

pocket costs under the MA-PD plan may be submitted for CHAMPUS/TRICARE payment. However, consistent with paragraph (c)(4) of this section, out-of-pocket costs do not include costs associated with unauthorized out-of-system care or care otherwise obtained under circumstances that result in a denial or limitation of coverage for care that would have been covered or fully covered had the beneficiary met applicable requirements and procedures. In such cases, the CHAMPUS/TRICARE amount payable is limited to the amount that would have been paid if the beneficiary had received care covered by the Medicare Advantage plan. If the TRICARE-Medicare beneficiary enrolls in a MA-PD drug plan, it will be governed by Medicare Part C, although plans that offer a prescription drug benefit also must comply with Medicare Part D rules. The beneficiary has to pay the plan's monthly premiums and obtain all medical care and prescription drugs through the Medicare Advantage plan before seeking CHAMPUS/TRICARE payment. CHAMPUS/TRICARE payment for such beneficiaries may not exceed that which would be payable for a beneficiary under paragraph (d)(1)(iii)(C) of this section.

3. Section 199.21 is amended by adding new paragraphs (g)(4) and (i)(2)(xi), and by revising paragraphs (h)(2)(ii) and (m), to read as follows:

**§ 199.21 Pharmacy benefits program.**

(g) \* \* \*  
(4) *Transition to the uniform formulary.* Beginning in Fiscal Year 2005, under an updated charter for the DoD P&T Committee, the committee shall meet at least quarterly to review therapeutic classes of pharmaceutical agents and make recommendations concerning which pharmaceutical agents should be on the Uniform Formulary, Basic Core Formulary, and Extended Core Formulary. The P&T Committee will review the classes in a methodical, but expeditious manner. During the transition period from the previous methodology of formulary management involving only the MTFs and the TRICARE Mail Order Pharmacy Program, previous decisions by the predecessor DoD P&T Committee concerning MTF and Mail Order Pharmacy Program formularies shall continue in effect. As therapeutic classes are reviewed under the new formulary management process, the processes established by this section shall apply.

\* \* \* \* \*  
(h) \* \* \*

(2) \* \* \*  
(ii) *Availability of formulary pharmaceutical agents at military treatment facilities.* Pharmaceutical agents included on the uniform formulary are available through facilities of uniformed services, consistent with the scope of health care services offered in such facilities and additional determinations by the Pharmacy and Therapeutics Committee of the relative clinical effectiveness and cost effectiveness, based on costs to the Program associated with providing the agents to beneficiaries. The Basic Core Formulary (BCF) is a subset of the uniform formulary and is a mandatory component of formularies at all full-service MTF pharmacies. The BCF contains the minimum set of pharmaceutical agents that each full-service MTF pharmacy must have on its formulary to support the primary care scope of practice for Primary Care Manager enrollment sites. Limited-service MTF pharmacies (e.g., specialty pharmacies within an MTF or pharmacies servicing only active duty military members) are not required to include the entire BCF on their formularies, but may limit their formularies to those BCF agents appropriate to the needs of the patients they serve. An Extended Core Formulary (ECF) may list preferred agents in drug classes other than those covered by the BCF. Among BCF and ECF agents, individual MTF formularies are determined by local Pharmacy and Therapeutics Committees based on the scope of health care services provided at the respective MTFs. All pharmaceutical agents on the local formulary of full-service MTF pharmacies must be available to all categories of beneficiaries.

\* \* \* \* \*  
(i) \* \* \*  
(2) \* \* \*  
(xi) For a Medicare-eligible beneficiary, the cost sharing requirements may not be in excess of the cost-sharing requirements applicable to all other beneficiaries covered by 10 U.S.C. 1086.

\* \* \* \* \*  
(m) *Effect of other health insurance.* The double coverage rules of section 199.8 of this part are applicable to services provided under the pharmacy benefits program. For this purpose, the Medicare prescription drug benefit under Medicare Part D, prescription drug benefits provided under Medicare Part D plans are double coverage plans and such plans will be the primary payer, to the extent described in section 199.8 of this part. Beneficiaries who

elect to use these pharmacy benefits shall provide DoD with other health insurance information.

Dated: December 21, 2006.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. E6-22258 Filed 12-27-06; 8:45 am]

**BILLING CODE 5001-06-P**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2005-AZ-0009; FRL-8262-5]

**Approval and Promulgation of Implementation Plans; Arizona; Motor Vehicle Inspection and Maintenance Programs**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve two revisions to the Arizona State Implementation Plan submitted by the Arizona Department of Environmental Quality. These revisions consist of changes to Arizona's Basic and Enhanced Vehicle Emissions Inspection Programs that would exempt collectible vehicles in the Phoenix metropolitan area, and collectible vehicles and motorcycles in the Tucson metropolitan area, from emissions testing requirements; an updated performance standard evaluation for the vehicle emissions inspection program in the Phoenix area; and new contingency measures. EPA is proposing approval of these two state implementation plan revisions because they meet all applicable requirements of the Clean Air Act and EPA's regulations and because the exemptions would not interfere with attainment or maintenance of the national ambient air quality standards in the two affected areas. EPA is proposing this action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect is to exempt these vehicle categories from the emissions testing requirements of the State's vehicle emissions inspection programs as approved for the Phoenix and Tucson areas.

**DATES:** Written comments must be received at the address below on or before January 29, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-

OAR-2005-AZ-0009 by one of the following methods:

*http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

E-mail: *tax.wienke@epa.gov*.

Fax: (415) 947-3579 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

Mail: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR-2, 75 Hawthorne Street, San Francisco, California 94105-3901.

