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Jane S. Moore,
Acting Regional Administrator.
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40 CFR Parts 52 and 81

[CO43-2-6865; CO43-1-6931; FRL-5532-07]

Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Carbon Monoxide Attainment Demonstrations and Related SIP Elements for Denver and Longmont; Clean Air Act Reclassification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Environmental Protection Agency today proposes approval of the State Implementation Plan (SIP) revisions submitted by the State of Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for carbon monoxide (CO). The implementation plan revisions were submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area CO SIP for Denver and Longmont. This action includes proposed approval of revisions to Colorado Regulations 11 (vehicle inspection and maintenance) and 13 (oxygenated fuels) submitted to satisfy conditions in the SIP. It also includes proposed reclassification of the Denver CO nonattainment area from Moderate to Serious. The rationale for the approvals and reclassification are set forth in this document. Additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by August 8, 1996.

ADDRESSES: Comments should be addressed to: Richard R. Long, Director of Air Programs (8P2-A), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466.

Copies of the State's submittals and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202-2466; and Colorado Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222-1530.

FOR FURTHER INFORMATION CONTACT: Jeff Houk at (303) 312-6446.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for moderate CO nonattainment areas are set out in sections 186-187 of the Clean Air Act (Act) Amendments of 1990 (CAAA) which pertain to the classification of CO nonattainment areas and to the submission requirements of the SIP's for these areas, respectively. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Denver and Longmont CO SIPs, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on today's proposal.

This Federal Register document specifically addresses several requirements of the 1990 CAAA which were required to be submitted no later than November 15, 1992, and which the State did not submit by that date. These requirements include an attainment demonstration, contingency measures and, for Denver, a vehicle miles travelled forecasting and tracking program and transportation control measures. EPA made a formal finding that the State had failed to submit these SIP revisions in a letter to Governor Roy Romer dated January 15, 1993. This Federal Register document also addresses revisions to Regulations 11 and 13, submitted by the State of Colorado to implement portions of the control strategy relied upon by the attainment demonstration.

Section 187(a)(7) required those States containing CO nonattainment areas with design values greater than 12.7 parts per million (ppm) to submit, among other things, an attainment demonstration by November 15, 1992, demonstrating that the plan will provide for attainment by December 31, 1995 for moderate CO nonattainment areas and December 31, 2000 for serious CO nonattainment areas. The attainment demonstration must include a SIP control strategy, which is also due by November 15,

1992. The SIP control strategy for a given nonattainment area must be designed to ensure that the area meets the specific annual emissions reductions necessary for reaching attainment by the deadline. In addition, section 187(a)(3) requires these areas to implement contingency measures if any estimate of actual vehicle miles travelled (VMT) or any updated VMT forecast for the area contained in an annual report for any year prior to attainment exceeds the number predicted in the most recent VMT forecast. Contingency measures are also triggered by failure to attain the NAAQS for CO by the attainment deadline. Contingency measures must be submitted with the CO SIP by November 15, 1992. Finally, a vehicle miles travelled forecasting and tracking program is required by Section 187(a)(2)(A), and transportation control measures are required for Denver by Section 187(a)(2)(B). These requirements are discussed in more detail below and in the Technical Support Document for this proposed action.

Longmont had been designated as unclassifiable/attainment prior to passage of the 1990 CAAA. However, a special monitoring study in 1988-89 recorded an exceedance of the NAAQS in Longmont. As a result, EPA Region VIII recommended that the Governor designate this area nonattainment, and on March 15, 1991, the Governor submitted a nonattainment designation for this area that was later codified by EPA at 40 CFR Part 81. Since this area had never had a SIP, EPA interpreted Section 172 of the Act to require an attainment demonstration for Longmont. Contingency measures under Section 172(c)(9) were also required. On January 15, 1993, EPA made a formal finding that the State had failed to submit these SIP revisions for Longmont.

On July 11, 1994 and July 13, 1994, Governor Roy Romer submitted comprehensive revisions to the Colorado SIP. The carbon monoxide SIP element submittals for Denver and Longmont addressed the outstanding CAA requirements discussed above, as well as other CAA mandates. The July 11, 1994 CO SIP revision for Denver was developed primarily by the Colorado Department of Health's Air Pollution Control Division (APCD), the Colorado Air Quality Control Commission (AQCC), and the Regional Air Quality Council (RAQC), which represents local government and citizen interests. The July 13, 1994 CO SIP revision for Longmont was developed primarily by the APCD, in consultation with the City of Longmont.

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.¹ Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA within six months after receipt of the submission.

The AQCC held a public hearing on June 16, 1994 to entertain public comment on the implementation plan revisions for Denver and Longmont. Following the public hearing, the SIP revisions were adopted by the AQCC, and forwarded to the Colorado Legislative Council for review. (Under Colorado law, SIP revisions imposing new or revised controls on mobile sources must be reviewed and accepted by the Colorado Legislative Council.) The AQCC held an emergency hearing on July 7, 1994, to address concerns with the Denver SIP raised by the Legislative Council, and on July 11 and July 13, 1994, the SIP revisions were submitted to EPA by the Governor for approval.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete, and a letter dated July 14, 1994 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. The applicable Clean Air Act requirements and EPA's rationale for its proposed actions are discussed below.

