

HUD to contract with the Harvard University Graduate School of Design (Harvard GSD) to conduct a study on the costs incurred in operating well-run public housing. Harvard GSD issued a final report, the Harvard Cost Study, on June 6, 2003. In Section 222 of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199, approved January 23, 2004), Congress directed the Secretary to conduct negotiated rulemaking with the publication of a final rule by July 1, 2004.

On March 10, 2004, HUD published a document establishing a Negotiated Rulemaking Advisory Committee on the Operating Fund (Committee) to provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard Cost Study. The Committee has met three times. The first meeting was held in Washington, DC on March 30, March 31, and April 1, 2004. A second meeting was held, also in Washington, DC, on April 13-15, 2004. The third Committee meeting was held on May 11 and 12, 2004, in Atlanta, Georgia.

II. Committee Meeting

This document announces a fourth meeting of the Committee. The Committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document.

In accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix) and the implementing regulations issued by the General Services Administration at 41 CFR part 102-3, HUD publishes notices in the **Federal Register** of an advisory committee meeting at least 15 calendar days prior to the meeting. In this case HUD is providing less than 15-days advance notice due to exceptional circumstances. The Committee was originally scheduled to complete its work at the third meeting. Although great progress was made at the previous meeting towards the development of a rule, the Committee determined that a fourth meeting would be necessary to complete its work. The time required to complete hotel reservations and other logistical arrangements prevented publication of this meeting notice prior to today's date.

The agenda planned for the meeting includes discussion of issues relating to the development of changes in response to the Harvard Cost Study. The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting,

to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document.

Dated: May 27, 2004.

Deborah Hernandez,

Director, Office of Voucher Programs.

[FR Doc. 04-12495 Filed 6-1-04; 8:45 am]

BILLING CODE 4210-33-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV052-0079; FRL-7669-3]

Approval and Promulgation of Implementation Plans; New Source Review; State of Nevada, Clark County Department of Air Quality Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action is a proposed partial approval and partial disapproval of several rules that were submitted as a revision of the Clark County portion of the Nevada State Implementation Plan (SIP). We had approved a similar version of these rules into the Nevada SIP in 1999. See 64 FR 25210 (May 11, 1999). Our approval was appealed to the U.S. Court of Appeals for the Ninth Circuit, which vacated the 1999 approval and remanded our approval of the rules for further consideration. See *Hall v. EPA*, 273 F.3d 1146 (9th Cir. 2001). This proposed partial approval and partial disapproval of the rules for the reasons discussed more fully below responds to the issues raised in the court's remand.

The rules at issue in this proposed action were adopted by the Clark County Department of Air Quality Management for issuing permits for new or modified stationary sources in Clark County to comply with the applicable permitting requirements under parts C and D of title I of the Clean Air Act as amended in 1990 to prevent significant deterioration in attainment areas and to attain the National Ambient Air Quality Standards in nonattainment areas. EPA is also proposing to approve as a revision to the Nevada SIP a State regulation prohibiting the construction of major new or modified sources under exclusive State jurisdiction in the nonattainment areas within Clark County. The intended effect of this proposed action is to ensure that the Clark County Department of Air Quality

Management's permitting rules are consistent with Ninth Circuit's ruling in *Hall v. EPA* and with the requirements of the Clean Air Act, as amended in 1990. EPA is also proposing to amend the appropriate section of the Code of Federal Regulations to reflect the successful court challenge to an EPA approval of previous versions of these local rules. Lastly, under section 110(k)(6) of the Act, EPA is proposing to correct or clarify certain previous final rulemaking actions taken by EPA on revisions to the Clark County portion of the Nevada SIP. EPA is taking comments on this proposal and plans to follow with a final action.

DATES: Comments on this proposed rule must be received in writing by July 2, 2004.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Chief, Permits Office, Air Division (AIR-3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105.

You can inspect copies of the State's submittals, EPA's technical support documents (TSDs), and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

You may also see copies of the State's two submittals at the Nevada Division of Environmental Protection, 333 W. Nye Lane, Room 138, Carson City, Nevada 89706. The State's submittal of DAQM's amended rules is available at the Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, Las Vegas, Nevada 89155.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, EPA Region IX, Air Division, Permits Office (AIR-3), at (415) 972-3973 or kohn.roger@epa.gov.

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

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I. Evaluation of Clark County New Source Review Rules

A. The State's Submittal

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency, the Clark County Department of Air Quality Management (DAQM), or were adopted by the State Environmental

Commission (SEC), and submitted by the State air agency, the Nevada

Division of Environmental Protection (NDEP), to EPA as revisions to the

Nevada State Implementation Plan (SIP).

TABLE 1.—SUBMITTED RULES

Agency	Rule #	Rule title	Adopted	Submitted
DAQM	0	Definitions	10/07/03	10/23/03
DAQM	11	Ambient Air Quality Standards	10/07/03	10/23/03
DAQM	12	Preconstruction Review for New or Modified Stationary Sources.	10/07/03	10/23/03
DAQM	52.8	Gasoline Dispensing Facilities—Section 52 Offset Program	10/07/03	10/23/03
DAQM	58	Emission Reduction Credits	10/07/03	10/23/03
DAQM	59	Emission Offsets	10/07/03	10/23/03
SEC	NAC 445B.22083.	Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels.	03/29/94	11/20/03

On November 18, 2003, the submittal containing DAQM's rules was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

DAQM's predecessor agency (the Clark County Health District) adopted earlier versions of the Clark County New Source Review (NSR) rules, then numbered section 1 (Definitions), section 11 (Ambient Air Quality Standards), and section 15 (Source Registration), at various times from 1979 through 1981, which we approved into the Clark County portion of the Nevada SIP at various times in 1981 and 1982. Specifically, we approved different defined terms of section 1 (Definitions) into the applicable SIP on three occasions in 1981 and 1982. See 46 FR 21758 (April 14, 1981), 46 FR 43141 (August 27, 1981), and 47 FR 26620 (June 21, 1982). We approved section 11 (Ambient Air Quality Standards) into the applicable SIP on August 27, 1981 (46 FR 43141). We approved different subsections of section 15 (Source Registration) into the applicable SIP on two occasions in 1981 and 1982. See 46 FR 21758 (April 14, 1981) and 47 FR 26620 (June 21, 1982).

Pursuant to the Clean Air Act Amendments of 1990 (CAA or Act), Clark County revised their NSR rules, then contained in local sections 0, 12, and 58, and in 1995, EPA proposed to approve with a contingency, and disapprove in the alternative, these revised rules into the SIP. See 60 FR 38777 (July 28, 1995). Following our 1995 proposed action, Clark County revised their NSR rules (sections 0, 12, and 58) to address the contingency identified by EPA and re-submitted them via NDEP to EPA. In 1999, we found the contingency to have been satisfied and approved the revised NSR rules into the SIP. See 64 FR 25210 (May 11, 1999). Our 1999 final action was challenged, and in 2001, the U.S. Court of Appeals for the Ninth Circuit

vacated our approval of Clark County's NSR rules (specifically, sections 0, 12, and 58, as submitted and acted on in 1999). See *Hall v. EPA*, 273 F.3d 1146 (9th Cir. 2001).

The court vacated our approval on the grounds that EPA did not have an adequate basis under section 110(l) of the Act to conclude that substitution (*i.e.*, replacement or supersession) of the pre-existing NSR SIP rules (sections 1, 11, and 15) with the new NSR rules (sections 0, 12, and 58) would not interfere with attainment of the NAAQS for carbon monoxide (CO) and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10) (*i.e.*, the two pollutants for which a sub-region of Clark County, Las Vegas Valley, is designated nonattainment) by the applicable attainment deadlines. In recognition of this ruling, we are proposing to delete and reserve the paragraphs in section 1470 ("Identification of plan") of 40 CFR part 52, subpart DD (Nevada) that codified our 1999 approval (*i.e.*, 40 CFR 52.1470(c)(37) and (38)) to clarify that, until the effective date of EPA's final approval of the submitted NSR rules into the SIP, sections 1, 11, and 15 (as approved by EPA in 1981 and 1982) represent the applicable SIP NSR rules in Clark County.

Subsequently, Clark County adopted revised NSR rules (then contained in local sections 0, 11, 12, 58, and 59) on December 4, 2001. This version of the Clark County NSR rules, excluding section 11, was submitted to EPA by NDEP by letter dated February 25, 2003. We did not take action on that submittal, which has been superseded by DAQM's adoption of additional revisions to the Clark County NSR rules (now expanded to include section 52, subsection 52.8, as well as sections 0, 11, 12, 58 and 59) on October 7, 2003 and NDEP's re-submittal to EPA dated October 23, 2003. In this notice, we refer

to this latest submittal of the DAQM NSR rules (sections 0, 11, 12, 52.8, 58, and 59) as the "DAQM NSR submittal." While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals. The TSD provides additional background information on the various NSR SIP submittals for Clark County.