Hand Delivery: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR-2, 75 Hawthorne Street, San Francisco, California 94105-3901. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R09-OAR-2005-AZ-0009. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR-2, 75 Hawthorne Street, San Francisco, California 94105-3901. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

**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*.

**SUPPLEMENTARY INFORMATION:**

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

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**I. Introduction and Background**

In May 1995, EPA approved Arizona's Basic and Enhanced Vehicle Emissions Inspection/Maintenance (VEI) Programs as meeting the applicable requirements of the Clean Air Act, as amended in 1990 (CAA or "Act") and EPA's motor vehicle inspection and maintenance rule ("EPA's I/M rule" or "federal I/M rule") as amended. See 60 FR 22518 (May 8, 1995). A "basic" I/M program was required in the Tucson Air Planning Area carbon monoxide (CO) nonattainment area (referred to by

Arizona in this context as "Area B") and in the Phoenix metropolitan CO and ozone nonattainment area (referred to as "Area A"). The VEI programs were designed to reduce emissions of CO, volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>).<sup>1</sup> At that time, Arizona was not required to have an "enhanced" I/M program, although Arizona was implementing most elements of an enhanced program in Phoenix. Arizona's program, as implemented in Phoenix, however, was not approved as an enhanced program, because the program did not satisfy all the requirements in EPA's I/M rule for enhanced programs. An enhanced I/M program became a requirement for the Phoenix area when the area was reclassified from "moderate" nonattainment to "serious" nonattainment for the CO NAAQS effective August 28, 1996 (61 FR 39343, July 29, 1996), and when the area was reclassified from "moderate" nonattainment to "serious" nonattainment for the 1-hour ozone NAAQS effective February 13, 1998 (63 FR 7290, February 13, 1998).

Since the Arizona VEI programs were originally approved in May 1995, EPA has amended the federal I/M rule several times to provide states with more flexibility in designing their programs but also to require testing of the on-board diagnostic (OBD) system. Since that time, Arizona has also made a number of changes to its enhanced and basic VEI programs.

In January 2003, we approved changes to the Arizona VEI programs submitted to us on July 6, 2001 and April 10, 2002, including the incorporation of OBD testing, an exemption for the first five model year vehicles from the programs on a rolling basis, replacement of the previously-approved remote sensing program in Phoenix with an on-road testing study, and legislative changes to the waiver provisions. See 68 FR 2912 (January 22, 2003). In our January 2003 final rule, we also approved the VEI program in the Phoenix area as meeting the enhanced I/M program performance standard. In today's notice, we propose action on a statutory change made by the Arizona Legislature to the Arizona VEI programs to exempt certain categories of vehicles from emissions testing requirements.

<sup>1</sup> The Phoenix metropolitan area is also a nonattainment area for respirable particulate matter (PM<sub>10</sub>); however, the VEI program plays a very minor role in the control strategy for this pollutant. There is no CAA requirement for I/M programs in PM<sub>10</sub> nonattainment areas.

## II. Summary of Arizona's SIP Submittals

The Arizona Department of Environmental Quality (ADEQ) submitted the most recent statutory changes to its Basic and Enhanced VEI Programs as a revision to the Arizona State Implementation Plan (SIP) on December 23, 2005 ("VEI SIP Revision"). The VEI SIP Revision submittal includes the SIP revision itself, divided into a non-regulatory portion, "Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs" (December 2005), and a regulatory portion, House Bill (HB) 2357, as well as supporting materials related to legal authority, adoption, public process and technical analysis.

HB 2357 amends the Arizona Revised Statutes (ARS) Section 49-542 by exempting vehicles that are at least 15 years old or are of a unique and rare design and that carry collectible vehicle insurance that restricts the mileage and/or use of the vehicle ("collectible vehicles") from emissions testing in both Area A (i.e., the Phoenix area) and Area B (i.e., the Tucson area). In addition, HB 2357 exempts motorcycles in the Tucson area from emissions testing. Specifically, the amendments to ARS 49-542 are found in paragraphs or subparagraphs (J)(2)(k), (J)(2)(l), (Y), and (Z) of that section of code. The changes to ARS Section 49-542 are self-implementing, which means that they become effective upon EPA approval as a revision to the Arizona SIP.

Among the technical materials included in the VEI SIP Revision submittal package is a report<sup>2</sup> prepared by ADEQ that evaluates the impacts of exempting three vehicle categories (vehicles 25 model years old and older, motorcycles, and collectible vehicles) from the emissions testing requirements on ambient air quality and on the ability of Areas A and B (i.e., Phoenix and Tucson, respectively) to maintain or attain the national ambient air quality standards (NAAQS). The report concluded that the testing and repair of these vehicle categories as a whole does provide a significant air quality benefit. The analysis, however, also identified a subset of vehicle categories (collectible vehicles in Phoenix and Tucson plus motorcycles in Tucson) for which the emissions testing requirement does not provide a significant air quality benefit and for which exemption would not

interfere with continued maintenance of the CO NAAQS or progress towards the 8-hour ozone NAAQS. HB 2357 was a Legislative response to the findings in this report.

In consultation with EPA concerning the VEI SIP Revision, ADEQ prepared an updated performance standard evaluation for the VEI program in the Phoenix area to reflect the new exemption for collectible vehicles, and developed new contingency measures that are intended to provide for reinstatement of emissions testing for the newly exempt vehicle categories in the event that a violation of the carbon monoxide NAAQS were to be recorded in the Phoenix or Tucson areas. On October 3, 2006, ADEQ adopted and submitted the updated performance standard evaluation and new contingency measures in a supplemental SIP revision, entitled, "Supplement to Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs, December 2005" (September 2006) ("VEI SIP Supplement"). As part of the submittal of the VEI SIP Supplement, ADEQ documented the public participation process that was conducted by ADEQ prior to adoption and submittal to EPA.