¹ Also, Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

Denver

A. Attainment Demonstration and Control Strategies

(1) Attainment Demonstration

As noted, CO nonattainment areas with design values greater than 12.7 ppm were required to submit a demonstration by November 15, 1992, that the plan will provide for attainment by December 31, 1995 for moderate CO nonattainment areas and December 31, 2000 for serious CO nonattainment areas. APCD conducted an attainment demonstration using urban areawide modeling in conjunction with intersection modeling for a modeling region encompassing the Denver nonattainment area.

The CO NAAQS are for 1-hour and 8-hour periods and are not to be exceeded more than once per year. The 1-hour CO NAAQS is 35 ppm (40 mg/m³) and the 8-hour CO NAAQS is 9 ppm (10 mg/m³). The demonstration predicted that the highest 8-hour design concentration as of the attainment date will be 8.91 ppm, thus demonstrating attainment of the 8-hour CO NAAQS. No demonstration was required to be carried out for the 1-hour NAAQS, as Denver has not violated this NAAQS since before the 1990 CAAA were enacted. The same strategies which bring the area into attainment with the 8-hour NAAQS will also contribute to reduced 1-hour concentrations. The modeled attainment demonstration is discussed in greater detail below.

(a) Policy Issues: Reclassification to Serious and Applicability of Serious Area SIP Requirements

(i) *Reclassification to Serious.* During the SIP development process, the RAQC conducted an exhaustive review of control strategies for use in demonstrating attainment of the CO NAAQS by the Clean Air Act-mandated deadline for moderate areas of December 31, 1995. Even with the oxygenated fuels program and an enhanced I/M program in place, the RAQC and APCD determined that a 30% reduction in emissions would still be needed to attain the NAAQS by this date. Any measures would need to be implemented in the 18-month period between SIP adoption (in June 1994) and the attainment date, ruling out many potential strategies with longer implementation horizons. The RAQC considered several aggressive strategies, including a mandatory no-drive day for high emitting vehicles, but was unable to identify a package of strategies that would provide the necessary emission reductions by December 31, 1995.

As a result, the RAQC recommended to the AQCC that the Denver area seek reclassification to serious. If Denver were reclassified to serious, the applicable attainment date would become December 31, 2000 (CAA Section 186(a)(1)). The AQCC adopted this recommendation, and the Governor formally requested reclassification to serious in his July 11, 1994 letter submitting the SIP. As part of this Federal Register document, EPA is proposing to reclassify the Denver-Boulder nonattainment area to serious.

EPA had originally intended to rely upon the authority for reclassification provided by Section 110(k)(6) of the Clean Air Act. This paragraph provides broad authority for EPA to correct previous approvals, disapprovals, designations, and classifications based on new information. However, air quality data collected during calendar year 1995 show that the Denver area experienced two exceedances of the CO NAAQS in 1995 at the CAMP monitor. Because of this, Denver cannot demonstrate attainment of the NAAQS by the statutory December 31, 1995 attainment date for moderate areas, and must be reclassified, by operation of law, to serious. Under Section 186(b)(2)(A), a moderate carbon monoxide nonattainment area must be reclassified as serious by operation of law if the Administrator finds that the area has failed to attain the CO NAAQS. Pursuant to Section 186(b)(2)(B), EPA must publish a document in the Federal Register identifying those areas that failed to attain the NAAQS and the resulting classifications. In this document, EPA is proposing to find that the Denver/Boulder carbon monoxide nonattainment area did not attain the NAAQS by the required attainment date of December 31, 1995, and to revise the area's classification for carbon monoxide in 40 CFR Part 81 from moderate to serious.

(ii) *Impacts of Reclassification to Serious.* Areas classified as serious are required to attain the CO NAAQS no later than December 31, 2000. In addition, the following additional requirements of CAA Section 187 apply:

Gasoline sold during the winter months must contain a level of oxygen necessary to attain the NAAQS. (CAA Section 187(b)(3))

A mandatory employer-based trip reduction program must be adopted and implemented, unless it can be shown that such a program is not necessary to demonstrate attainment of the NAAQS. (CAA Section 187(b)(2), referencing CAA Section 182(d)(1)(B))

A December 31, 1995 milestone must be identified, and an economic

incentive program must be adopted and implemented if the milestone is not achieved or if the area fails to attain the CO NAAQS by December 31, 2000. (CAA Section 187(d))

Vehicle miles travelled forecasts must be submitted for the period 1996–2000 (submittal of vehicle miles traveled forecasts for 1993–1995 is required for moderate areas). (CAA Section 187(a)(2)(A))

Additional requirements for the content and analysis of transportation plans, programs and projects apply under the EPA/DOT transportation conformity regulations (58 FR 62215, November 24, 1993).

The oxygenated gasoline, VMT forecast, and conformity requirements are discussed elsewhere in this document.

(iii) *December 31, 1995 milestone demonstration.* CAA Section 187(d) requires areas classified as serious to submit a demonstration no later than March 31, 1996, that the area has achieved CO emission reductions equivalent to the total of the specified annual emission reductions required by December 31, 1995. The Act does not provide further guidance on the form or content of the milestone itself, the specified annual emission reductions, or the nature of the milestone demonstration. EPA has not issued guidance on this matter.