EPA revised its federal regulations implementing Parts C and D of the CAA on December 31, 2002, and those revisions became effective on March 3, 2003. Because Clark County had submitted a version of its revised NSR rules to us specifically in response to the court's 2001 ruling in *Hall v. EPA*, EPA is now evaluating DAQM's NSR submittal based on the federal NSR regulations that were in effect at the time of the ruling in *Hall v. EPA* (prior to December 31, 2002). This proposed rulemaking, therefore, does not establish any precedent for evaluating whether a proposed NSR SIP fulfills the requirements of the revised NSR regulations that were published December 31, 2002. The evaluation in this proposed rulemaking of DAQM's NSR submittal is limited to whether the submittal meets the requirements of the federal NSR regulations as they existed at the time of the ruling in *Hall v. EPA*, prior to revision on December 31, 2002.

There is no previous version of Nevada Administrative Code (NAC) 445B.22083 (Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels) approved, or submitted for approval, into the Nevada SIP.

Submitted DAQM sections 0, 11, 12, 52.8, 58, and 59 represent a comprehensive revision to Clark County's NSR program and are intended to satisfy the requirements under both part C (prevention of significant deterioration)(PSD) and part D (nonattainment new source review) of

title I of the Act as those parts relate to permitting of major new sources or major modifications as well as provide for a minor source permitting program as required under section 110(a)(2)(C) of the Act. Submitted DAQM section 0 (Definitions) consists of definitions of all terms relating to new sources and modifications to existing sources of air pollution. As is the case for existing SIP section 1 (Definitions), DAQM section 0 also contains numerous definitions of terms used in prohibitory rules not related to NSR. Some of these prohibitory rules are already approved into the SIP (*e.g.*, SIP section 53 (Oxygenated Gasoline Program)) while others are expected to be approved into the SIP in the near future (*e.g.*, DAQM section 54 (Cleaner Burning Gasoline) and DAQM sections 90 through 94 (related to various fugitive dust sources)). Therefore, with respect to submitted DAQM section 0, we are proposing to approve the entire rule, not just those definitions related to NSR, however, as explained later in this notice, we are proposing to retain in the SIP certain definitions from existing SIP section 1 because they are needed for various existing SIP rules unaffected by this action.

DAQM section 11 sets forth the current national ambient air quality standards (NAAQS). DAQM section 12 sets forth the source permitting requirements, including those related to applicability, control technology (*i.e.*, Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT)), offsets, and public notice. DAQM subsection 52.8 contains offset requirements for new or modified gasoline dispensing facilities whose annual through-put is more than 3.6 million gallons of gasoline per year. DAQM section 58 establishes procedures for the creation, banking, and use of emission reduction credits, and DAQM section 59 establishes offset requirements for new or modified sources. NAC 445B.22083 is a State regulation prohibiting the construction of major new or modified sources under exclusive State jurisdiction in the nonattainment areas within Clark County. The TSD has more information about these rules.

B. EPA's Evaluation and Action

SIP Revision Procedural Requirements

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan or revision submitted by a State must be

adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

DAQM held a public hearing on October 7, 2003 to entertain public comment on revisions to the following local air pollution regulations: sections 0, 11, 12, 52.8, 58 and 59. Notice for that hearing was provided by advertisement in a newspaper of general circulation in the applicable area on three separate days in September 2003. On October 7, 2003, the amended rules were adopted by DAQM and submitted to the State. On October 23, NDEP submitted the amended rules to EPA for approval as a revision to the Nevada SIP. We find that this process satisfies the procedural requirements under sections 110(a)(2), 110(l) and 172(c)(7) of the Act.

With respect to NAC 445B.22083, the Nevada SEC held a public hearing on March 3, 1994 to entertain public comment on the submitted rule. Notice for that hearing was provided by advertisement in a newspaper of general circulation in the applicable area on three separate days in February 1994. On March 3, 1994, the Nevada SEC adopted the submitted rule, which was subsequently renumbered in 2002 to its current codification as NAC 445B.22083. On November 20, 2003, NDEP submitted NAC 445B.22083 to EPA for approval as a revision to the Nevada SIP. We find that this process satisfies the procedural requirements under sections 110(a)(2), 110(l), and 172(c)(7) of the Act.

General Nonattainment and PSD Requirements

We have evaluated DAQM's NSR SIP submittal described above against the applicable requirements of section 110 and parts C and D of (title I) of the Act and the implementing regulations at 40 CFR 51.160 through 51.166 (July 1, 2002). We also relied upon the following materials in the review of this submittal: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (*see* 57 FR 13498, April 16, 1992), EPA's Emission Offset Interpretive Ruling (40 CFR part 51, appendix S), and EPA's policy document entitled, "Improving Air Quality with Economic Incentive Programs," that was published in January 2001.

We note that, on December 31, 2002, EPA published a final notice revising regulations governing NSR programs ("Federal NSR regulations") mandated by parts C and D of title I of the Act. *See* 67 FR 80186. These revisions

include changes in the NSR applicability requirements for modifications to allow sources more flexibility to respond to rapidly changing markets and to plan for future investments in pollution control and prevention technologies. We selected March 3, 2003 as the effective date for our revision to the Federal NSR regulations. Normally, we would be evaluating the Clark County NSR SIP submittal on the basis of the current Federal NSR regulations, which would include these most recent revisions, but in light of the unusual circumstances surrounding EPA's review process for the Clark County NSR rules, *i.e.*, court vacature of a fully-approved set of NSR rules, we have *not* evaluated the submitted NSR rules for consistency with the revised Federal NSR regulations but have evaluated them instead against the Federal NSR regulations that were in effect when the rules were being revised to address issues raised by EPA in the wake of the *Hall* decision. Like other State and local agencies, Clark County must adopt and submit revisions to its SIP-approved NSR rules implementing the minimum program requirements set forth in the revised Federal NSR regulations no later than January 2, 2006. *See* 67 FR 80186, at 80240 (December 31, 2002). Given this approach to our evaluation of the DAQM NSR submittal, the reader should refer to the 2002 version of 40 CFR parts 51 and 52 (revised as of July 1, 2002) where citations are made herein to the those parts of the CFR.

Nonattainment NSR Requirements

The Act requires all States with nonattainment areas to submit, by November 15, 1992, nonattainment NSR provisions that comply with part D (of title I) of the Act and the related implementing regulations. The Las Vegas Valley (hydrographic area #212), a sub-region within Clark County, was designated as a nonattainment area for both the carbon monoxide (CO) and particulate matter (PM-10) NAAQS under the Clean Air Act Amendments of 1990, and thus, the nonattainment NSR requirements apply to that area. Las Vegas Valley is currently classified as a "serious" nonattainment area for both the CO and PM-10 NAAQS. *See* 40 CFR 81.329.

First, it should be noted that, pursuant to State law, the State of Nevada, not a local air or health district, has jurisdiction over plants which generate electricity by using steam produced by the burning of fossil fuel within the State of Nevada. The applicable State law, now codified in Nevada Revised Statutes (NRS)

445B.500, was approved by EPA as a SIP revision in 1980 as NRS 445.546(4). See 45 FR 46384 (July 10, 1980). Thus, within Clark County, the State, not DAQM, has jurisdiction over such plants that are located, or that will be constructed, in that county (including the nonattainment area). This exclusion is reflected in submitted DAQM section 12, subsection 12.1.3.2.

The Nevada State Environmental Commission (SEC), the administrative body responsible for the air quality regulations implemented by NDEP, has not adopted a preconstruction permit program that complies with part D of the Act (*i.e.*, Nonattainment NSR) for the nonattainment area within Clark County. Normally, because NDEP has jurisdiction over a particular category of stationary sources in a nonattainment area (*i.e.*, Las Vegas Valley), the State would be required to adopt and submit a Nonattainment NSR program for new major sources or major modifications within the applicable source category in the nonattainment area. However, EPA is not requiring the State to submit Nonattainment NSR rules for Las Vegas Valley because the Nevada SEC adopted a regulation (NAC 445B.22083) that prohibits new power plants or major modifications to existing power plants under State jurisdiction within the Las Vegas Valley nonattainment area, and NDEP has submitted that regulation to EPA as a revision to the SIP. We propose to approve this regulation into the Nevada SIP to resolve the regulatory gap that would otherwise exist in connection with NSR for sources under NDEP jurisdiction within the nonattainment area of Clark County.

With respect to the DAQM NSR submittal, we have concluded that it meets the applicable Nonattainment NSR requirements on the basis of the following findings:

1. The DAQM NSR submittal provides for calculation of emissions offsets based on the same emissions baseline used in the demonstration of reasonable further progress as required by section 173(a)(1)(A) of the Act (*see* DAQM section 0, “emission reduction credit” and “baseline emissions”), provides for emissions offsets to be obtained when the construction permit for a new or modified source is issued and to be in effect by the time the new or modified source commences operation as required by section 173(c)(1) of the Act (*see* DAQM section 59, subsection 59.4.2.6), provides for emissions increases from new major sources or major modifications to be offset by real reductions in actual emissions as required by section 173(c)(1) of the Act (*see* DAQM section 0, “emission

reduction credit (ERC),” and specifically paragraph (b) of that definition: “Section 58 emission reduction credit”, and DAQM section 59, subsection 59.1.5), prohibits emissions reductions otherwise required by the Act from being used for NSR offset purposes as required by section 173(c)(2) of the Act (*see* DAQM section 0, “surplus,” and DAQM section 59, subsection 59.4.2.1), and provides for appropriate limitations on “prior shutdown” emission reduction credits as required in 40 CFR 51.165(a)(3)(ii)(C) (*see* DAQM section 58, subsection 58.3.2.5.3).