## III. EPA Review of the SIP Revisions

### A. CAA Procedural Provisions

CAA section 110(l) requires revisions to a SIP to be adopted by the state after reasonable notice and public hearing. EPA has promulgated specific requirements for SIP revisions in 40 CFR part 51, subpart F.

On October 20 and 21, 2005, ADEQ published notices in newspapers of general circulation in the Phoenix and Tucson areas of public hearings on proposed revisions to the Arizona SIP to exempt collectible vehicles in Phoenix and collectible vehicles and motorcycles in Tucson from emissions testing requirements under the Arizona VEI programs (i.e., a draft VEI SIP Revision). Public hearings were held on November 28, 2005 in Phoenix and November 30, 2005 in Tucson. On December 23, 2005, in accordance with Arizona law, ADEQ adopted these exemptions as set forth in "Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs" (December 2005) as a revision to the Arizona SIP and submitted the revision to EPA for approval.

ADEQ followed a similar process in adopting and submitting the VEI SIP Supplement. ADEQ held a public

hearing in Tucson on August 30, 2006 and in Phoenix on August 31, 2006 on a draft VEI SIP Supplement and adopted the VEI SIP Supplement on October 3, 2006 in accordance with Arizona law prior to submittal to EPA as a revision to the Arizona SIP.

ADEQ's VEI SIP Revision and VEI SIP Supplement submittal packages include evidence of public notice and hearing, ADEQ responses to public comments, and ADEQ adoption as described above, and, based on review of these materials, we find that ADEQ has met the procedural requirements of CAA section 110(l) and 40 CFR part 51, subpart F.

### B. I/M Program Requirements

As noted in Section I, Introduction and Background, herein, Arizona's VEI programs were most recently approved as meeting federal I/M program requirements on January 22, 2003 (68 FR 2912). Although the Phoenix and Tucson areas have been redesignated to "attainment" for the CO NAAQS, the VEI programs continue to be relied upon to maintain the CO standard in those areas. Moreover, "enhanced" I/M remains an "applicable requirement" for the Phoenix area under our final rule implementing the 8-hour ozone NAAQS (see 40 CFR 51.900(f) and 51.905(a)(1)) based on the designation of that area as a nonattainment area for the 8-hour ozone NAAQS (and designation as nonattainment for the 1-hour ozone NAAQS at the time of designation for the 8-hour standard). Thus, to be approved, the VEI programs, as amended and evaluated herein, must continue to meet the relevant enforceability requirements for I/M programs in subpart S of 40 CFR part 51 and, for the Phoenix area with respect to ozone, the enhanced performance standard in 40 CFR 51.351. In the following paragraphs, we review ADEQ's VEI SIP Revision and VEI SIP Supplement to determine whether the amended VEI programs continue to meet federal I/M program requirements. The aspects of I/M affected by the submitted revisions to the VEI programs include vehicle coverage and exemptions, compliance enforcement, and the performance standard evaluation.

#### 1. Vehicle Coverage and Exemptions

The performance standard for enhanced I/M programs (including alternate low enhanced programs) assumes coverage of all 1968 and later model year light duty vehicles and trucks. Light duty trucks are not included in the performance standard for basic I/M programs. Other levels of coverage may be approved if the

<sup>2</sup> "Report on Potential Exemptions from Vehicle Emissions Testing for Motorcycles, Collectible Vehicles, and Vehicles 25 Model Years Old and Older" (December 2004).

necessary emission reductions are achieved. See 40 CFR 51.356.

The Arizona VEI programs approved by EPA in 1995 exempt several categories of vehicles from the emissions testing requirements. Such vehicle categories included, among others, vehicles manufactured in or before the 1966 model year and vehicles being sold between motor vehicle

dealers. See 60 FR 22518, 22521 (May 8, 1995). In 2003, we approved revisions to the VEI programs including an exemption for the first five model year vehicles on a rolling basis. See 68 FR 2912 (January 22, 2003). The SIP revision we are acting on today would establish additional vehicle categories that would be exempt from emissions testing requirements: collectible

vehicles in the Phoenix and Tucson areas and motorcycles in the Tucson area. Based on data for calendar year 2003, collectible vehicles make up 0.5 percent of the fleet of vehicles subject to VEI in the Phoenix area, and collectible vehicles and motorcycles together make up 2.1 percent of the subject fleet in the Tucson area. See Table 1 below.

TABLE 1.—PERCENTAGE OF FLEET AFFECTED BY SIP REVISION <sup>1</sup>

	Number of vehicles tested	Percent of vehicle fleet
Phoenix:		
Total Tested Fleet .....	825,812	100.0
Estimated Number of Collectible Vehicles .....	3,800	0.5
Tucson:		
Total Tested Fleet .....	373,734	100.0
Estimated Number of Collectible Vehicles .....	1,400	0.4
Number of Motorcycles .....	6,240	1.7

<sup>1</sup> From Table 1 on page 4 of the VEI SIP Revision.

Basic and enhanced I/M programs are not required to test motorcycles. However, the emissions testing of motorcycles was shown to have a significant air quality benefit in the Phoenix area, so the State has not adopted an exemption for motorcycles in that area. The effect of the new exemptions on the continued ability of the VEI program in the Phoenix area to meet the enhanced I/M program performance standard is discussed below in Section III.B.3, "Performance Evaluation," and the effect of the new exemptions on emissions and ambient air quality in both Phoenix and Tucson is discussed herein in Section III.C, "Demonstrating Noninterference With Attainment And Maintenance Under CAA Section 110(l)."

## 2. Compliance Enforcement

Section 51.361 of title 40 of the CFR requires that denial of motor vehicle registration be the method used to ensure compliance with enhanced I/M programs. ARS Section 49–542(D) and Arizona Administrative Code (AAC) R18–2–1007 require that all vehicles must complete a vehicle emissions inspection to obtain a vehicle registration.