Since the Act does not prescribe a methodology for determining a milestone and EPA has not issued guidance for this purpose, the State has chosen to use its 1995 base case emission inventory as the milestone (Section XII–D of the SIP). The milestone level is 1396 tons per day in the nonattainment area; this level represents progress toward attainment from the 1988 level of 1709 tons per day.

(iv) *Employer-based trip reduction program (the ECO program).* CAA Section 187(b)(2) requires areas classified as serious to adopt the measures required by Section 182(d)(1). These measures consist of transportation control measures (CAA Section 182(d)(1)(A)) and a mandatory employer-based travel reduction program (commonly known as the Employee Commute Options, or ECO, program) (CAA Section 182(d)(1)(B)). Section 187(b)(2) also provides that, in any area defined as a “covered area” under the Clean Fuel Fleet Program requirements of Section 246(a)(2)(B) (the Denver area meets this definition), a SIP may exclude any of the Section 182(d)(1) measures if (1) the SIP includes an explanation of why any measure was not adopted and what

emission reduction measure was adopted to provide comparable reduction in emissions, or (2) the SIP contains reasons why such reduction is not necessary to attain the national primary ambient air quality standard for CO. (As a moderate area, Denver was already required by the “Special Rule for Denver,” Section 187(a)(2)(B), to address the transportation control measure requirements of Section 182(d)(1)(A). These requirements are discussed in Chapter X of the SIP.)

The SIP demonstrates that no TCMs are necessary to provide for attainment of the NAAQS by December 31, 2000 (attainment demonstration, Tables XII–1 and XII–2). However, several TCMs were adopted as part of the SIP, including transportation management associations to encourage and provide technical support for voluntary employer-based trip reduction activities; financial incentives for subsidized employee transit passes and other travel reduction strategies for downtown Denver employees; transit passes for students at the Auraria campus in downtown Denver; high-occupancy vehicle lanes on Broadway and Lincoln, two major arterials providing access to the central business district; and improved traffic signalization in the central business district and elsewhere in the nonattainment area. Appendix X–A of the SIP also discusses several other TCMs that were adopted and implemented as part of the 1979 and 1982 SIPs for Denver and remain in effect.

Section X.F. of the SIP provides the formal justification for exclusion of the ECO program from the Denver SIP. However, on December 23, 1995, the President signed revisions to the ECO requirements of the Clean Air Act. These revisions amended the Act to make submittal of a SIP revision providing for the ECO program voluntary for areas which are bumped up to a higher classification (and thus, newly made subject to the requirement). Thus, the State would have no longer been required to submit such program, even if EPA had initially interpreted the Act to require this program for Denver.

(b) Technical Evaluation of Attainment Demonstration

EPA is proposing to approve the State’s attainment demonstration for Denver. EPA has determined that the State correctly applied national guidance in conducting modeling of the entire region and of six intersections that could potentially cause violations of the CO NAAQS. In addition, the State complied with a Region VIII request to conduct modeling of downtown

intersections above and beyond the six required by national guidance. However, due to the factors described below, the model could not be properly applied to two high-traffic downtown intersections: Speer/Auraria and Broadway/Colfax. Model predictions at these two sites were affected by uncertainties in meteorological and motor vehicle emissions inputs. In addition, the modeled predictions of high ambient values at these intersections were not supported by saturation monitoring data obtained at the same locations. Thus, the attainment demonstration is based on modeled and monitored values at a third downtown intersection, CAMP, which has historically recorded the highest CO concentrations in the Denver metro area. These issues are discussed in greater detail below.

A variety of specialized models were used to model the Denver area carbon monoxide concentrations in accordance with EPA guidance. The Urban Airshed Model (UAM) was used to simulate regional concentrations during two historical episodes when very high carbon monoxide levels occurred. During these same episodes the CAL3QHC model was used to simulate concentrations from local streets and roadways. The outputs from both models were added together so that total predicted concentrations could be compared with values actually measured at the monitoring sites during these episodes. These comparisons determine if the modeling meets the performance criteria prescribed in the UAM guidance document, and in the modeling protocol. For both episodes there was a tendency for the UAM/CAL3QHC model to underpredict concentrations. However, the degree of underprediction was within the limits specified in EPA UAM Guidance documents, and in the modeling protocol.

The validated UAM/CAL3QHC model was then applied in the attainment year (2000) to determine whether proposed control strategies are sufficient to meet the 8-hour ambient air quality standard (9.0 ppm). The same meteorological conditions used in the model validation runs were used in the 2000 model runs. However, the 2000 runs were modeled with revised emission input files to examine the benefits of the various control strategies. The 2000 attainment runs showed that the control strategies in the SIP are sufficient to reduce carbon monoxide concentrations to less than 9.0 ppm at all locations in the nonattainment area.

The Denver CO modeling protocol was approved by EPA Region VIII in

May 1992. Specific intersections to be modeled were not identified in the protocol. The State showed attainment on each of the six highest ranked intersections selected for modeling, following screening criteria contained in "Guideline for Modeling CO from Roadway Intersections", EPA-454/R-92-005. The State subsequently found that the six busiest intersections for traffic congestion were located in the suburban areas, where background air quality levels are relatively low. Application of CAL3QHC at these six locations, combined with UAM predicted background levels, showed the year 2000 concentrations at levels well within the CO NAAQS. The Region requested the State to model an additional intersection in the central business district, to ensure that control strategies provide for attainment at hot spot locations in the urban core area, not just at suburban locations exposed to significantly lower background concentrations.