2. The DAQM NSR submittal provides for an analysis of alternative sites, sizes, production processes, and environmental control techniques as a prerequisite to issuing construction permits to new major sources or major modifications of nonattainment pollutants as required by section 173(a)(5) of the Act (*see* DAQM section 12, subsection 12.1.4.1(k)), provides for a definition of “stationary source” that includes certain internal combustion engines as required by section 302(z) of the Act (*see* DAQM section 0, “stationary source”), and provides for a demonstration that all other major stationary sources under the same ownership as the proposed source are in compliance with the Act as required by section 173(a)(3) of the Act (*see* DAQM section 12, subsection 12.8.2(b)).

3. The DAQM NSR submittal provides for opportunities for, and due consideration of, public comment as required by 40 CFR 51.161 and provides for substantive requirements for new or modified minor sources as required in 40 CFR 51.160 through 51.164 (*see* the pollutant-specific requirements in DAQM section 12, subsection 12.2 and the notice and public hearing requirements in DAQM section 12, subsections 12.3.2, 12.3.3, and 12.3.4).

4. The DAQM NSR submittal provides for appropriate stack height limitations as required in 40 CFR 51.118(a) (*see* DAQM section 12, subsection 12.5.4), provides for appropriate review of a source or modification which becomes major due to a relaxation in a federally-enforceable limit as required in 40 CFR 51.165(a)(5)(ii) (*see* DAQM section 0, “major modification” and “stationary source”), provides for additional requirements for any new major source or major modification that may have an impact on visibility in any mandatory Class I Federal Area as required in 40 CFR 51.307(b)(2) (*see* DAQM section 12, subsection 12.12), provides for appropriate consideration of fugitive emissions as required in 40 CFR 51.165(a)(1)(iv)(C) (*see* DAQM section 0, paragraph (b)(1) under “stationary

source”), and provides for application of the Lowest Achievable Emission Rate (LAER) on all new major sources and major modifications of nonattainment pollutants as required in section 173(a)(2) of the Act (*see* DAQM section 12, subsections 12.2.2.2, 12.2.4.2, and 12.2.23.2 for PM-10, and subsections 12.2.7.3 and 12.2.9.3 for CO).

5. The DAQM NSR submittal provides for, as required under subpart 3 of part D of title I of the Act, appropriate thresholds for major sources and major modifications in “serious” CO nonattainment areas (*see* DAQM section 0, “stationary source” and “major modification”) in which stationary sources are not significant contributors to ambient CO levels (*see* EPA’s proposed finding related to the impact of stationary sources on ambient CO levels in Las Vegas Valley in 68 FR 4141, at 4154 (January 28, 2003)), and provides for an appropriate offset ratio (*see* DAQM section 59, subsection 59.1.4, table 59.1.2).

6. The DAQM NSR submittal provides for, as required under subpart 4 of part D of title I of the Act, appropriate thresholds for major sources and major modifications in “serious” PM-10 nonattainment areas (*see* DAQM section 0, “stationary source” and “major modification”) in which PM-10 precursors (*e.g.*, oxides of nitrogen, sulfur dioxide, and volatile organic compounds) do not contribute significantly to PM-10 levels which exceed the standards in the area (*see* EPA’s proposed finding related to the impact of PM-10 precursors in Las Vegas Valley in 68 FR 2954, at 2958 (January 22, 2003)), and provides for an appropriate offset ratio (*see* DAQM section 59, subsection 59.1.4, table 59.1.2).

The TSD provides additional information on our evaluation of the DAQM NSR submittal relative to Nonattainment NSR requirements.

PSD NSR Requirements

Part C of title I of the Act contains the provisions, including preconstruction permit requirements for new major sources or major modifications, for the prevention of significant deterioration (PSD) of air quality in areas designated as “attainment” or “unclassifiable” for the NAAQS. EPA’s regulations for PSD permit programs are found in 40 CFR 51.166 and 40 CFR 52.21. Except for CO and PM-10 in Las Vegas Valley (hydrographic area #212), Clark County is designated as “attainment” or “unclassifiable” for the NAAQS. See 40 CFR 81.329.

EPA offers States (and local air districts) two mechanisms by which to

administer PSD permitting programs. First of all, EPA may delegate the PSD permitting authority of 40 CFR 52.21 to a State or air district. For instance, EPA has provided a partial delegation of authority to NDEP to administer the Federal PSD program (set forth in 40 CFR 52.21). See 68 FR 52837 (September 8, 2003). Thus, NDEP and EPA now share responsibility for administering the PSD program as it relates to major new, or major modifications at, plants which generate electricity by using steam produced by the burning of fossil fuel in Clark County (note that, in the nonattainment portion of Clark County (Las Vegas Valley), such new or modified plants are prohibited under NAC 445B.22083).

Alternatively, a State or air district may develop its own PSD program meeting the requirements of 40 CFR 51.166, and submit these rules for inclusion in the applicable SIP. The DAQM NSR submittal has been submitted for EPA approval under 40 CFR 51.166 as well as the nonattainment NSR provisions discussed in the previous subsection of this notice. With respect to the DAQM NSR submittal, we have concluded that it meets the applicable PSD NSR requirements on the basis of the following findings:

1. The DAQM NSR submittal provides for implementation of best available control technology (BACT) for new major sources or major modifications as required in section 40 CFR 51.166(j) (*see* DAQM section 12, subsections 12.2.3.2, 12.2.4.2, and 12.2.5.2 (PM-10); subsections 12.2.8.2, 12.2.9.3, and 12.2.10.2 (CO); subsections 12.2.11.2, 12.2.12.3, and 12.2.13.2 (volatile organic compounds (VOC)); subsections 12.2.14.4 and 12.2.15.2 (oxides of nitrogen (NO_x)); and subsections 12.2.16.2 (sulfur dioxide (SO₂)), 12.2.17.2 (lead (Pb)), and 12.2.19.7 (non-criteria pollutants subject to PSD)).

2. The DAQM NSR submittal provides for an appropriate air quality analysis, including pre-application air monitoring and post-construction monitoring, as required in 40 CFR 51.166(m) (*see* DAQM section 12, subsections 12.2.4.4, 12.2.4.5, 12.2.5.4, and 12.2.5.5 (PM-10); subsections 12.2.9.2, 12.2.10.4, and 12.2.10.5 (CO); subsections 12.2.12.2, 12.2.13.4, and 12.2.13.5 (VOC); subsections 12.2.14.3, 12.2.15.4 and 12.2.15.5 (NO_x); subsections 12.2.16.4 and 12.2.16.5 (SO₂); subsections 12.2.17.4 and 12.2.17.5 (Lead); subsections 12.2.19.1 and 12.1.19.2 (non-criteria PSD pollutants; subsections 12.5.5 (PSD monitoring significance levels), 12.6.1 (pre-construction ambient air monitoring

requirements), and 12.6.2 (post-construction ambient air monitoring requirements)).

3. The DAQM NSR submittal establishes the appropriate maximum allowable ambient air increments (*see* DAQM section 12, subsections 12.2.3.5, 12.2.4.6, and 12.2.5.6 (PM-10); subsections 12.2.14.3 and 12.2.15.6 (NO_x); subsection 12.2.16.6 (SO₂) and ambient air ceilings (*see* DAQM section 12, subsections 12.2.3.5(b), 12.2.4.6(c), and 12.2.5.6(c) (PM-10); subsections 12.2.9.2 and 12.2.10.4(c) (CO); subsections 12.2.12.2 and 12.2.13.4(b) (VOC); subsections 12.2.14.3 and 12.2.15.6(c) (NO_x); subsections 12.2.16.6(c) (SO₂) and 12.2.17.4 (Lead)) as required in 40 CFR 51.166(c) and (d). DAQM implements the ambient air ceilings by reference to submitted DAQM section 11, which contains the current NAAQS.

4. The DAQM NSR submittal provides for completion of appropriate additional impact analyses related to visibility, soils, and vegetation and appropriate additional air quality impact analysis related to general land use development as required in 40 CFR 51.166(o) (*see* DAQM section 12, subsections 12.2.4.7 and 12.2.5.7 (PM-10); subsections 12.2.9.2 and 12.2.10.6 (CO); subsections 12.2.12.2 and 12.2.13.6 (VOC); subsections 12.2.14.3 and 12.2.15.7 (NO_x); and subsections 12.2.16.7 (SO₂), 12.2.17.6 (Lead), and 12.2.19.3 (non-criteria PSD pollutants)).

5. The DAQM NSR submittal provides for the appropriate Class II PSD classification for all areas in Clark County based on their adopted maximum allowable ambient air increments discussed above.

6. The DAQM NSR submittal provides for protection of air quality related values (including visibility) in Class I areas as required in 40 CFR 51.166(p) (*see* DAQM section 12, subsections 12.2.4.6(b), 12.2.4.8, 12.2.5.6(b), and 12.2.5.8 (PM-10); subsections 12.2.9.2 and 12.2.10.7 (CO); subsections 12.2.12.2 and 12.2.13.7 (VOC); subsections 12.2.14.3, 12.2.15.6(b), and 12.2.15.8 (NO_x); subsections 12.2.16.6(b) and 12.2.16.8 (SO₂); subsection 12.2.17.7 (Lead); subsection 12.3.1.2(b) (notification of the Federal Land Manager (FLM) or other appropriate Federal official); subsection 12.3.4.4 (framework for coordination between DAQM and the FLM or other appropriate Federal official concerning potential impacts to Class I areas)).

