited deficiency for unclassified, attainment, maintenance, and moderate nonattainment areas to a level comparable to RACM/RACT in other parts of the country. We believe that BACM/BACT, as required for the serious nonattainment area in PCAQCD, should be at least as stringent as RACM/RACT. We do not have justification for an opacity standard more stringent than 20% to fulfill BACM/BACT for general PM-10 sources in the serious nonattainment area. Therefore, we believe that the 20% opacity standard fulfills RACM/RACT and BACM/BACT for the general PM-10 sources to which the rule is applicable, even though some specific PM-10 sources might achieve a more stringent opacity standard in fulfilling BACM/BACT.

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling the requirements of RACM/RACT and BACM/BACT and should be given full approval.

#### C. Public comment and final action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the CAA. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate the rule into the federally enforceable SIP.

### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law,

it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

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

Dated: October 19, 2005.

Wayne Nastri,

Regional Administrator, Region IX.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[OAR-2005-0150b; FRL-7995-2]

#### Designation of Areas for Air Quality Planning Purposes; Arizona; Correction of Boundary of Phoenix Metropolitan 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** EPA is proposing to correct the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area to exclude the Gila River Indian Reservation. EPA is proposing this action under the authority of section 110(k)(6) of the Clean Air Act and in light of the Federal trust responsibility to the Tribes. This action is intended to facilitate and support the Gila River Indian Community's efforts to develop, adopt and implement a comprehensive Tribal Implementation Plan by removing unnecessary obligations that flow from the erroneous inclusion of a portion of the Reservation in the Phoenix metropolitan 1-hour ozone nonattainment area.

**DATES:** Any comments on this proposal must arrive by December 12, 2005.

**ADDRESSES:** Submit comments, identified by docket number R09-OAR-2005-150, by one of the following methods:

1. *Agency Web site:* <http://docket.epa.gov/rmepub/>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

3. *E-mail:* [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

4. *Mail or deliver:* Wienke Tax, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal

information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are "anonymous access" systems, and EPA will not know your identify or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at <http://docket.epa.gov/rmepub> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco,

California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Wienke Tax, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (520) 622-1622, e-mail: [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses the correction of the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area under section 110(k)(6) of the Clean Air Act to exclude the Gila River Indian Reservation. In the Rules and Regulations section of this **Federal Register**, we are taking direct final action to correct the boundary without

prior proposal because we believe this correction action is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive comments, no further activity is planned. For all the reasons explained in the parallel direct final notice, we propose to correct the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area to exclude the Gila River Indian Reservation. For further information on this proposal and the rationale underlying our proposed action, please see the direct final action.

Dated: November 3, 2005.

**Stephen L. Johnson,**  
*Administrator.*

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