The State performed preliminary CAL3QHC modeling at three additional intersections in the Downtown area: Speer & Auraria; Broadway & Colfax; and Broadway & Champa. These preliminary 1995 results showed predicted concentrations at Speer/Auraria and Broadway/Colfax up to 6 ppm higher than concentrations modeled at the CAMP monitor (Broadway & Champa). Because of uncertainties related to the validity of meteorological inputs used in the model, the State opted not to include the CAL3QHC modeling results for the two higher intersections in the current SIP, deferring consideration of these locations until additional saturation monitoring studies could be conducted at these intersections. The State selected Broadway and Champa as the intersection to use in the SIP attainment demonstration because the on-site air quality and meteorology monitoring data available at this location provided more confidence in the results, i.e., produced modeled concentrations that were in good agreement with concentrations actually monitored at the site. There are significant and unique micro-meteorological effects influencing each of the three central business district intersections, including: high-rise office buildings, channeling of the wind down "urban street canyons", and urban heat island effects. Since the Diagnostic Wind Model (DWM) used with UAM does not include any of these effects, the State did not consider the meteorological outputs from DWM appropriate for use in microscale modeling.

The State's intersection analysis is consistent with national policy and other recent UAM/CAL3QHC modeling applications. Additional information on the attainment demonstration modeling is included in the Technical Support Document for this action.

(2) Control Strategies

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM (including RACT) as expeditiously as practicable and to provide for attainment of the NAAQS. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider the available control measures, and to adopt and implement such measures as are reasonably available for implementation in the area and necessary for attainment of the NAAQS as components of the area's attainment demonstration. The EPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures to be implemented. EPA is proposing to approve several of the control strategies. The exact nature of EPA's proposed approvals is discussed in more detail below and in the Technical Support Document for today's action.

The Denver CO SIP takes credit for several control programs in the attainment demonstration. Those identified in Chapter V of the SIP as "baseline strategies" are measures which were in existence at the time of CO SIP development, and for which no further State regulatory action was required. EPA is not taking action on these control strategies through this SIP revision, as these are strategies which have been adopted through previous SIP revisions and have been or are being acted on in other Federal Register documents. Those identified as "additional control strategies" are measures which were newly-considered and adopted for the attainment demonstration, and which are being acted on in this SIP revision.

The baseline strategies include the Federal motor vehicle control program, the 2.7% oxygenated fuels program (approved in the Federal Register on July 25, 1994 (59 FR 37698)), the Enhanced inspection and maintenance (I/M) program (conditionally approved in the Federal Register on November 8, 1994 (59 FR 55584)), various transportation system improvements, and the woodburning control measures adopted as part of the Denver PM10 SIP (approved in the Federal Register on July 25, 1994 (59 FR 37698)).

In addition, Section 246 of the Clean Air Act requires that the State adopt and implement the Clean Fuels Fleet Program, an alternative fuels program for certain commercial and governmental fleet operations. AQCC Regulation 17, the Clean Fuels Fleet Program regulation, was adopted by the AQCC on May 5, 1994, and submitted with the Denver CO SIP. (The full Clean Fuels Fleet Program SIP was submitted to EPA on October 17, 1994.) A wide variety of non-mandated alternative fuels programs are also underway in the Denver area. No credit is taken for Regulation 17 or any of the other programs in the attainment demonstration, and EPA will act on the Clean Fuels Fleet Program in the Federal Register at a later date.

Several additional control strategies have been formally incorporated into or committed to in the Denver CO SIP to provide for attainment of the CO NAAQS by December 31, 2000. These measures are described in Chapter VI of the SIP and are discussed below.

(a) *3.1% oxygenated fuels program.* In the CO SIP, the State made a commitment, which has since been met, to implement and adopt a 3.1% oxygenated fuels program, providing additional benefit over the 2.7% program already required of the area by Section 211(m) of the Act. The program is being implemented in two phases. In the winter of 1994-95, a "maximum blending" program took effect, which requires gasoline suppliers using methyl tert-butyl ether as an oxygenate to blend at the 2.7% oxygen level (the maximum allowed by Federal regulations), and suppliers using ethanol as an oxygenate to blend at the 3.5% oxygen level (also the maximum allowed by Federal regulations). The market share of ethanol in the Denver area has exceeded 50% in recent years, and this approach is expected to result in at least a 3.1% oxygen content during each winter season. If the maximum blending approach should fail to provide for at least a 3.1% oxygen content, the SIP provides that in subsequent winter seasons an averaging program, pursuant to EPA guidance for such programs, will take effect.

AQCC Regulation 13 governs the oxygenated fuels program. The SIP committed to revise this regulation in two steps. Reg 13 was revised to incorporate the maximum blending approach for the winter of 1994-95 by the AQCC on July 19, 1994. Reg 13 was revised to incorporate the more complex 3.1% averaging program on October 20, 1994. Both sets of regulation revisions were submitted by the Governor for EPA approval on September 29, 1995. The

September 29, 1995 submittal was determined complete on November 30, 1995.