7. The DAQM NSR submittal provides for agency and public participation as required in 40 CFR 51.166(p)(1) and 51.166(q) (*see* DAQM section 12,

subsection 12.3.1.2(b), 12.3.2, and 12.4.4)).

The TSD provides additional information on our evaluation of the DAQM NSR submittal relative to PSD NSR requirements.

Section 110(l) of the Act

Section 110(l) of the Act prohibits EPA from approving any revision of a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. For attainment pollutants in attainment areas, our evaluation considers first whether a submitted SIP revision would be as stringent as the provision in the existing applicable implementation plan that it would supercede. If so, then no further analysis is generally required. But, even if we cannot conclude that a SIP revision is as stringent as the corresponding provision in the applicable implementation plan, we may still approve the revision so long as it can be shown that the revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

For nonattainment pollutants in nonattainment areas, one court has ruled that our evaluation must extend beyond the issue of whether the submitted SIP revision is as stringent as the existing SIP provision that it would supercede and consider the submitted SIP revision in light of current ambient air quality and nonattainment planning requirements within the applicable nonattainment area. *See Hall v. EPA*, 273 F.3d 1146 (9th Cir. 2001). No other court has yet decided this issue. In nonattainment areas too, we may approve SIP relaxations under section 110(l) so long as they would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act (such as section 193 of the Act, discussed in the next section of this TSD).

Based on the detailed pollutant-by-pollutant evaluation we provide in the TSD (and summarize herein), which includes an evaluation of the incremental SIP strengthenings and relaxations in the context of pollutant emission sources, trends, air quality conditions, and planning requirements, we conclude that approval of the DAQM NSR submittal (and thereby replacement or supersession of the existing SIP NSR rules) would not interfere with any applicable requirement concerning attainment and reasonable further

progress, or an other applicable requirement of the Act.

Most of the significant differences between the two NSR programs (SIP-approved versus the DAQM NSR submittal) are pollutant-specific rather than of general applicability. There are, however, two differences of general applicability that warrant discussion here: the emissions test used to define a stationary source modification and the basis for the minor (referred to as "non-major" under the submitted DAQM NSR program) source baseline date.

First, the DAQM NSR submittal would replace a "potential-to-potential" test with an "actual-to-potential" test for evaluating proposed stationary source modifications (*see* existing SIP section 1, "modification" (1.52)). As a result, the existing SIP rule fails to require NSR review for modifications at major sources, which involve a significant net emissions increase in actual emissions, but no increase in the potential to emit. In contrast, the DAQM NSR submittal provides for the more protective "actual-to-potential" test for evaluating proposed modifications at major sources. This would represent a general strengthening of the NSR program compared to the existing SIP NSR program. For additional Agency discussion on the relative stringency of these two different tests for determining applicability of requirements for modifications, *see* our final rule on recent NSR revisions at 67 FR 80186 at 80204–80206 (December 31, 2002).

Second, through the definition of "baseline concentration" in SIP section 1, the existing SIP established a uniform minor source baseline date of August 7, 1977 in the various PSD baseline areas (which derive from the areas designated as attainment or unclassifiable by EPA under section 107(d) of the Act) within Clark County. This definition is consistent with EPA's 1978 final PSD regulations. However, the court in the *Alabama Power* decision set aside EPA's definition (from the 1978 PSD regulations) in favor of the statutory definition of the term (*see* section 169(4) of the Act), which links the baseline concentration to the ambient concentration that exists at the time of the first PSD application in a given area. *See Alabama Power Co. v. Costle*, 636 F.2d 323, at 375–376 (D.C. Cir. 1979). EPA's PSD regulations have long since been revised to reflect the court's holding (*see* 40 CFR 51.166(b)(13)).

While the definition of "baseline concentration" in DAQM section 0 is consistent with the current EPA definition, EPA approval of this definition to supercede the SIP definition would have the effect of

untriggering (completely) the minor source baseline dates for PM and SO₂ in those section 107(d) attainment or unclassifiable areas in which no source or modification has submitted a complete PSD application or would have a significant impact. Examples of such areas include Frenchman Flat (hydrographic area (HA) 160), Indian Springs Valley (HA 161), and Pahrump Valley (HA 162).

For those areas in which a source or modification has submitted a complete PSD application or would have a significant impact, EPA approval would have the effect of establishing a new minor source baseline date for PM or SO₂ or both, *i.e.*, from August 7, 1977 to various different (more recent) dates in the applicable areas. Examples include Las Vegas Valley (HA 212), which would have a new minor source baseline date for SO₂ of April 25, 1996 (triggered by a complete PSD application submitted by TIMET) and Black Mountains (HA 215), which would have a new minor source baseline date for PM of December 14, 1990 (triggered by a complete PSD application submitted by NCA #2).

Arguably, untriggering (or re-establishing new, more recent) minor source baseline dates represents a relaxation because a greater level of air quality degradation would be allowed compared to a regulatory scheme in which the baseline date and concentration is set uniformly for all areas at August 7, 1977. However, this particular type of change aligns the Clark County NSR program with the statute (*see* section 169(4) of the Act) and thus, can also be viewed as a correction rather than as a relaxation. We conclude, therefore, that approval of the DAQM NSR submittal would serve the Congressional purposes described in the *Alabama Power* decision, and that the untriggering (or re-setting) of PSD minor source baseline dates in Clark County under these circumstances would be consistent with section 110(l) of the Act. Section 110(l) prohibits interference with any applicable requirement of the Act, and in this case the SIP revision will bring the Clark County program in line with the requirements of the Act as interpreted by the court. Thus, EPA concludes that approval is consistent with section 110(l). We also note that our approval of the DAQM NSR submittal would have little practical effect on the PSD program as it is being administered currently by DAQM since DAQM has not been administering the program under the assumption that there is a uniform county-wide minor source baseline date (*i.e.*, as provided for in the

existing SIP NSR program) but rather under the assumption that the minor source baseline date is triggered on an area-by-area basis by the submittal of the first complete PSD application in a given area.

Carbon Monoxide (CO). As noted previously, a sub-region within Clark County, the Las Vegas Valley (hydrographic area #212), is designated as a "serious" nonattainment area for the CO NAAQS. Clark County has developed and adopted a "serious area" attainment plan which relies primarily on the Federal motor vehicle control program, and State and local wintertime gasoline specifications (such as DAQM sections 53 (Oxygenated Gasoline Program) and 54 (Cleaner Burning Gasoline), and an "enhanced" motor vehicle inspection and maintenance program to demonstrate attainment of the CO NAAQS by the applicable attainment date (year 2000). We have proposed approval of this plan. *See* 68 FR 4141 (January 28, 2003) for our proposed approval of the Las Vegas Valley "serious area" CO attainment plan. The rest of the county is designated unclassifiable/attainment for the CO NAAQS. *See* 40 CFR 81.329.

Approval of the DAQM NSR submittal (and thereby replacement or supersession of the existing SIP NSR rules) would represent an incremental relaxation in the control technology requirement for new or modified *non-major* CO sources within Las Vegas Valley (*i.e.*, from LAER to BACT), but would also represent an incremental strengthening by imposing more stringent offset requirements. The offset requirements would be strengthened in two respects: the threshold for the offset requirement would be lowered to 70 tons per year (tpy) from 100 tpy and the offset ratio would be increased to 2:1 from 1:1. Given (1) that the more inclusive "actual-to-potential test" would replace the "potential-to-potential" test for evaluating source modifications; (2) that the incremental relaxation in the control technology requirement would replace the highest level of control (LAER) with the next highest (BACT) level of control and this incremental difference is offset by an incremental strengthening in the offset requirement; (3) that DAQM section 12 prohibits new or modified CO stationary sources with potentials to emit (PTEs) greater than 50 tpy in the downtown CO "hot spot" area; (4) that the Las Vegas Valley "serious area" CO attainment plan assumes growth in non-major stationary CO sources (*i.e.*, does not assume that the CO emissions from non-major sources would be offset), concludes that stationary sources are

not a significant contributor to CO levels in the valley, and does not rely on stationary source controls to demonstrate attainment; and (5) that EPA has proposed approval of the CO attainment demonstration based on on-road motor vehicle controls, we have concluded that the supercession of the existing SIP NSR program by the submitted NSR program would not interfere with the CO attainment strategy or any other applicable requirement of the Act.

Particulate Matter (PM-10). As noted previously, Las Vegas Valley (hydrographic area #212), is designated as a "serious" nonattainment area for the PM-10 NAAQS. Clark County has developed and adopted a "serious area" attainment plan which relies primarily on prohibitory rules regulating fugitive dust sources, including vehicle travel over paved and unpaved roads and construction activity, to demonstrate attainment of the PM-10 NAAQS by year 2006. We have proposed approval of this plan. See 68 FR 2954 (January 22, 2003) for our proposed approval of the Las Vegas Valley "serious area" PM-10 attainment plan. The rest of the county is designated on a hydrographic area basis as "unclassifiable" for the PM-10 NAAQS, see 40 CFR 81.329, but PM-10 NAAQS violations have been recorded in Apex Valley, which borders Las Vegas Valley to the north.