Collectible vehicles exempt from emissions testing under the submitted SIP revision are required to have collectible vehicle insurance. This type of vehicle is "maintained primarily for use in car club activities, exhibitions, parades or other functions of public interest or for a private collection and is used only infrequently for other purposes" and "has a collectible vehicle or classic automobile insurance

coverage that restricts the collectible vehicle mileage or use, or both, and requires the owner to have another vehicle for personal use."<sup>3</sup>

The Arizona Department of Transportation, Motor Vehicle Division (MVD), will be able to track collectible vehicles in cooperation with collectible vehicle insurers. Insurers who submit evidence of collectible vehicle insurance to MVD will have those vehicles automatically tagged in MVD's database to be exempt from testing at renewal of registration. Should those vehicles' collectible insurance be cancelled or not be renewed, MVD will be notified by the insurer and will send the vehicle owner a letter that the collectible vehicle's registration will be cancelled. The owner of the vehicle has 14 days after receipt of the letter from MVD to submit a new policy. If this is not done, the vehicle's registration is cancelled, as is the exemption from emissions testing.

In contrast to collectible vehicles, exemption of motorcycles in the Tucson area from emissions testing would be straightforward from the standpoint of compliance enforcement and would not undermine compliance enforcement for other types of vehicles that continue to be subject to the emissions testing requirements under the VEI program in the Tucson area. Owners of motorcycles registered in the Tucson area will simply receive a registration or re-registration form from MVD that indicates "emissions test not required."

<sup>3</sup> See HB 2357, in Appendix A of the VEI SIP submittal.

Therefore, we propose to find that the Arizona VEI programs, as amended to exempt collectible vehicles in the Phoenix and Tucson areas and motorcycles in the Tucson area, continue to meet the compliance enforcement requirements of 40 CFR 51.361.

## 3. Performance Evaluation

In our review of ADEQ's VEI SIP Revision submittal, we concluded that the revision could not be approved without a performance evaluation demonstrating that the VEI program, as amended to exempt collectible vehicles, would continue to meet the federal enhanced I/M performance standard (codified at 40 CFR 51.351) in the Phoenix area. The need for an updated performance evaluation follows from the fact that the Phoenix area, which was designated as nonattainment for the 1-hour ozone NAAQS (at the time of designation for the 8-hour ozone nonattainment), is designated as nonattainment for the 8-hour ozone NAAQS and that enhanced I/M remains an "applicable requirement" for such areas under our final rule implementing the 8-hour ozone NAAQS (see 40 CFR 51.900(f) and 51.905(a)(1)).

In response, ADEQ prepared an updated performance evaluation using the most recent version of EPA's motor vehicle emissions model, MOBILE6.2. This updated evaluation was included in the VEI SIP Supplement submitted to EPA on October 3, 2006. The VEI SIP Supplement includes a summary report and paper copies of MOBILE6.2 input and output files.

For the updated evaluation, ADEQ developed and applied reduction factors to exclude collectible vehicles from the fleet tested under the VEI program as provided for in HB 2357. ADEQ then compared the emissions reduction benefits from the revised VEI program with the corresponding benefits that would be achieved under EPA's

alternate low enhanced I/M performance standard.

The results of ADEQ's analysis are summarized in Table 2 below, which shows that the emissions reduction benefits achieved by the Arizona VEI program as amended are higher than those achieved under the performance standard. The amended Arizona VEI program continues to achieve greater

emissions reductions than the federal model program because the VEI program includes elements that go beyond federal I/M requirements. These include a requirement for a one-time only waiver, an implementation area beyond the nonattainment area boundaries, and denial of waivers for grossly-emitting vehicles.

TABLE 2.—RESULTS OF ADEQ'S ALTERNATE LOW ENHANCED PERFORMANCE STANDARD MODELING <sup>1</sup>

	VOC	2008 NO <sub>x</sub>	CO	VOC	NO <sub>x</sub>	CO
I/M Benefits in Area A (grams/mile) .....	0.21	0.10	3.66	0.07	0.09	1.40
I/M Performance Standard benefits (grams/mile) .....	0.16	0.02	2.91	0.04	0.01	1.02

<sup>1</sup> The emission rates in this table represent the difference between the fleet-wide emission rate under the applicable program (i.e., amended Arizona VEI program or EPA's I/M model program) and the corresponding emission rate under the no-I/M scenario. See Tables 1, 2, and 3 of appendix B to the VEI SIP Supplement.

Based on our review of the VEI SIP Supplement, we find ADEQ's methods used to update the performance standard evaluation and use of the alternate low enhanced I/M performance standard to be acceptable, and we find that the VEI program, as amended to exempt collectible vehicles in the Phoenix area from the emissions testing requirements, exceeds the alternate low enhanced I/M performance standard in the Phoenix area as required under 40 CFR 51.351 and 51.905(a)(1). Therefore, we propose to approve the updated performance standard evaluation for the Phoenix VEI program, as submitted on October 3, 2006 in the VEI SIP Supplement, as a revision to the Phoenix portion of the Arizona Ozone SIP.

*C. Demonstrating Noninterference With Attainment and Maintenance Under CAA Section 110(l)*

Revisions to SIP-approved control measures must meet the requirements of Clean Air Act section 110(l) to be approved by EPA. Section 110(l) states: “\* \* \*. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.”

We interpret section 110(l) to apply to all requirements of the CAA and to all

areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. We also interpret section 110(l) to require a demonstration addressing all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. Thus, for example, modification of a SIP-approved measure may impact NO<sub>x</sub> emissions, which may impact PM<sub>2.5</sub>. The scope and rigor of an adequate section 110(l) demonstration of noninterference depends on the air quality status of the area, the potential impact of the revision on air quality, the pollutant(s) affected, and the nature of the applicable CAA requirements.