(b) *Increased I/M failure rate for pre-1982 vehicles.* The SIP includes a commitment, which has since been met, to revise Regulation 11, which governs the I/M program, to incorporate more stringent emissions cutpoints which will increase the failure rate for pre-1982 vehicles from the current 14–26% to approximately 40%. Pre-1982 vehicles have less advanced emission control system technology, resulting in higher CO emission levels, and the more stringent cutpoints for these vehicles will result in the identification and repair of a greater number of high-emitting vehicles than are captured by the present I/M program (an increase of approximately 70,000 vehicles per year). These regulation revisions were adopted by the AQCC on September 22, 1994, and submitted by the Governor for EPA approval on September 29, 1995. The September 29, 1995 submittal was determined complete on November 30, 1995.

(c) *Prohibition on the re-registration of abandoned and impounded pre-1982 vehicles sold at auction.* This element of the SIP requires local governments in the Denver area to modify their ordinances or procedures for disposing of pre-1982 abandoned and impounded vehicles to prohibit purchasers from obtaining any form of title to the vehicles. These vehicles may be sold for scrappage or dismantling only. This measure will accelerate the normal rate of removal of vehicles of this age from the fleet, by preventing up to 5,000 vehicles of this type from being re-registered. Elimination of this many pre-1982 vehicles could reduce regional CO emissions by up to 5 tons per day. However, because of the difficulty of defining a concise emission reduction, the State does not take credit for this strategy in the attainment demonstration.

B. Transportation Control Measures

Section 187(a)(2)(B) (Special Rule for Denver) requires the State to submit a SIP revision that includes the TCMs as required in Section 182(d)(1)(A) of the Act, for the purpose of reducing CO emissions. The SIP may exclude any of the Section 182(d)(1)(A) measures if 1) the SIP includes an explanation of why any measure was not adopted and what emission reduction measure was adopted to provide comparable reduction in emissions, or 2) the SIP contains reasons why such reduction is not necessary to attain the national primary ambient air quality standard for CO.

The TCM SIP revision is contained in Chapter X of the Denver CO SIP. The TCMs adopted as part of the SIP are listed below. See the Technical Support Document for today's document and the SIP itself for a more detailed description of these measures.

(1) Employer-based transportation emission management programs promoted and encouraged by transportation management associations and financial incentives.

(2) Auraria transit pass.

(3) Conversion of Broadway/Lincoln Bus Lanes to Bus/HOV.

(4) Improved Traffic Signalization.

(5) Other Measures.

Appendix X–A contains the State's assessment of the measures listed in Section 108(f), including a comprehensive description of strategies already in place in Denver and the newly-adopted measures. Several TCMs have already been adopted as part of the SIP in previous ozone and CO SIP revisions, and have been approved by EPA (45 FR 51199, August 1, 1980, and 48 FR 55284, December 12, 1983).

Appendix X–A also describes projects and programs which are not being included in the SIP but nevertheless provide some emission reduction benefit.

EPA is proposing to approve this element of the Denver CO SIP. The SIP satisfies the requirement of Section 187(a)(2)(B) to either include the TCMs or provide a justification for not including them. The attainment demonstration for the SIP does not include credit for any of the TCMs; however, the above measures were adopted as enforceable provisions of the SIP.

C. Vehicle Miles Traveled Forecasting and Tracking

Section 187(a)(2)(A) of the Clean Air Act Amendments of 1990 required EPA, in consultation with the U.S. Department of Transportation (DOT), to develop guidance for states to use in complying with the VMT forecasting and tracking provisions of Section 187. A Notice of Availability for the resulting *Section 187 VMT Forecasting and Tracking Guidance* was published in the Federal Register on March 19, 1992. Section 187(a)(2)(A) requires Denver to submit a SIP revision providing for a VMT forecasting and tracking program, and contingency measures for implementation in the event that a VMT forecast is exceeded. The specific requirements are discussed in detail in the Technical Support Document for today's action.

The State of Colorado has submitted a SIP revision to EPA in order to satisfy

the requirements of Section 187(a)(2)(A) and Section 187(a)(3). In order to gain approval, the State submittal must provide for each of the following mandatory elements: (1) a forecast of VMT in the non-attainment area for each year prior to the attainment year; (2) a provision for annual updates of the forecasts along with a provision for annual reports describing the extent to which the forecasts proved to be accurate; these reports shall provide estimates of actual VMT in each year for which a forecast was required; (3) adopted and enforceable contingency measures to be implemented without further action by the State or the Administrator if actual annual VMT or an updated forecast exceeds the most recent prior forecast or if the area fails to attain the CO NAAQS by the attainment date.

(1) VMT Forecasts

Section 187(a)(2)(A) requires that the State include in its SIP submittal a forecast of VMT in the non-attainment area for each year before the year in which the SIP projects the National Ambient Air Quality Standard for CO will be attained. The forecasts are to be based on guidance developed by EPA in consultation with DOT, i.e., the *Section 187 VMT Forecasting and Tracking Guidance*. Table XIV–2 of the SIP contains the required forecasts of annual VMT for the years 1993–2001.

(2) Annual VMT Updates/Reports

Section 187(a)(2)(A) specifies that the SIP revision provide for annual updates of the VMT forecasts and annual reports that describe the accuracy of the forecasts and that provide estimates of actual VMT in each year for which a forecast was required. The *Section 187 VMT Forecasting and Tracking Guidance* specifies that annual reports should be submitted to EPA by September 30 of the year following the year for which the VMT estimate is made. The SIP commits to the submission of these annual reports and identifies responsibilities among the various transportation agencies in Denver to develop the reports.