In general, approval of the DAQM NSR submittal would strengthen the SIP by updating the PM increments in terms of PM-10 (rather than total suspended particulate (TSP)). EPA replaced the PM NAAQS, measured as TSP, with new PM NAAQS, measured as PM-10, in 1987. See 52 FR 24634 (July 1, 1987). With respect to Las Vegas Valley, approval of the DAQM NSR submittal (and thereby replacement or supercession of the existing SIP NSR rules) would represent an incremental relaxation in the control technology requirement for new or modified non-major PM-10 sources (*i.e.*, from the most stringent level of control, LAER to the next highest level of control, BACT), and in the offset requirement (from "federal" to "local" offsets) for new or modified sources with PTEs from 15 tpy (as adjusted from 25 tons TSP) to 70 tpy, but it would also represent an incremental strengthening by establishing a more stringent offset ratio (2:1) to replace the current ratio (1:1). Given (1) that the more inclusive "actual-to-potential test" would replace the "potential-to-potential test" for evaluating source modifications; (2) that the offsetting effects of these changes to the NSR program would ensure a negligible effect on PM-10 emissions;

(3) that the submitted NSR program conforms to that PM-10 attainment plan in that the plan assumes BACT- rather than LAER-level of control for new or modified non-major sources in Las Vegas; (4) that the Las Vegas Valley "serious area" PM-10 attainment plan concludes that stationary sources are not a significant contributor to PM-10 NAAQS violations in the valley, and does not rely on stationary source controls to demonstrate attainment; and (5) that EPA has proposed approval of the demonstration based on fugitive dust controls, we have concluded that the supercession of the existing SIP NSR program by the submitted NSR program would not interfere with the PM-10 attainment strategy or any other applicable requirement of the Act.

With respect to Apex Valley, the incremental relaxation in the control technology requirement (from LAER to BACT) and the elimination of any offset requirement, when viewed in isolation, could appear to potentially interfere with attainment of the PM-10 NAAQS in that area given the monitored incidence of PM-10 NAAQS violations in the area. However, EPA recognizes that Clark County is in the process of extending additional regulatory controls to existing PM-10 sources in the Apex Valley and to developing a Natural Events Action plan to address those PM-10 NAAQS violations that result from high wind events that occur there, and in that context, EPA believes that the incremental relaxation in requirements for new or modified stationary sources would not interfere with attainment of the PM-10 NAAQS in Apex Valley since the attainment strategy, by necessity, will focus on existing sources and high-wind-driven fugitive dust.

Ozone. Las Vegas Valley (hydrographic area #212) was designated as a nonattainment area for the ozone NAAQS in 1978. Pursuant to the Clean Air Act Amendments of 1977, Clark County developed and adopted the Las Vegas Valley Air Quality Implementation Plan in 1978 as an attainment plan for the ozone NAAQS. This plan was revised in 1980 and then again in 1984. The attainment strategy relied primarily on the Federal motor vehicle emission control program, the NSR program (*i.e.*, existing SIP sections 1, 11, and 15), and various stationary source prohibitory rules (including SIP sections 33, 50, 51, 52, and 60), which relate to sources of chlorine (found to be a significant ozone precursor in Las Vegas Valley) and VOC sources, such as petroleum product storage and handling. We approved these plan submittals at various times (see, *e.g.*, 51

FR 29923, August 21, 1986). Based on monitoring data documenting the necessary decrease in peak ozone concentrations, we redesignated Las Vegas Valley as "attainment" for the (one-hour) ozone NAAQS in 1986. See 51 FR 41788 (November 19, 1986). Since then, peak ozone levels have remained relatively constant at 0.09 parts per million (ppm) to 0.10 ppm, but peak levels in recent years have approached the one-hour standard of 0.12 ppm. The current (one-hour) ozone NAAQS designation for Clark County is unclassifiable/attainment. See 40 CFR 81.329.

Approval of the DAQM NSR submittal (and thereby replacement or supercession of the existing SIP NSR rules) would represent an incremental relaxation in the control technology requirement for new or modified non-major VOC sources within Las Vegas Valley (*i.e.*, from LAER to BACT), however, the DAQM NSR submittal extends LAER level of control to new or modified major VOC sources proposed for certain locations adjacent to, and generally upwind of Las Vegas Valley (*i.e.*, Eldorado Valley and Ivanpah Valley). In these adjacent areas, the applicable control technology requirement under the existing SIP NSR rules is BACT. Given that the 1980's-era ozone attainment strategy relies on several important VOC regulatory elements that would not be affected by our action on the NSR program, *e.g.*, stationary source prohibitory SIP rules (*i.e.*, SIP sections 33, 50, 51, 52, and 60) and motor vehicle tailpipe and fuel regulations promulgated by EPA under title II of the Act, and that the incremental relaxation in the control technology requirement for new or modified sources of VOC in Las Vegas Valley would replace the highest level of control (LAER) with the next highest level of control (BACT) and would be partially offset by an incremental strengthening in that requirement in upwind areas, we have concluded that the approval of the DAQM NSR submittal (and thereby replacement or supercession of the existing SIP NSR rules) would not interfere with continued attainment of the one-hour ozone NAAQS or any other applicable requirement of the Act. We note that Clark County has been designated as nonattainment for the eight-hour ozone NAAQS, which EPA established in 1997 (62 FR 38856, July 19, 1997) and which will in time replace the existing (one-hour) ozone NAAQS. 69 FR 23858, 23919-23920 (April 30, 2004). Additional changes to the DAQM NSR program will be required on a schedule

to be established by EPA in a final rule implementing the eight-hour ozone NAAQS. See 69 FR 23951, 23985–23986 (April 30, 2004).

Nitrogen Dioxide (NO₂). Clark County is designated on a hydrographic area basis as unclassifiable/attainment for the NO₂ NAAQS. See 40 CFR 81.329. Ambient NO₂ concentrations are well below (approximately 50%) the applicable NAAQS.

As a general matter, approval of the DAQM NSR submittal would strengthen the SIP by establishing NO₂ PSD increments and requiring the related NO₂ PSD increment consumption analysis for new major sources or major modifications in Clark County. Within Las Vegas Valley, approval of the DAQM NSR submittal (and thereby replacement or supercession of the existing SIP NSR rules) would relax the control technology requirement for new or modified sources of NO_x (from LAER to BACT), but this relaxation would be offset by the special restrictions established in DAQM section 12 for new or modified NO_x sources in the urbanized core of Las Vegas. From the standpoint of continued attainment of the NO₂ NAAQS, while the net effect (negative or positive) of these offsetting regulatory changes is difficult to predict, it would not be expected to be significant given that the relaxed control technology requirement is from the highest level of control (LAER) to the next highest level of control (BACT) rather than an elimination of the control technology requirement completely and given that, as noted above, ambient NO₂ concentrations are well below the applicable NAAQS. Thus, we have concluded that the supercession of the existing SIP NSR program by the submitted NSR program would not interfere with continued attainment of the NO₂ NAAQS or any other applicable requirement of the Act.

Sulfur Dioxide (SO₂). Clark County is designated on a hydrographic area basis as unclassifiable/attainment for the SO₂ NAAQS. See 40 CFR 81.329. SO₂ monitoring data collected in Las Vegas Valley in the early 1980's indicate that the highest ambient concentrations were between 5% and 22% of the respective NAAQS depending upon the averaging period. Monitoring data from year 2002 show little change in ambient SO₂ concentrations relative to conditions in the early 1980's.

Approval of the DAQM NSR submittal (and thereby replacement or supercession of the existing SIP NSR rules) would represent an incremental relaxation in the control technology requirement for new or modified SO₂ sources within Las Vegas Valley (*i.e.*,

from LAER to BACT) and an incremental relaxation in the ambient SO₂ standards used in the impact analyses conducted as part of the permit application process for new or modified sources (comparing the SO₂ ambient standards in existing SIP section 11 with submitted DAQM section 11). From the standpoint of continued attainment of the SO₂ NAAQS, EPA concludes that the incremental relaxation of the control technology requirement in Las Vegas Valley for new or modified sources of SO₂ is not significant given that the relaxed requirement is from the highest level of control (LAER) to the next highest level of control (BACT) rather than an elimination of the control technology requirement completely and given that ambient SO₂ concentrations continue to be well below the applicable NAAQS. Also, NDEP has jurisdiction over one of the principal sources of SO₂ (coal-burning power plants) in Clark County, and the control technology requirements for SO₂ emissions from those sources are unaffected by this action. Finally, the incremental relaxation in SO₂ ambient air quality standards used in the permit application evaluation process is consistent with continued attainment of the NAAQS since the revised ambient standards in submitted DAQM section 11 accurately reflect the current NAAQS for SO₂. Thus, we have concluded that supercession of the existing SIP NSR program by the submitted NSR program would not interfere with continued attainment of the SO₂ NAAQS or any other applicable requirement of the Act.

Lead. EPA promulgated the NAAQS for lead (Pb) in 1978. See 43 FR 46246 (October 5, 1978). Ambient lead levels collected in Las Vegas Valley during the late 1970's were found to violate the NAAQS. To provide for the attainment and maintenance of the lead NAAQS in the valley, Clark County adopted the *State Implementation Plan Revision for Ambient Lead in Las Vegas Valley, Clark County, Nevada* (dated February 11, 1980). EPA approved this plan as a SIP revision in 1982. See 47 FR 28374 (June 30, 1982). This lead (Pb) attainment plan predicted attainment of the lead NAAQS prior to 1982 primarily based on the declining lead content of motor vehicle gasoline, and indeed, maximum quarterly concentrations were much less than the NAAQS by the mid-1980's.