As described above, the changes to the Arizona VEI programs that would occur with EPA approval of the two SIP revision submittals evaluated herein (i.e., the new exemptions from emissions testing for collectible vehicles in Phoenix and collectible vehicles and motorcycles in Tucson) affect both the Phoenix and Tucson areas. Therefore, EPA needs to review the effect of the exemptions in both of these areas before we can determine whether we can approve the two SIP revisions under CAA section 110(l).

The VEI SIP Revision submittal that seeks exemption of collectible vehicles from the Phoenix enhanced I/M program and collectible vehicles and motorcycles from the Tucson basic I/M program includes an evaluation of the

effects of the revisions to the VEI programs on ozone, carbon monoxide, PM<sub>2.5</sub>, and air toxics in both geographic areas. The details of ADEQ's evaluation of the emissions effects and related ambient air quality impacts of the new exemptions are contained in “Report on Potential Exemptions from Vehicle Emissions Testing for Motorcycles, Collectible Vehicles and Vehicles 25 Model Years Old and Older (December 2004)” (“2004 Report”), which was included as Appendix B to the VEI SIP Revision.

The 2004 report indicates that ADEQ used the latest version of EPA's motor vehicle emissions model program, MOBILE6.2, to estimate the emissions effects of the new exemptions. The methods used to gather data included surveys of collectible vehicle insurers and collectible vehicle and motorcycle owners, in addition to acquisition of data from the State vehicle emissions inspections programs, other state agencies, air quality planning agencies and relevant air quality plans. We find that ADEQ used reasonable methods and appropriate models in estimating the emissions effects of the new exemptions. Table 3 below summarizes ADEQ's estimates by geographic area, vehicle category, and pollutant in units of metric tons per day (mtpd). Table 3 also shows the emissions impact as a percentage of the overall pollutant-specific inventory in the applicable area.

TABLE 3.—VOC AND CO EMISSIONS INVENTORY IMPACTED BY THE VEI SIP REVISION

Vehicle category	Area-wide total emissions inventory (mtpd)	I/M benefit from test and repair of vehicles <sup>1</sup> (mtpd)	Percent of areawide total emissions inventory
Phoenix:			
Collectible Vehicles:			
VOC .....	328.9	0.03	0.009
CO .....	912.3	0.32	0.035
Tucson:			
Collectible Vehicles:			
VOC .....	84.8	0.01	0.012
CO .....	598.5	0.14	0.023
Motorcycles:			
VOC .....	84.8	0.03	0.035
CO .....	598.5	0.09	0.015

<sup>1</sup> I/M Benefit = the reduction in emissions due to the repair of vehicles that exceed the prescribed emissions standards in Arizona Administrative Code (A.A.C.) R18–2–1031.

### 1. Ozone

Ozone is formed by the interaction of directly-emitted precursor emissions, volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>), in the presence of sunlight under the influence of meteorological and topographical features of an area.

*Phoenix.* By rule effective June 15, 2004, EPA designated the Phoenix area as a “basic” nonattainment area for the new 8-hour ozone NAAQS based on 2001–2003 air quality monitoring data. See 69 FR 23858 (April 30, 2004). As indicated in Table 3 above, the revision to the VEI program in Phoenix would increase VOC emissions by 0.03 metric tons per day, which represents approximately 0.009% of the overall VOC emissions inventory in this area under existing conditions. ADEQ did not estimate NO<sub>x</sub> emissions, but we agree with ADEQ’s reasoning that any change, positive or negative, in NO<sub>x</sub> emissions would be minimal given the small number of vehicles involved, the fact that repairs to vehicles to reduce VOC and CO emissions often result in an incremental increase in NO<sub>x</sub> emissions, and the small fraction of collectible vehicles (approximately 8 percent) currently subject to NO<sub>x</sub> testing (only those that are model years 1981 and newer).

These incremental emissions impacts of the VEI SIP Revision would occur in an area for which overall VOC and NO<sub>x</sub> emissions are expected to decline. Specifically, in the Phoenix area, overall VOC emissions are expected to decrease by 7% between 2006 and 2015 and overall NO<sub>x</sub> emissions are expected to decrease by 13% over the same period.<sup>4</sup>

<sup>4</sup> See Maricopa Association of Governments (MAG), “One-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa County

Moreover, data collected by the ozone monitoring network in the Phoenix area appears to show that the area has attained the 8-hour ozone NAAQS for the years 2003–2005.<sup>5</sup>

Therefore, based on the minimal likely effect of the VEI SIP Revision on VOC and NO<sub>x</sub> emissions, the downward trend in overall ozone precursor emissions, and monitoring data that appears to show that the area has attained the 8-hour ozone NAAQS, we find that exempting collectible vehicles from emissions testing under the VEI program would not interfere with attainment of the 8-hour ozone NAAQS in the Phoenix area.

*Tucson.* EPA included the Tucson area in “rest of state,” an area that we designated as “unclassifiable/attainment” for the new 8-hour ozone NAAQS. See 69 FR 23858 (April 30, 2004). As indicated in Table 3 above, the revision to the VEI program in Tucson would increase VOC emissions by 0.04 metric tons per day, which represents approximately 0.047% of the overall VOC emissions inventory in this area under existing conditions. For the reasons given above for the Phoenix area, we would expect any change, positive or negative, in NO<sub>x</sub> emissions due to the VEI SIP Revision to be minimal.

These incremental changes in ozone precursor emissions would occur in an area where the highest three-year average of the annual fourth-highest daily maximum level (*i.e.*, the statistical basis for the NAAQS) collected among the nine stations comprising the ozone monitoring network in the Tucson area

Nonattainment Area,” March 2004, pp. 3–11 and 3–12.