(3) Contingency Measures

Section 187(a)(3) specifies that the State, in its SIP revision, adopt specific, enforceable contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT or if the area fails to attain the CO NAAQS by the attainment date. Implementation of the identified contingency measures must not require further rulemaking activities by the

State or EPA. Certain actions, such as notification of sources, would probably be needed before a measure could be implemented effectively. The State has met this requirement, as discussed in Section D. below. The State of Colorado has submitted a SIP revision implementing each of the required elements required by Section 187(a)(2)(A) and Section 187(a)(3) of the CAAA.

D. Contingency Measures

The Clean Air Act requires each CO nonattainment area with a design value above 12.7 ppm at the time of classification to adopt contingency measures that will take effect without further action by the State or EPA upon a determination by EPA that an area failed to make reasonable further progress or to attain the standards, as described in § 172(c)(9), or that actual or forecasted VMT exceeded a previous forecast. Section 187(a)(3) requires the State to submit a SIP revision containing contingency measures no later than November 15, 1992. The State submitted these measures as part of the Denver CO SIP on July 11, 1994.

States may implement contingency measures early to obtain additional emission reductions, without being required to adopt replacement contingency measures to put in place should one of the triggering events for implementation of contingency measures occur. This policy is described in a memorandum from Tom Helms, Chief of the OAQPS Ozone Policy and Strategies Group entitled "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide Nonattainment Areas," August 13, 1993.

As noted above, the State did not take credit in the attainment demonstration for the TCMs adopted to meet the requirements of Section 187(a)(2)(B). Because these measures are surplus to the reductions needed for attainment, the State has adopted these as the required contingency measures as well. The Denver region is proceeding with early implementation of these measures to obtain the additional emission reductions they provide.

If a triggering event for contingency measures occurs, EPA will review the status of implementation of the TCMs adopted in Chapter X of the SIP. Each of the TCMs must be fully implemented in order to satisfy the contingency measures requirements of Sections 172 and 187. In addition, the EPA/DOT transportation conformity regulation (58 FR 62235, November 24, 1993) requires DRCOG and USDOT to demonstrate that SIP TCMs are being implemented or are

on schedule for implementation before making a conformity determination for transportation plans or TIPs. This provides an extra degree of assurance that the contingency measures will be implemented if needed.

Section XIII.C. of the SIP defines the target emissions reduction level for contingency measures. Based on average projected annual VMT growth between 1995 and 2000 and the modeled fleet emission factors for those years, the State determined that minimum emission reductions of 26 tons per day in 1995 and 16 tons per day in 2000 represented the minimum emission reduction levels for contingency measures pursuant to EPA guidance. The TCMs, when fully implemented, are projected to produce an emission reduction of 34 tons per day in the year 2000. The emission reductions would be higher in earlier years, since the baseline fleet emission factors to which the contingency measure effectiveness would be applied are higher. Thus, the submittal satisfies EPA's minimum criteria for contingency measure effectiveness.

E. Mobile Source Emissions Budgets and Transportation Conformity

Section 176(c)(1) of the Act directs that no department, agency, or instrumentality of the federal government may permit any activity that does not conform to a SIP. Section 176(c)(2) further specifies that federally funded transportation improvement programs (TIPs), regional transportation plans, and projects must conform to the SIP in order to be adopted by the metropolitan planning organization. EPA and DOT promulgated implementing regulations for this CAA provision on November 24, 1993 (58 FR 62235).

One key provision of the conformity regulations requires a demonstration that emissions from the transportation plan and TIP are consistent with the emissions budget in the SIP (Sections 93.118 and 93.119 of the conformity rule). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment and/or maintenance demonstration to achieve compliance with the NAAQS in the nonattainment area. The rule's requirements and EPA's policy on emissions budgets are found in the Preamble to the transportation conformity rule (58 FR 62193-96) and in the sections of the rule referenced above. The SIP defines emissions budgets for the 1995 milestone year and the 2000 attainment year.

The 1995 budget is consistent with the mobile source emissions estimate for

the milestone year and is 1125 tons per day in the nonattainment area. This budget no longer applies for conformity, since that date has passed. For the year 2000, the SIP includes modeling for scenarios with and without TCMs. The RAQC recommended that the AQCC adopt the emissions budget for the scenario without TCMs as the budget to be used for conformity (825 tons per day in the nonattainment area). However, the AQCC adopted (and the Governor submitted) an emission budget of 808 tons per day in the nonattainment area. This lower budget reflected some (not all) of the emissions reductions associated with the implementation of the TCMs. The AQCC felt that this lower budget would provide a margin of safety for attainment and would provide an extra incentive (through the conformity requirements) for implementation of the TCMs.

Subsequent to submittal of the SIP, DRCOG completed an initial conformity analysis for the 2015 transportation plan and the 1995-2000 TIP, and found that the plan and TIP could not conform to the lower budget adopted by the AQCC and submitted to EPA. In response, the RAQC adopted a resolution requesting that the AQCC revise the SIP to raise the emission budget to the attainment level of 825 tons per day. The AQCC adopted this SIP revision after a public hearing on February 16, 1995, and the Governor submitted this SIP revision on July 18, 1995.