In general, the DAQM NSR submittal represents a strengthening of the SIP with respect to lead in those portions of Clark County that lie outside of Las Vegas Valley but an incremental relaxation of the SIP within Las Vegas

Valley. However, from the standpoint of continued attainment of the lead NAAQS in Las Vegas Valley, the relaxation of certain NSR requirements for new or modified stationary sources of lead (*de minimis* exemptions, a BACT control technology requirement rather than LAER, elimination of offsets) would not interfere with continued attainment of the lead NAAQS nor any other requirement of the Act because the incremental relaxation of the control technology requirement is from the highest level of control (LAER) to the next highest level of control (BACT) rather than an elimination of the control technology requirement completely and because the DAQM NSR submittal continues to ensure that permits are not issued to new or modified sources that would cause a violation of the lead NAAQS (*see* DAQM section 12, subsection 12.2.17.4(c)). Moreover, the overwhelming influence of mobile sources to the historical lead NAAQS violations, which would be unaffected by approval of the DAQM NSR submittal, and the low background lead concentrations further ensure that supercession of the existing NSR SIP program with the submitted NSR SIP program would not interfere with continued attainment of the lead NAAQS or any other requirement of the Act.

Section 193 of the Act

Section 193 of the Act, which was added by Congress in the Clean Air Act Amendments of 1990, includes a savings clause which provides, in pertinent part: "No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant." This section of the Act does not clearly apply to revisions in NSR programs, but we have evaluated the DAQM NSR submittal on the assumption that section 193 does apply. NSR program revisions are inherently difficult to evaluate with respect to changes in emissions reductions because NSR covers all types of stationary sources and provides for case-by-case evaluations of control technology requirements whether the applicable requirement is BACT or LAER (*see* 40 CFR 51.166(b)(12) and 40 CFR 51.165(a)(1)(xiii)). In the context of the DAQM NSR submittal, a determination of whether the submitted NSR program would provide for equivalent or greater

emission reductions relative to the existing SIP NSR program is further complicated by the comprehensive nature of the changes. The DAQM NSR submittal represents a wholesale revision affecting the substance, procedure, and format of the Clark County NSR program. Nevertheless, we can identify three parameters that most closely link to relative changes in emissions reductions from new or modified stationary sources: the test for evaluating source modifications, the control technology review, and the requirements for offsets, including offset thresholds, offset ratios, and the other specifications for creation and use of offsets. As explained below, relaxation in some of these parameters is offset by countervailing strengthenings in other parameters with the net result that we can conclude that the submitted NSR program will provide for equivalent or greater emissions reductions as the existing SIP NSR program (which predates the 1990 Clean Air Act Amendments) for the two applicable nonattainment pollutants, CO and PM-10.

Test for Source Modifications. As noted previously, the submitted DAQM NSR program would establish the more inclusive test ("actual-to-potential") for evaluating source modifications and thereby replace the existing SIP NSR program's "potential-to-potential" test, with the result that a greater number of source modifications would be subject to new source review and the related requirements of BACT or LAER.

Control Technology Requirements. Under the existing SIP NSR program, the highest level of control (LAER) applies to all new or modified sources of CO or PM in the nonattainment area. In contrast, under the submitted DAQM NSR program, the next highest level of control, BACT, applies to new or modified sources of CO and PM with PTEs less than 70 tpy. Under the submitted NSR program, LAER applies at 70 tpy or greater for CO and PM-10.

Offsets Requirements. Offsets requirements refer to applicable thresholds, ratios, and specifications such as whether offsets are surplus, permanent, quantifiable and federally enforceable. With respect to offset thresholds, for CO, offsets under the existing SIP NSR program apply to sources or modifications with PTEs greater than 100 tpy, whereas, under the submitted NSR program, offsets apply at 70 tpy. For PM, offsets under the existing SIP NSR program apply to sources or modifications with PTEs greater than 25 tpy (based on TSP, which is roughly equivalent to 15 tpy PM-10). The corresponding threshold

under the submitted NSR program is 70 tpy of PM-10. With respect to offset ratios, for both CO and PM, the existing SIP NSR program establishes a 1:1 ratio whereas the submitted NSR program establishes a more stringent a 2:1 ratio. With respect to specific characteristics of offsets, DAQM section 59 requires that offsets be surplus, permanent, quantifiable and federally enforceable as defined in DAQM section 0. See DAQM section 59, subsection 59.4.2.1, and the related definitions in DAQM section 0. Section 15 does not have any similar requirements for offsets.

Evaluation for Carbon Monoxide. First, as noted above, the submitted program would establish the more inclusive "actual-to-potential" test for evaluating source modifications. Second, the submitted program would establish a lower threshold for triggering offset requirements (70 tpy under the submitted NSR program versus 100 tpy under the existing SIP NSR program), would establish a higher offset ratio (2:1 versus 1:1), and would establish the requirements for creation and use of offsets (surplus, permanent, quantifiable and federally enforceable) that ensure that emissions increases are truly offset. Thus, two of the three parameters strongly support a conclusion that the submitted program would provide equivalent or greater CO emissions reductions relative to the existing SIP NSR program.

One of the three parameters, the control technology requirement, is more stringent for non-major sources under the existing SIP NSR program than under the submitted program. The existing SIP NSR program requires LAER-level of control for non-major CO sources whereas the submitted DAQM NSR program requires BACT-level of control for such sources. The emissions reductions associated with application of LAER-level of control relative to those associated with application of BACT-level of control depend upon the type and size of proposed sources or modifications. In some instances, due to the "top-down" approach used in BACT analyses, which requires justification for not selecting LAER-level of control before evaluating less stringent levels of control, BACT is equivalent to LAER. This "top-down" approach for determining BACT is described in detail in Chapter B of EPA's *Draft New Source Review Workshop Manual* (October 1990). In most other instances, the differences in emissions limitations between the two levels of control are relatively small, particularly in relation to emissions that would otherwise result from an uncontrolled source.

Thus, we have concluded that the CO emissions increase associated with the incremental relaxation associated with the control technology requirement for non-major sources, which should be relatively minor given the small difference between emissions limitations under BACT versus LAER in most circumstances, would be more than compensated for by the more inclusive test for source modifications, the lower CO offset threshold, the higher CO offset ratio, and the establishment of other requirements for offsets that ensure that they truly offset emissions from applicable new sources or modifications.

Evaluation for Particulate Matter. As noted above, the submitted DAQM NSR program would establish the more inclusive "actual-to-potential" test for evaluating source modifications.

The second parameter, the control technology requirement (LAER), is more stringent for non-major sources under the existing SIP NSR program than under the submitted program (BACT). As described above for CO, however, the difference between the emissions reductions associated with application of LAER-level of control relative to those associated with application of BACT-level of control typically ranges from minor to none at all.

With respect to requirements for PM offsets, the differences between the existing SIP and submitted NSR programs are particularly difficult to evaluate. On one hand, the existing SIP NSR program has established a lower offset threshold at 25 tpy of TSP (which is roughly equivalent to 15 tpy of PM-10), compared to 70 tpy of PM-10 under the submitted program. On the other hand, the existing program has established a lower offset ratio (1:1 versus 2:1).

Moreover, the "quality" of the offsets under the existing program is lower than that required under the submitted program in two respects. First, unlike the submitted program, the existing SIP NSR program does not require that offsets be surplus, permanent, quantifiable and federally enforceable and thus does not ensure that increases in emissions are truly offset. Second, the existing SIP NSR program allows TSP offsets to be used to offset increases in PM emissions. Depending upon the particle size distribution of those TSP offsets, it is possible that increases in PM-10 emissions under the existing SIP NSR program would not be offset by PM-10 offsets at all. In other words, a new source that generates particulate matter that is largely or entirely of the particle size constituting PM-10 could be "offset" under the existing program

by another source whose PM emissions are largely or entirely of a particle size not constituting PM-10 but still constituting TSP (TSP includes particles roughly 30 microns in diameter or less). In such circumstances, the PM-10 emissions increase at the new source would be at most only partially offset since the "offsets" do not, or only partially, constitute PM-10. In contrast, the submitted program, while it does not require offsets for as many new sources as the existing program (due to the higher offset threshold), does require that PM-10 emissions increase be offset by PM-10 offsets, *i.e.*, where offsets are required.

In conclusion, while we recognize the significant trade-offs in emission reduction potential between the two NSR programs with respect to PM-10, we have concluded that the PM-10 emissions increase associated with the incremental relaxation associated with the control technology requirement for non-major sources and the higher offset threshold would be more than compensated for by the more inclusive test for source modifications, the higher PM-10 offset ratio, the establishment of other requirements for offsets that ensure that they truly offset emissions from applicable new sources or modifications, and the requirement to use PM-10 offsets rather than TSP offsets, only some fraction of which constitutes PM-10.

Conclusion. For the reasons set forth above, we propose to find that the submitted DAQM NSR program insures equivalent or greater emissions reductions of CO and PM-10 as compared to the existing SIP NSR program in compliance with section 193 of the Act.