<sup>5</sup> See Table 4 in the VEI SIP Revision and see the Quick Look Reports (dated August 14, 2006 and August 31, 2006) included in the docket for this proposed rule.

was approximately 10% below the 8-hour ozone NAAQS (based on 2003–2005 data).<sup>6</sup> As such, we agree with ADEQ’s conclusion that the slight change in ozone precursor emissions from the exemption of collectible vehicles and motorcycles from emissions testing requirements of the VEI program would not interfere with continued attainment of the 8-hour ozone NAAQS in the Tucson area.

### 2. Carbon Monoxide

Carbon monoxide (CO) is a product of incomplete combustion of fuels. In most urban areas, most of the CO comes from motor vehicle exhaust.

*Phoenix.* In 2005, EPA redesignated the Phoenix area for CO, and approved a maintenance plan that provides for maintenance of the CO NAAQS in that area through 2015. See 70 FR 11553 (March 9, 2005) and 70 FR 52926 (September 6, 2005).

As indicated in Table 3 above, the revision to the VEI program in Phoenix would increase CO emissions by 0.32 metric tons per day, which represents approximately 0.035% of the overall CO emissions inventory in this area under existing conditions. The incremental CO emissions increase of the SIP revision would occur in an area where overall CO emissions are expected to remain relatively constant over the next 10 years and where ambient CO levels are well below the NAAQS. Specifically, in the Phoenix area, overall CO emissions are expected to decrease by only 1% between 2006 and 2015,<sup>7</sup> and the

<sup>6</sup> See Table 5 of the VEI SIP Revision and the Quick Look Reports (dated August 14, 2006 and August 31, 2006) included in the docket for this proposed rule.

<sup>7</sup> See Maricopa Association of Governments, “Carbon Monoxide Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area,” May 2003, pp. 3–10.

highest second-highest value (*i.e.*, the basis for the NAAQS) collected among the 15 stations comprising the CO monitoring network in the Phoenix area is 5.1 parts per million (ppm), eight-hour average, or less than 60% of the 8-hour CO NAAQS (based on 2004–2005 data).<sup>8</sup>

Therefore, based on the minimal estimated increase in CO emissions due to the VEI SIP Revision, the relatively constant level of overall CO emissions, and monitoring data that shows that ambient CO levels remain well below the CO NAAQS, we find that exempting collectible vehicles from emissions testing under the VEI program would not interfere with continued attainment of the CO NAAQS in the Phoenix area.

*Tucson.* Tucson was designated as a “not classified” CO nonattainment area following the CAA Amendments of 1990. See 56 FR 56694 (November 6, 1991). Arizona implemented its VEI program in the Tucson area as part of the control strategy to attain and maintain the CO NAAQS in the area. In 2000, EPA redesignated the Tucson area to attainment for CO and approved the area’s maintenance plan, which provides for maintenance of the CO NAAQS through 2008. See 65 FR 36353 (June 8, 2000), 65 FR 50651 (August 21, 2000), and 69 FR 12802 (March 18, 2004).

As indicated in Table 3 above, the revision to the VEI program in Tucson would increase CO emissions by 0.23 metric tons per day, which represents approximately 0.038% of the overall CO emissions inventory in this area under existing conditions. The incremental CO emissions increase of the SIP revision would occur in an area where ambient CO levels are well below the NAAQS. Specifically, in the Tucson area the highest second-highest value (*i.e.*, the basis for the NAAQS) collected among the six stations comprising the CO monitoring network in the Tucson area is 2.5 ppm, eight-hour average, or less than 30% of the 8-hour CO NAAQS (based on 2004–2005 data).<sup>9</sup>

Therefore, based on the minimal estimated increase in CO emissions due to the VEI SIP Revision and monitoring data that shows that ambient CO levels remain well below the CO NAAQS, we find that exempting collectible vehicles and motorcycles from emissions testing under the VEI program would not

interfere with continued attainment of the CO NAAQS in the Tucson area.

### 3. Particulate Matter

EPA has promulgated different NAAQS for particles with a nominal aerodynamic diameter of 10 microns or less (PM<sub>10</sub>) and for particles with a nominal aerodynamic diameter of 2.5 micrometers (microns) or less (PM<sub>2.5</sub>). Ambient PM<sub>10</sub> and PM<sub>2.5</sub> levels consist of directly-emitted particles as well as secondary particles formed through atmospheric reactions involving such precursors as NO<sub>x</sub> and SO<sub>x</sub>.

*Phoenix.* In 1990, the Phoenix area was designated as a “moderate” nonattainment for the PM<sub>10</sub> NAAQS by operation of law under the CAA Amendments of 1990. EPA reclassified the area as “serious” in 1996. See 61 FR 21372 (May 10, 1996). In 2002, EPA approved the “serious area” PM<sub>10</sub> plan, which was intended to provide for attainment of the PM<sub>10</sub> NAAQS in the Phoenix area by 2006. See 67 FR 48718 (July 25, 2002); certain plan elements re-approved at 71 FR 43979 (August 3, 2006).