The Governor's July 18, 1995 letter withdraws the 808 ton per day emission budget submitted on July 11, 1994. This leaves the default budget of 825 tons per day from the attainment demonstration as the applicable budget under EPA's conformity rule. Since EPA is proposing to approve the attainment demonstration, the 825 ton per day budget that the attainment demonstration is based on would be approved by default, and no separate action is necessary on the July 18, 1995 submittal of this budget.

Section 93.106(b) of the conformity rule requires that the transportation plans in moderate nonattainment areas reclassified to serious meet certain content and analysis requirements. These new requirements would affect plans adopted two years after reclassification to serious. Once EPA reclassifies the Denver area to serious, these requirements will take effect two years thereafter. DRCOG's transportation planning methodologies already meet many of these requirements.

Longmont

A. Background of Sip Revision

Pursuant to the requirements of the 1990 Clean Air Act Amendments, each State was required to identify its nonattainment areas and submit descriptions of these areas for EPA promulgation in 40 CFR Part 81. Longmont had been designated as unclassifiable/attainment prior to passage of the 1990 Amendments. However, a special monitoring study in 1988–89 recorded an exceedance of the NAAQS in Longmont. (This study is described in Chapter II of the Longmont SIP.) As a result, EPA Region VIII recommended that the Governor designate this area nonattainment in a letter dated January 15, 1991. In a letter dated March 15, 1991, Governor Roy Romer submitted a request that Longmont be designated a moderate nonattainment area, and submitted boundaries for the new area. The designation, classification and boundaries were promulgated by EPA in the Federal Register on November 6, 1991 (56 FR 56733).

Since this area had never had a SIP, EPA interpreted Section 172 of the Act to require an attainment demonstration for Longmont. As a moderate area, the applicable attainment date for Longmont is December 31, 1995. Contingency measures under Section 172(b)(9) were also required. On January 15, 1993, EPA made a formal finding that the State had failed to submit these SIP revisions for Longmont.

On July 13, 1994, Governor Roy Romer submitted comprehensive revisions to the Colorado SIP. The carbon monoxide SIP element submittal for Longmont addressed the outstanding CAA requirements discussed above, as well as other CAA mandates. EPA found this SIP element complete on July 14, 1994. The CO SIP revision for Longmont was developed primarily by APCD, in consultation with the City of Longmont. The SIP development process is discussed in Chapter I of the SIP.

Throughout the remainder of this Federal Register document, references are made to the "Longmont area." This is a matter of convenience; these references apply to the Longmont CO nonattainment area as defined in 40 CFR Part 81 unless otherwise noted.

B. Attainment Demonstration and Control Strategies: Longmont

(1) Attainment Demonstration

A different approach was used for demonstrating attainment in Longmont than the methodology used in Denver. Originally, the State planned to develop

the attainment demonstration for Longmont as part of the modeling for Denver. However, it was discovered that the ambient conditions which led to exceedances of the CO NAAQS in Denver were not directly applicable to Longmont. After reviewing the results of the 1988–89 special monitoring studies, which suggested that exceedances occur due to emissions on a neighborhood scale, and in consideration of Longmont's small size and low traffic counts relative to conditions in Denver, EPA concluded that the complex UAM/CAL3QHC modeling methodology used in Denver was not necessary for demonstrating attainment in Longmont. EPA recommended that a simple rollforward analysis, similar to that used in attainment demonstrations for Colorado's smaller PM10 nonattainment areas, be used for Longmont. This decision is documented in a July 26, 1993 letter from EPA to APCD.

The methodology used and the results are presented in Chapter IV of the SIP. The SIP projects a second maximum concentration of 6.97 ppm at the end of 1995, well below the 9.0 ppm NAAQS.

(2) Control Strategies

Section 172(c)(1) of the Act requires the plans for all nonattainment areas to provide for the implementation of RACM (including RACT) as expeditiously as practicable and to provide for attainment of the NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider the available control measures, and to adopt and implement such measures as are reasonably available and necessary for attainment of the NAAQS as components of the area's attainment demonstration. EPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures being implemented.

The Longmont CO SIP takes credit for several control programs in the attainment demonstration. These control strategies, identified in Table III.3 and discussed in Chapter V of the SIP, are measures which were in existence at the time of CO SIP development, and for which no further State regulatory action was required. EPA is not taking action on these control strategies in this Federal Register document, as these are strategies which have been adopted through previous SIP revisions and have been or are being acted on in other Federal Register documents. The attainment demonstration does not take credit for any newly-adopted control strategies, nor are any such strategies

included in the SIP. In addition, Chapter V discusses several other activities underway in the Longmont area that have emission reduction benefits. However, these activities are not identified as control strategies and are not reflected in the 1995 attainment emission inventory, and thus, EPA is not incorporating these measures into the SIP.

The control strategies relied upon for the Longmont attainment demonstration include the Federal motor vehicle control program, the 2.7% oxygenated fuels program (approved in the Federal Register on July 25, 1994 (59 FR 37698)), the enhanced inspection and maintenance (I/M) program (conditionally approved in the Federal Register on November 8, 1994 (59 FR 55594)), various ongoing travel reduction strategies and transportation system improvements, and woodburning control measures from the Denver PM10 SIP (the woodburning program was approved in the Federal Register on July 25, 1995 (59 FR 37698)).