Proposed Partial Approval

Pursuant to section 110(k)(3) of the Act, we propose a partial approval of the submitted NSR rules. With the exceptions listed in the following subsection of this notice, we propose approval of the submitted NSR rules, including DAQM sections 0, 11, 12, 58, and 59 and NAC 445B.22083, based on our determination that the rules comply with applicable statutory and regulatory provisions requiring regulation of stationary sources in general and requiring permit programs for major stationary sources in particular, including section 110(a)(2)(C) and parts C and D of title I of the Act. In support of this recommendation, we have concluded that our approval of the submitted NSR rules (and thereby replacement or supersession of the existing SIP NSR rules), *i.e.*, with the partial exception for certain definitions

in existing SIP section 1, complies with section 110(l) of the Act because the untriggering (or re-setting) of the minor source baseline dates for PM and SO₂ would be consistent with the statutory purpose of linking such dates with collection of actual air quality data and because the relaxation of certain control technology and offset requirements would not interfere with the strategy for attainment of the CO and PM-10 NAAQS in Las Vegas Valley or the continued attainment of the other NAAQS in Clark County.

Proposed Partial Disapproval

We are also proposing a partial disapproval of the DAQM NSR submittal. A discussion of the individual subsections of the submittal that we are proposing to disapprove is provided in the following paragraphs.

1. We propose to disapprove submitted DAQM section 12, subsections 12.2.18 (HAP sources in Clark County) and 12.2.20 (Additional Requirements for Stationary Sources with Beryllium, Mercury, Vinyl Chloride, or Asbestos Emissions in Clark County) to avoid potential confusion or conflict with the Federal NESHAPS/MACT regulatory program. Regulations governing hazardous air pollutant (HAP) emissions are generally not appropriate for incorporation into SIPs, which are intended under the Act to assure attainment and maintenance of the criteria air pollutants.

2. We propose to disapprove DAQM section 52, subsection 52.8 (Section 52 Offset Program), because it cannot be evaluated properly in the absence of a SIP submittal of the entire rule (section 52). DAQM revised subsection 52.8 to clarify the date when the emission reduction credit program will expire, but the emission reduction credit program is not a part of existing SIP section 52, different portions of which were approved by EPA in 1981 (*see* 46 FR 21758, April 14, 1981) and in 1982 (*see* 47 FR 26386, June 18, 1982). Thus, consideration of this latest revision should be conducted only as part of an evaluation of the entire rule (*i.e.*, DAQM section 52).

A partial disapproval is appropriate in this instance given the explanation provided above and given that these three subsections (*i.e.*, DAQM section 12, subsections 12.2.18 and 12.2.20, and DAQM section 52, subsection 52.8) are easily severable from the overall NSR submittal.

Recommendations for Improvements to DAQM NSR Rules

The TSD describes rule deficiencies that do not preclude full approval of the

DAQM NSR submittal but are recommended for the next time DAQM modifies the rules. These recommendations relate to such topics as use of consistent terms, greater coordination with NDEP concerning increment consumption, and consideration of any analysis of the impact of a major source or major modification on air quality related values in Class I areas provided by a Federal Land Manager or other Federal official during the permit application review period and provision of an explanation in the public notice in those instances which DAQM disagrees with a finding of such Federal official.

II. Corrections to, or Clarification of, the Clark County Portion of Nevada State Implementation Plan

In pertinent part, section 110(k)(6) of the Act provides that whenever EPA determines that the EPA action approving, disapproving, or promulgating any plan or plan revision (or part thereof) was in error, EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public. The EPA interprets this provision to authorize the Agency to make corrections to an approval, disapproval, or promulgation of a SIP revision when it is shown to EPA's satisfaction that an error occurred in failing to consider or inappropriately considering information available to EPA at the time of the approval, disapproval, or promulgation, or the information made available at the time of approval, disapproval, or promulgation is subsequently demonstrated to have been clearly inadequate.

Over the years, EPA has taken numerous actions on revisions to the Clark County portion of the Nevada SIP. In the process, EPA has made certain errors, or took certain actions that warrant clarification, which are the subject of this proposed action. Each proposed correction or clarification is summarized below. The TSD for this proposed action provides additional discussion of these rules.

SIP section 1, subsections 1.79, Significant Source of Total Chlorides, and 1.94, Total Chlorides. In the preamble to our final rule approving these defined terms into the SIP (46 FR 43141; August 27, 1981), we said that we were taking no action on these two subsections, but then we proceeded to codify them in the "Identification of plan" section of 40 CFR part 52, subpart

DD (Nevada). As a result, we inadvertently approved these two subsections of local rule, SIP section 1 (Definitions), into the Clark County portion of the Nevada SIP. We are proposing now to delete these terms from the SIP and to codify this deletion by revising the appropriate paragraph under 40 CFR part 52, subpart DD (Nevada), section 1470 (Identification of plan).

Former SIP section 12, Upset, Breakdown, or Scheduled Maintenance. EPA originally approved this rule into the SIP in 1973. See 38 FR 12702 (May 14, 1973). In 1981, we reversed course and disapproved it and codified this disapproval by amending 40 CFR part 52, section 1478 (then entitled "Rules and Regulations"). See 46 FR 43141 (August 27, 1981). Subsequently, Clark County renumbered its air pollution regulations and submitted a local rule (section) 25 also entitled "Upset, Breakdown, or Scheduled Maintenance," which we disapproved in 1984. See 49 FR 10259 (March 20, 1984). In that 1984 final rule, we codified our disapproval of submitted section 25 by amending 40 CFR 52.1483, but we also removed and reserved 40 CFR 52.1478 which had included the 1981 disapproval language related to section 12 (Upset, Breakdown, or Scheduled Maintenance). (Note that 40 CFR 52.1478 has subsequently been renamed "Extensions.") The end result of this sequence of rulemaking is that, while section 12 (Upset, Breakdown, or Scheduled Maintenance), originally approved by EPA in 1973, is no longer approved into the Nevada SIP (ever since disapproval action in 1981), the current codification of the Nevada SIP in subpart DD (Nevada) of 40 CFR part 52 is not clear on this point. Therefore, we are proposing to clarify the status of former SIP (now disapproved) section 12 (Upset, Breakdown, or Scheduled Maintenance), as submitted on January 19, 1973, by revising the appropriate paragraph under 40 CFR part 52, subpart DD (Nevada), section 1470 (Identification of plan).

SIP Section 15, Prohibition of Nuisance Conditions. EPA approved this rule into the Nevada SIP in 1973. See 38 FR 12702 (May 14, 1973). Clark County later renumbered its air quality regulations, and we subsequently approved a new local rule (section) 15 (Source Registration) into the SIP. That new SIP section 15 (Source Registration) had nothing to do with general nuisance conditions and thus did not supercede the old SIP rule 15 (Prohibition of Nuisance Conditions) in the Nevada SIP. However, general nuisance rules, such as SIP section 15 (Prohibition of

Nuisance Conditions) are not appropriate for inclusion in SIPs, because they are not specifically directed at the attainment and maintenance of the NAAQS, and therefore, we are proposing to delete section 15 (Prohibition of Nuisance Conditions) from the SIP and to codify this deletion by revising the appropriate paragraph under 40 CFR part 52, subpart DD (Nevada), section 1470 (Identification of plan).

Disapproved section 25, subsection 25.1, untitled, but related to upset, breakdown or scheduled maintenance. In 1981, we disapproved this rule, which had been submitted to us on July 24, 1979. See 46 FR 43141 (August 27, 1981). Through that 1981 action, we listed this rule in the "Identification of plan" section of 40 CFR part 52, subpart DD (Nevada) but canceled out the apparent approval by codifying the corresponding disapproval in 40 CFR 52.1478. In 1984, we disapproved an amended version of local Clark County rule, section 25 (Upset, Breakdown, or Scheduled Maintenance), which had been submitted to us on November 17, 1981. See 49 FR 10259 (March 20, 1984). In the 1984 action, we codified our disapproval of section 25 (Upset, Breakdown, or Scheduled Maintenance), submitted on November 17, 1981, by amending 40 CFR 52.1483, but we also removed and reserved 40 CFR 52.1478 (then entitled "Rules and Regulations"), which had included the 1981 disapproval language related to section 25, subsection 25.2, as submitted on July 24, 1979. By removing the disapproval language but retaining the listing of section 25, subsection 25.1, in the "Identification of plan" section of 40 CFR part 52, subpart DD (Nevada), we have inadvertently caused potential confusion as to the status of this particular rule with respect to the Nevada SIP. To eliminate this confusion, we are proposing to delete the listing of section 25, subsection 25.1 (untitled, but related to upset, breakdown or scheduled maintenance), by revising the appropriate paragraph under 40 CFR part 52, subpart DD (Nevada), section 1470 (Identification of plan).