The Phoenix area PM<sub>10</sub> attainment plan relies largely on control of fugitive dust sources such as paved and unpaved roads, vacant disturbed lots, and unpaved parking lots. On-road vehicle exhaust accounts for approximately 2.1% of the annual average area-wide (directly-emitted) PM<sub>10</sub> inventory.<sup>10</sup> The area continues to violate both the annual and 24-hour PM<sub>10</sub> NAAQS and thus appears to have failed to meet the PM<sub>10</sub> NAAQS by the 2006 attainment date.<sup>11</sup>

PM<sub>10</sub> emissions are emitted as a product of incomplete combustion along with such other pollutants as CO and VOC, and because the exemption of collectible vehicles from emissions testing requirements of the VEI program in the Phoenix area would incrementally increase emissions of the latter pollutants, it would also likely result in the incremental increase of the former as well. ADEQ did not quantify the PM<sub>10</sub> emissions impact of this new exemption. However, we can safely conclude that any such impact would be negligible, even though the area will likely miss its attainment deadline, given the small number of vehicles involved (see Table 1 herein), the magnitude of the emission impact of other products of incomplete combustion (see Table 3 herein and

related discussion of ozone and CO above), and the small contribution of the applicable source category (on-road motor vehicle exhaust) to overall PM<sub>10</sub> emissions in the Phoenix area. Thus, the VEI SIP Revision would not interfere with attainment of the PM<sub>10</sub> NAAQS in the Phoenix area.

Based on the same rationale, we can also conclude that the exemption of collectible vehicles from the emissions testing requirements of the VEI program in the Phoenix area would not interfere with attainment of the NAAQS for PM<sub>2.5</sub>, a pollutant for which the Phoenix area is designated as “unclassifiable/attainment.” See 70 FR 944 (January 5, 2005). Ambient PM<sub>2.5</sub> concentrations in the Phoenix area are well below the applicable NAAQS.

*Tucson.* EPA has included the Tucson area in the “unclassifiable” area designation for the PM<sub>10</sub> NAAQS and in the county-specific “unclassifiable/attainment” designation (*i.e.*, Pima County) for the PM<sub>2.5</sub> NAAQS. See 57 FR 56762 (November 30, 1992), 70 FR 944 (January 5, 2005), and 40 CFR 81.303. Ambient PM<sub>10</sub> and PM<sub>2.5</sub> concentrations in the Tucson area are well below the applicable NAAQS. For the reasons given above for Phoenix, the PM<sub>10</sub> and PM<sub>2.5</sub> emissions impact of exemption of collectible vehicles and motorcycles from emissions testing requirements would be negligible and would not interfere with continued attainment of the PM<sub>10</sub> and PM<sub>2.5</sub> NAAQS in the Tucson area.

### 4. Air Toxics

*Phoenix and Tucson.* Since the CAA does not have ambient air quality standards for air toxics, the EPA’s interpretation of section 110(l) is that an area’s compliance with any applicable MACT standards, as well as any Federal Motor Vehicle Control Programs (FMVCP) under sections 112 or 202(l) of the CAA constitutes an acceptable demonstration of noninterference for air toxics. Motor vehicles are not subject to MACT standards, and the VEI SIP Revision will not interfere with any Federal Motor Vehicle Control Programs that apply in the area. For these reasons, the State thus concludes, and EPA concurs, that the VEI SIP Revision would not interfere with any applicable CAA requirements relative to air toxics.

### 5. Conclusion

Based on the above discussion, EPA concludes that the changes to the Arizona VEI programs that would occur with EPA approval of the VEI SIP Revision and VEI SIP Supplement (*i.e.*, the exemptions from emissions testing for collectible vehicles in the Phoenix

<sup>8</sup> See Table 14 of the VEI SIP Revision and the Quick Look Reports (dated August 14, 2006 and August 31, 2006) included in the docket for this proposed rule.

<sup>9</sup> See Table 15 of the VEI SIP Revision and the Quick Look Reports (dated August 14, 2006 and August 31, 2006) included in the docket for this proposed rule.

<sup>10</sup> See Maricopa Association of Governments, “Revised MAG 1999 Serious Area Particulate Plan for PM-10 for the Maricopa County Nonattainment Area,” February 2000, pp. 8–15.

<sup>11</sup> We will make this determination when quality-assured data for 2006 are available.



area and collectible vehicles and motorcycles in the Tucson area) would not interfere with attainment or maintenance of any of the NAAQS in the Phoenix or Tucson areas and would not interfere with any other applicable requirement of the Act, and thus, are approvable under CAA section 110(l). Therefore, we propose to approve statutory exemptions from emissions testing for collectible vehicles in Phoenix and collectible vehicles and motorcycles in Tucson, as submitted on December 23, 2005 in the VEI SIP Revision, as a revision to the Phoenix and Tucson portions of the Arizona CO and Ozone SIPs.

#### *D. Contingency Provisions of CAA Section 175A(d)*

In 2000, EPA redesignated the Tucson area from nonattainment to attainment for the CO NAAQS and approved a maintenance plan. See 65 FR 36353 (June 8, 2000), 65 FR 50651 (August 21, 2000), and 69 FR 12802 (March 18, 2004). In 2005, EPA did the same for the Phoenix area. See 70 FR 11553 (March 9, 2005) and 70 FR 52926 (September 6, 2005). The CO maintenance plans for the two areas include contingency elements or plans that we approved as meeting the requirements of CAA section 175A(d).

For the Phoenix area, the contingency plan establishes an action (or trigger) level protective of the NAAQS and identifies several measures, including expansion of "Area A" (the area in which certain control measures apply), for early implementation as well as consideration of additional measures on a set schedule following the triggering event. For the Tucson area, the contingency plan establishes trigger or action levels as well as schedules for review and collection of data and consideration of adoption of control measures from a preselected list of such measures. At the time of redesignation of the Phoenix and Tucson areas to attainment for the CO NAAQS, the VEI programs were adopted and approved into the Arizona SIP and were assumed to continue in effect throughout the maintenance periods. Moreover, the VEI programs at the time of redesignation of these areas did not exempt collectible vehicles or motorcycles in either area from the emissions testing requirements.