The package of strategies incorporated in the attainment demonstration is expected to reduce emissions from 55,070 tons per day in 1988 to 37,292 tons per day in 1995, for an overall reduction of approximately 32%. The strategies result in a 1995 projected second maximum concentration of 6.97 ppm.

C. Contingency Measures: Longmont

EPA's requirements for contingency measures are described above. Unlike Denver, Longmont is not subject to the CAA Section 187(a)(2)(A) requirement for a VMT forecasting and tracking program, and thus is not required to implement contingency measures in the event that a VMT forecast is exceeded. Contingency measures for Longmont were submitted as part of the July 13, 1994 SIP.

The 3.1% oxygenated fuels program, adopted as part of the Denver CO SIP, has been adopted as the contingency measure for Longmont. This measure is being implemented in the entire six-county Denver metropolitan area as required by the Clean Air Act, and thus is being implemented in Longmont, even though it is not credited in the attainment demonstration. EPA considers this to be early implementation of the contingency measure, as provided for in the August 13, 1993 Tom Helms memorandum referenced above.

Section V.C. of the SIP defines the target emissions reduction level for contingency measures. VMT growth in Longmont was estimated at 3.1% per

year, which equates to CO emissions growth of 0.92 tons per year. The 3.1% oxygenated fuels program gives Longmont an additional incremental emission reduction over the 2.7% program of 1.01 tons per year, which exceeds the minimum emission reduction level. Thus, EPA's minimum requirements for contingency measures are satisfied by the State's submittal.

II. Implications of This Action

In today's action, EPA is proposing to approve SIP revisions submitted by the Governor on July 11, 1994, July 13, 1994, and September 29, 1995. Specifically, EPA is proposing to (1) approve the July 11, 1994 attainment demonstration, VMT tracking and forecasting program, TCM, and contingency measures submittals for Denver; (2) approve the July 13, 1994 attainment demonstration and contingency measures submittals for Longmont; and (3) approve the control strategies for Denver, including the September 29, 1995 submittal of revisions to Regulations 11 and 13 (I/M and oxygenated fuels).

In this document, EPA is also proposing to find that the Denver/Boulder carbon monoxide nonattainment area did not attain the NAAQS by the required attainment date of December 31, 1995, and to revise the area's classification for carbon monoxide in 40 CFR Part 81 from moderate to serious. This proposed finding is based on air quality data revealing more than one exceedance of the CO NAAQS during calendar year 1995, resulting in a design value higher than the NAAQS for the period 1994-95. By action dated December 20, 1994, the EPA Administrator delegated to the Regional Administrators the authority to determine whether CO nonattainment areas attained the NAAQS, and to reclassify those that did not.

III. Request for Public Comments

EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this document, EPA will consider any comments received by August 8, 1996.

IV. Executive Order (EO) 12866

Under EO 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the EO. The EO defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f) of the EO, including, under

paragraph (1), that the rule may "have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."

The SIP-related actions proposed today have been classified as Table 3 actions for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted these regulatory actions from EO 12866 review.

Likewise, EPA has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f) of the EO. Under Section 186(b)(2) of the Clean Air Act, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. sections 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations that are less than 50,000.

SIP revision approvals under Section 110 and Subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval process does not impose any new requirements, EPA certifies that this proposed rule would

not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-266 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

As discussed in section IV. of this document, findings of failure to attain and reclassification of nonattainment areas under Section 186(b)(2) of the CAA do not, in and of themselves, create any new requirements. Therefore, I certify that today's proposal does not have a significant impact on small entities.

VI. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the SIP approval actions proposed today do not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. These Federal actions approve pre-existing requirements under State or local law, and impose no new Federal requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from these actions.

Likewise, EPA believes, as discussed in section IV of this document, that the proposed finding of failure to attain and reclassification to serious are factual determinations based upon air quality data and must occur by operation of law and, hence, do not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting recordkeeping requirements.

40 CFR Part 81

Air pollution control.

Authority: U.S.C. 7401-7671q.

Dated: June 24, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96-17319 Filed 7-8-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 55

[FRL-5534-7]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed rulemaking; consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the South Coast Air Quality Management District (South Coast AQMD) and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The OCS requirements for the above Districts, contained in the Technical Support Document, are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations. Proposed changes to the existing requirements are discussed below.

DATES: Comments on the proposed update must be received on or before August 8, 1996.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A-5), Attn: Docket No. A-93-16 Section XII, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the proposed notice and

copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A-93-16 Section XII. This docket is available for public inspection and copying Monday-Friday during regular business hours at the following locations:

EPA Air Docket (A-5), Attn: Docket No. A-93-16 Section XII, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE-131), Attn: Air Docket No. A-93-16 Section XII, Environmental Protection Agency, 401 M Street SW, Room M-1500, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

Christine Vineyard, Air and Toxics Division (A-5-3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55¹, which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This notice of proposed rulemaking is being promulgated in response to the submittal of rules by two local air pollution control agencies. Public comments received in writing within 30 days of publication of this notice will be

considered by EPA before publishing a notice of final rulemaking.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,² and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

A. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the South Coast AQMD is designated as the COA.

1. *The following rules were submitted as revisions to existing requirements:* Rule 102 Definition of Terms (Adopted 11/17/95)

¹ The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

² After delegation, each COA will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).