SIP section 29 (Odors in the Ambient Air). EPA originally approved this rule into the SIP in 1973. See 38 FR 12702 (May 14, 1973). Clark County later renumbered its air pollution regulations, and we subsequently approved a new local rule (section) 29 (Sulfur Content in Fuel Oil) into the SIP. See 46 FR 43141 (August 27, 1981). The new SIP section 29 (Sulfur Content in Fuel Oil) was completely different than the old SIP section 29 (Odors in the Ambient Air)

and thus did not supercede it, nor have we taken specific action to delete the old SIP section 29 (Odors in the Ambient Air) from the Nevada SIP. Thus, section 29 (Odors in the Ambient Air), submitted on January 19, 1973, remains in the Nevada SIP. Odor nuisance rules are generally not appropriate for inclusion in the SIP, because they are not specifically directed at the attainment and maintenance of the NAAQS. Therefore, we are proposing to delete section 29 (Odors in the Ambient Air), submitted on January 19, 1973, from the Nevada SIP and to codify the deletion by revising the appropriate paragraph under 40 CFR part 52, subpart DD (Nevada), section 1470 (Identification of plan).

SIP section 33, Chlorine in Chemical Processes. This local rule was adopted on May 18, 1984, and was included in the *Las Vegas Valley Air Quality Implementation Plan, Post 1982 Update for Ozone*, which was adopted by Clark County on October 16, 1984, submitted by NDEP on January 11, 1985, and approved by EPA as a SIP revision on August 21, 1986 (51 FR 29923). The codification of our approval of the post-1982 ozone plan, however, does not provide a separate listing of section 33, which could result in confusion as to the status of that rule with respect to the SIP. See 40 CFR 52.1470(c)(33). To clarify its status as an approved part of the Nevada SIP, we are proposing to revise 40 CFR 52.1470(c)(33) to provide for a specific listing for section 33 (Chlorine in Chemical Processes).

SIP section 40, subsection 40.1, Prohibition of Nuisance Conditions; SIP section 42, subsection 42.2, untitled but related to nuisance from open burning; and SIP section 43, subsection 43.1, Odors in the Ambient Air. These three rules were submitted to EPA on July 24, 1979. In 1981, we took final action on the portion of the July 24, 1979 submittal that included these three rules. See 46 FR 43141 (August 27, 1981). In that rulemaking, we indicated that we were taking no action on the three rules, but we inadvertently listed them as approved into the SIP. See 40 CFR 52.1470(c)(16)(viii). Therefore, we are proposing to revise 40 CFR 52.1470(c)(16)(viii) to delete SIP section 40, subsection 40.1 (Prohibition of Nuisance Conditions), SIP section 42, subsection 42.2 (untitled but related to nuisance from open burning), and SIP section 43, subsection 43.1 (Odors in the Ambient Air), submitted on July 24, 1979, from the Nevada SIP.

Conclusion. EPA has reviewed the rules described above and determined that they were previously approved in

error into the Clark County portion of the Nevada SIP (SIP sections 1.79, 1.94, 15, 29, 40.1, 42.2, and 43.1), or were previously disapproved but not clearly identified as such in the CFR (former SIP section 12 and disapproved submitted section 25.1), or were not clearly listed as approved (SIP section 33). Deletion of those rules approved in error into the SIP will not relax the applicable SIP and is consistent with the Act. Therefore, EPA is proposing to delete them and to clarify the status of the other listed rules under section 110(k)(6) of the Act, which provides EPA with the authority to take these actions without additional State submission.

III. Proposed Action and Public Comment

As authorized under section 110(k)(3) of the Act, EPA is proposing a partial approval and partial disapproval of the revised Clark County NSR rules into the Nevada SIP. We are proposing to approve submitted DAQM sections 0, 11, 12 (except subsections 12.2.18 and 12.2.20), 58, and 59 and submitted State regulation NAC 445B.22083. We are proposing to disapprove submitted DAQM section 12, subsections 12.2.18 and 12.2.20, and submitted DAQM section 52, subsection 52.8.

If finalized, this action would incorporate those provisions of the submitted rules that we are approving into the SIP and would not incorporate those provisions that we are disapproving. Also, if finalized as proposed, the submitted rules will supercede the existing SIP rules that provide for permitting of new or modified stationary sources in Clark County, including all of existing SIP sections 11 and 15, as well as most of the defined terms in existing SIP section 1, and will withdraw EPA's nonattainment area visibility FIP authority as it relates to new source review by DAQM in Clark County (see 40 CFR 52.1488(b)). If this partial disapproval is finalized, sanctions will not be imposed under section 179 of the Act because the provisions that we are proposing to disapprove are not required SIP submissions.

With respect to the two local rules entitled "Definitions," if we finalize this action as proposed, we would approve submitted DAQM section 0 (Definitions) in its entirety, including those terms not directly related to NSR, but we would retain 33 defined terms from SIP section 1 (Definitions) because there are no equivalent, corresponding terms and definitions in DAQM section 0, and thus, these terms may be needed for existing SIP rules unaffected by this

action. The 33 defined terms from SIP section 1 to be retained include: Affected Facility (1.1), Air Contaminant (1.3), Air Pollution Control Committee (1.6), Area Source (1.11), Atmosphere (1.12), Board (1.16), Commercial Off-Road Vehicle Racing (1.23), Dust (1.26), Existing Facility (1.28), Existing Gasoline Station (1.29), Fixed Capital Cost (1.30), Fumes (1.36), Health District (1.40), Hearing Board (1.41), Integrated Sampling (1.44), Minor Source (1.50), Mist (1.51), New Gasoline Station (1.57), New Source (1.58), NIC (1.60), Point Source (1.70), Shutdown (1.78), Significant (unnumbered), Single Source (1.81), Smoke (1.83), Source of Air Contaminant (1.84), Special Mobile Equipment (1.85), Standard Commercial Equipment (1.87), Standard Conditions (1.88), Start Up (1.89), Stop Order (1.91), Uncombined Water (1.95), and Vapor Disposal System (1.97). The TSD provides additional information on the proposed partial supercession of existing SIP section 1.

Second, in recognition of the vacature of our approval of previous versions of the Clark County NSR rules in *Hall v. EPA*, we propose to delete 40 CFR 52.1470(c)(36) and (37).

Third, under section 110(k)(6), we are proposing to correct certain provisions of the Clark County portion of the Nevada SIP that were incorporated into the SIP in error and to revise certain provisions of the Clark County portion of the Nevada SIP that warrant clarification. Specifically, we are proposing to delete SIP section 1, subsections 1.79 (Significant source of total chlorides") and 1.94 (Total Chlorides); SIP section 15 (Prohibition of Nuisance Conditions); SIP section 29 (Odors in the Ambient Air); SIP section 40, subsection 40.1 (Prohibition of Nuisance Conditions); SIP section 42, subsection 42.2 (untitled but related to nuisance from open burning); and SIP section 43, subsection 43.1 (Odors in the Ambient Air), from the appropriate paragraphs of section 1470 ("Identification of plan") of 40 CFR part 52, subpart DD (Nevada). If finalized as proposed, this action will delete these rules from the federally enforceable SIP. We are also proposing to revise the appropriate paragraphs in 40 CFR 52.1470 to clarify that former SIP section 12 (Upset, Breakdown, or Scheduled Maintenance) and submitted section 25.1 (untitled, but related to upset, breakdown, or scheduled maintenance) have been disapproved and are not approved into the Nevada SIP, and to clarify that SIP section 33 (Chlorine in Chemical Processes) was, and continues to be, approved into the Nevada SIP as part of our approval of

the overall post-1982 ozone plan for Las Vegas Valley.

We are soliciting public comment on all aspects of this proposal. These comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail (in triplicate if possible) as described in the ADDRESSES section listed in the front of this document. EPA will consider any written comments received by July 2, 2004.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the

distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compound.

Dated: May 24, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.
[FR Doc. 04-12412 Filed 6-1-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[OW-2003-0067; FRL-7669-1]

RIN 2040-AE62

National Primary Drinking Water Regulations: Analytical Method for Uranium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the use of three additional analytical methods for compliance determinations of uranium in drinking water. Each of these methods use an inductively coupled plasma mass spectrometry

(ICP-MS) technology that has gained wide acceptance in the analytical community. EPA believes that ICP-MS analytical methods could be more cost-effective, less labor-intensive or more sensitive than some of the technologies previously approved in the December 2000 Radionuclides Rule. (65 FR 76708) This proposed rule does not withdraw approval of any previously approved monitoring methods for uranium.

In the "Rules and Regulations" section of the **Federal Register**, we are approving National Primary Drinking Water Regulations: Analytical Method for Uranium as a direct final rule without prior proposal because we view this as a noncontroversial rulemaking and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Through this proposal, EPA requests comment on whether approval of the ICP-MS methods published by EPA, American Society for Testing and Materials International (ASTM), and the Standard Methods Committee (EPA 200.8, ASTM D5673-03, and SM 3125), is appropriate for compliance determinations of uranium in drinking water only. Readers should please note that EPA is not requesting comment on any other use of these three ICP-MS methods, use of any other ICP-MS method, or any issue associated with the uranium standard or its implementation, and EPA will not respond to any comments other than those concerning the approval of these specific methods (as cited) for compliance determinations of uranium in drinking water. Today's action does not affect approval of the 15 methods currently approved for compliance monitoring of uranium.

DATES: Comments must be received on or before July 2, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. OW-2003-0067, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Website: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment

system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: OW-Docket@epa.gov.
- Mail: OW Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please include a total of 4 copies.

- Hand Delivery: OW Docket, EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OW-2003-0067. 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.epa.gov/edocket>, 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 EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are "anonymous access" systems, 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 EDOCKET or 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 EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other