Generally, contingency plans should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State and should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be

implemented. See EPA Memorandum from John Calcagni, Office of Air Quality Planning and Standards, entitled "Procedures for Processing Requests to Redesignate Areas to Attainment," dated September 4, 1992. At a minimum, CAA section 175A(d) requires that the State adopt as contingency measures all control measures that had been approved in the SIP for the area prior to redesignation but that the State subsequently repeals or relaxes. In this instance, because the EPA-approved VEI emissions testing requirements applied to collectible vehicles and motorcycles at the time of redesignation for the Phoenix and Tucson areas, reinstatement of emissions testing for these newly-exempt vehicle categories must be adopted as contingency measures for the Phoenix and Tucson CO maintenance areas to comply with CAA section 175A(d).

ADEQ's VEI SIP Supplement includes two new contingency measures that establish a binding commitment on ADEQ to request Legislative action to reinstate emissions testing for collectible vehicles in the Phoenix area or collectible vehicles and motorcycles in the Tucson area should the applicable area experience a violation of the CO NAAQS. See pages 1 and 2 of the VEI SIP Supplement. Specifically, ADEQ's contingency measures involve notification to the Legislature by the October following a violation of the CO NAAQS in the Phoenix or Tucson areas. After notifying the Legislature, ADEQ will request that the Arizona Legislature enact new legislation to reinstate the categories of vehicles exempted through EPA approval of the VEI SIP Revision and VEI SIP Supplement (*i.e.*, collectible vehicles in Phoenix or collectible vehicles and motorcycles in Tucson) during the General Legislative Session that begins in January. ADEQ's request to the Legislature will call for testing to be renewed for the newly exempt vehicle categories in the applicable area beginning the January following the General Legislative Session.

We view ADEQ's contingency measures in the context of the existing EPA-approved CO contingency plans for the Phoenix and Tucson areas, and as such, we find that the plans, as amended to include these new contingency measures, continue to meet the requirements of CAA section 175A(d), and that the new measures themselves are consistent with relevant EPA guidance. Therefore, we propose to approve the contingency measures, as adopted and submitted by ADEQ on October 3, 2006 in the VEI SIP

Supplement, as a revision to the Phoenix and Tucson area portions of the Arizona CO SIP.

#### **IV. EPA's Proposed Action and Request for Public Comment**

Under section 110(k) of the CAA, EPA is proposing to approve the revisions to the Arizona SIP submitted by the State of Arizona on December 23, 2005 and October 3, 2006 concerning the Arizona VEI programs implemented in the Phoenix and Tucson areas because we find that the revisions are consistent with the requirements of the CAA and EPA's regulations.

Specifically, we are proposing to approve exemptions from emissions testing requirements for collectible vehicles in the Phoenix area and collectible vehicles and motorcycles in the Tucson area as set forth in the "Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs" (December 2005) and ARS Section 49-542 as amended in section 1 of Arizona House Bill 2357, 47th Legislature, 1st Regular Session (2005) and approved by the Governor on April 13, 2005; and the updated performance standard evaluation for the Phoenix area and new contingency measures as set forth in the "Supplement to Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs, December 2005" (September 2006).

We will accept comments from the public on this proposal for the next 30 days.

#### **V. 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 action merely proposes to approve changes to 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 changes to 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 (Pub. L. 104-4).

This proposed rule also does 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 (59 FR 22951, November 9, 2000), nor will it 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), because it merely proposes to approve changes to state law implementing a Federal requirement, 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 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. 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, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 12, 2006.

**Jane Diamond,**

*Acting Regional Administrator, Region 9.*

[FR Doc. E6-22305 Filed 12-27-06; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 80 and 86

[EPA-HQ-OAR-2006-0363; FRL-8263-5]

RIN 2060-AN66

#### Amendment to Tier 2 Vehicle Emission Standards and Gasoline Sulfur Requirements: Partial Exemption for U.S. Pacific Island Territories

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

**ACTION:** Proposed Rule.

**SUMMARY:** EPA is proposing to exempt the three U.S. Pacific Island Territories—American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (C.N.M.I.)—from the gasoline sulfur requirements that EPA promulgated in the Tier 2 motor vehicle rule. The Governor of American Samoa petitioned us for an exemption from the Tier 2 gasoline sulfur requirement because of the potential for gasoline shortages, the added cost, and the minimal air quality benefits the Tier 2 gasoline sulfur requirement would provide to American Samoa. Representatives of the Governors of Guam and C.N.M.I. have also requested an exemption referencing the petition submitted by American Samoa. The Far East market, primarily Singapore, supplies gasoline to the U.S. Pacific Island Territories. The Tier 2 sulfur standard effectively requires special gasoline shipments, which would increase the cost and could jeopardize the security of the gasoline supply to the Pacific Island Territories. The air quality in American Samoa, Guam, and C.N.M.I. is generally pristine, due to the wet climate, strong prevailing winds, and considerable distance from any pollution sources. We recognize that exempting the U.S. Pacific Island Territories from the gasoline sulfur standard will result in smaller emission reductions. However, Tier 2 vehicles

using higher sulfur gasoline still emit 30% less hydrocarbons and 60% less NO<sub>x</sub> than Tier 1 vehicles and negative effects on the catalytic converter due to the higher sulfur levels are, in many cases, reversible. Additionally, these reduced benefits are acceptable due to the pristine air quality, the fact that gasoline quality will not change, and the cost and difficulty of consistently acquiring Tier 2 compliant gasoline. The Tier 2 motor vehicle rule also sets standards for vehicle emissions. Vehicles in use on the U.S. Pacific Island Territories will not be exempt from the Tier 2 vehicle emission standards. However, additional flexibility will be afforded due to the lack of low sulfur gasoline.

**DATES:** Comments must be received on or before January 29, 2007. Request for a public hearing must be received by January 12, 2007. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0363, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OAR-2006-0363. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0363. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly