

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2016-0550; FRL-9957-56-Region 6]

#### Approval and Promulgation of Implementation Plans; Texas; El Paso Carbon Monoxide Limited Maintenance Plan

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

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is taking direct final action to approve the required second carbon monoxide (CO) maintenance plan as a revision to the Texas State Implementation Plan (SIP). The El Paso, Texas CO maintenance area (El Paso Area) has been demonstrating consistent air quality monitoring at or below 85% of the CO National Ambient Air Quality Standard (NAAQS or standard). Because of this, the State of Texas, through its designee, submitted the required second maintenance plan for the El Paso Area as a Limited Maintenance Plan (LMP).

**DATES:** This rule is effective on May 22, 2017 without further notice, unless the EPA receives relevant adverse comment by April 20, 2017. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2016-0550, at <http://www.regulations.gov> or via email to [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Jeffrey Riley, 214-665-8542, [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov). For the full EPA

public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Riley, 214-665-8542, [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov). To inspect the hard copy materials, please schedule an appointment with Jeffrey Riley or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

### I. Background

Under the 1990 CAA Amendments, a portion of the City of El Paso, Texas was designated and classified as a moderate nonattainment area for CO because it did not meet the NAAQS for this criteria pollutant 56 FR 56694 (November 1, 1991). The former El Paso CO nonattainment area is restricted to a narrow strip along the Rio Grande, adjacent to Ciudad Juarez, Mexico. El Paso’s former classification as a moderate nonattainment area under sections 107(d)(4)(A) and 186(a) of the CAA imposed a schedule for attainment of the CO NAAQS by December 31, 1995.

EPA approved the El Paso Area’s CAA section 179 attainment demonstration that showed attainment but for emissions from Mexico, the motor vehicle emissions budget, and the contingency plan 68 FR 39457 (July 2, 2003).

EPA approved the redesignation of the El Paso CO nonattainment area to attainment for the CO NAAQS, the associated CAA section 175A(a) maintenance plan, and the included motor vehicle emissions budgets at 73 FR 45162 (August 4, 2008). The maintenance plan ensures continued attainment of the CO standard until 2020.

On September 21, 2016, the Texas Commission on Environmental Quality (TCEQ) submitted a revision to the El Paso SIP, providing the second 10-year update to the CO maintenance plan for the area, as required eight years after redesignation by section 175A(b) of the

Act and also submitted a request for approval of the maintenance plan as a LMP. The purpose of the LMP is to ensure continued maintenance of CO NAAQS in the El Paso Area for the duration of the second 10-year maintenance period of 2018–2028 by demonstrating that future emissions of this criteria pollutant are expected to remain at or below emission levels necessary for continued attainment of the current CO NAAQS.

### II. The EPA’s Evaluation

Since there are few specific content requirements defined in section 175A of the Act for subsequent (or second) maintenance plan revisions, EPA has exercised its discretion in determining the recommended content of such plans.<sup>1</sup> If an area meets the criteria, the State (area) may submit a maintenance plan that is more streamlined than a full Maintenance Plan.<sup>2</sup> Such a streamlined plan is called a Limited Maintenance Plan (LMP), and the criteria of a LMP is detailed more below. EPA’s interpretation of section 175A of the CAA, as it pertains to LMP’s for CO, is contained in the October 6, 1995, national guidance memorandum titled “Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas” from Joseph Paisie, Office of Air Quality Planning and Standards.<sup>3</sup> The LMP guidance allows for areas that can demonstrate consistent air quality monitoring data at or below 85% of the NAAQS for carbon monoxide to elect for a LMP. Other criteria for the LMP option are detailed in the 1995 guidance as well. The TCEQ has opted to develop a LMP for the El Paso Area to fulfill the second 10-year CO maintenance period required by the Act.

Consistent with the above guidance, EPA will consider the maintenance demonstration satisfied if the monitoring data show the 8-hour CO design value is at or below 7.65 parts per million (ppm), or 85% of the 8-hour

<sup>1</sup> See generally EPA memorandum “Procedures for Processing Requests for Redesignate Areas to Attainment,” from John Calgani, Director Air Quality Management Division to Regional Air Division Directors (September 4, 1992); and EPA memorandum “Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas” from Sally L. Shaver, Director Air Quality Strategies & Standards Division to Regional Air Division Directors (November 16, 1994). Copies of both memorandums are included in the docket for this rulemaking.

<sup>2</sup> A limited maintenance plan generally includes all the elements of a full CAA section 175A maintenance plan except that a limited maintenance plan is not required to include motor vehicle emissions budgets for transportation conformity purposes.

<sup>3</sup> A copy of the October 6, 1995 Guidance Memorandum is included in the docket for this rulemaking.

CO NAAQS of 9 ppm. The EPA believes that if the area begins the maintenance period at or below 85% of the applicable NAAQS, the continuing applicability of the Prevention of Significant Deterioration Program (PSD) and other Federal measures along with the existing control measures already adopted should provide adequate assurance of maintenance of the NAAQS over the 10-year period.

The EPA has reviewed the State's SIP submittal for the El Paso Area. Per our 1995 guidance above, a LMP consists of several core provisions: An attainment inventory, a demonstration of maintenance of the applicable NAAQS, operation of a monitoring network, a provision for contingency measures, and a discussion of the approach necessary to meet conformity requirements. The following is a summary of the criteria for a LMP and the EPA's evaluation of how each provision has been met by the SIP submittal.

*A. Base Year Emissions Inventory*

Under the LMP option, a cap on total emissions is not needed during the first or second 10-year maintenance period, and there is no requirement to project emissions over the maintenance period because an area's monitoring data satisfy the air quality criteria of the LMP by beginning the maintenance period at or below 85% of the CO NAAQS. However, the maintenance plan should contain an attainment year emission inventory to identify a level of CO emissions in the area that is sufficient to attain the CO NAAQS. Emission inventories contain estimates of how much CO is produced by all categories in the maintenance area on an annual basis: Point sources, area sources, on-road mobile sources, and non-road mobile sources. The September 21, 2016 SIP submittal contains a summary of the CO emissions inventory for the El Paso Area for the base year 2014. The methods used to determine the El Paso CO emission inventory are consistent with the EPA's most recent guidance on developing emission inventories, and the inventory incorporates the latest information and planning assumptions available at the time of its development.<sup>4</sup> Because violations of the CO NAAQS are most likely to occur on winter weekdays, the inventory

prepared is for a "typical winter day".<sup>5</sup> The table below shows the estimated tons of CO emitted per winter day by source category for the 2014 base year.

TABLE I—CO EMISSIONS BY SOURCE CATEGORY, 2014

Source category	Tons per winter weekday
Point .....	5.12
Area .....	8.76
Non-road mobile .....	33.02
On-road mobile .....	112.26
Total .....	159.16

This LMP demonstrates continued attainment of the CO standard for El Paso County in 2014 through monitoring data. The 2014 emissions inventory shows that emissions decreased during the initial 10-year maintenance period even with growth in vehicle miles traveled, economic activity, and population.

*B. Demonstration of Maintenance*

The State has chosen to demonstrate maintenance of the NAAQS by continued monitoring of the air quality in the El Paso Area. To qualify for the LMP option, the design value for each monitor should be at or below 85% of the 8-hour CO NAAQS. The value corresponding to this 85% threshold is 7.65 ppm for the 8-hour CO NAAQS. The last monitored violation of the CO NAAQS in the El Paso Area occurred in 1993 and monitored CO levels have been steadily in decline ever since. For this submission, the State provided data showing monitored CO values from 2006–2015, reflecting a 2015 8-hour CO design value of 2.8 ppm. Thus, the design value for the 8-hour standard is less than 31% of the CO NAAQS. The EPA believes that if an area begins the maintenance period at or below the 85% threshold, it is unreasonable to expect that so much growth will occur during the 10-year maintenance period to cause a violation of the NAAQS.<sup>6</sup>

The CO control program for El Paso Area is comprised of both Federal and local measures. The current maintenance plan 73 FR 45162 (August 4, 2008) for the area includes several control strategies that will remain in place for the duration of the second 10-

year maintenance period of 2018–2028. The Federal strategies are continued implementation of the Tier 2 motor vehicle emission standards along with the requirement for reduced sulfur in gasoline, which became effective on February 10, 2000. 65 FR 6697 (February 10, 2000). Additionally, EPA's newly approved Tier 3 Motor Vehicle Emission and Fuel Standards at 79 FR 23414 (April 28, 2014) will reduce CO emissions from new, light-duty motor vehicles, light-duty trucks, and medium-duty passenger vehicles beginning model year 2017 and will be fully phased in by model year 2025. The Tier 3 fuel standards will lower the sulfur content of gasoline and make emission control systems more effective for both existing and new vehicles. As newer vehicles gradually replace older ones in the fleet, these control programs will result in lowered CO emissions in the El Paso County Area and elsewhere.<sup>7</sup>

Local control strategies remaining in place for the duration of the second 10-year LMP include a vehicle emissions Inspection and Maintenance (I&M) Program, an Oxygenated Fuels Program, and the PSD Program. 73 FR 45162 (August 4, 2008). The I&M program has been in effect in the El Paso Area since January 1, 1987, and initially consisted of two-speed idle (TSI) testing for all vehicles. On January 1, 2007, an enhanced vehicle I&M program began On-Board Diagnostics testing for all model year 1996 and newer vehicles and continued to use TSI testing for all model year 1995 and older vehicles. All vehicle emissions inspection stations in the El Paso I&M program area are required to offer both tests. The program addresses CO emissions as well as ozone precursor emissions. The original program as described above will remain in place for the duration of the second 10-year maintenance period (2018–2028).

The El Paso Oxygenated Fuel Program aims to reduce vehicle emissions by providing for the use of oxygenated fuels. Various forms of this program have been in place during the winter months (October 1 through March 31) since October 1, 1992. The minimum oxygenate content of winter fuels in El Paso County is 2.7% by weight, and this requirement will remain in effect for the

<sup>4</sup> See Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone. Volume I: General Guidance for Stationary Sources, EPA-450/4-91-016, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, May 1991; and Air Emissions Inventory Improvement Program (EHIP) Technical Report Series—Volumes 1–10.

<sup>5</sup> See the above-referenced October 1995 CO LMP guidance under "3.a.—Attainment Inventory" and EPA's EI guidance titled "Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone: Volume I," also cited in the October 1995 CO LMP guidance.

<sup>6</sup> See Section IV.b of the above referenced 11/16/1994 ozone LMP guidance (November 16, 1994).

<sup>7</sup> The Tier 2 final rule Regulatory Impact Analysis notes reductions in NO, VOC, particulate, SO<sub>x</sub>, CO, and hazardous air pollutant emissions from cars and light trucks by mandating lower VOC, NO<sub>x</sub>, and PM emission standards for these vehicles' emissions control systems, as well as requiring gasoline sulfur levels be reduced. Sulfur interferes with the operation of advanced exhaust treatment systems; reduced gasoline sulfur content improves the efficiency of these systems.

duration of the second 10-year (2018–2028) maintenance period. This requirement controls CO emissions by creating more complete combustion of fuel.

Although not a direct local control measure, the State's PSD Program is a preconstruction permitting program that has been approved as part of the Texas SIP and applies to El Paso County. This program has been in effect for CO since the El Paso Area was redesignated to attainment in 2008. Under this program, new stationary sources of CO are evaluated and are required to use the Best Available Control Technology (BACT) to control emissions. This program will continue as a control strategy during the second maintenance period of 2018–2028. Therefore, we find that the State demonstrates continued maintenance of the standard.

#### *C. Monitoring Network and Verification of Continued Attainment*

The Plan includes a commitment to maintain operation of the existing EPA-approved air quality monitoring network in accordance with 40 CFR part 58. The TCEQ will continue to monitor CO through the end of the second 10-year maintenance period to ensure the CO level remains below 85% of the NAAQS. This data will be reported to EPA annually.

To comply with national ambient air monitoring requirements, and to better understand El Paso's air quality problems, the State has operated a CO monitoring network in the El Paso Area since the 1970's. In 2000, the El Paso monitoring network consisted of seven sites, including the Ascarate Park site at the Texas/Mexico border, which recorded the highest concentrations of CO that year. In recognition of significantly declining CO concentrations in the El Paso Area since 2000, Texas has gradually reduced and consolidated the El Paso CO monitoring network to three sites in 2015 with approval from the EPA. To verify the attainment status of the area over the maintenance period, the LMP should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. The State has an approved monitoring network that includes CO monitoring in the El Paso Area that was most recently approved by the EPA on October 27, 2016. In the El Paso CO LMP, the State commits to maintaining a CO monitoring network to verify continued attainment of the NAAQS.

#### *D. Contingency Plan*

Contingency measures are specific control strategies that will be activated if they are triggered by a predefined event. Section 175A(d) of the Act requires that a maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area to attainment. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures. In the September 21, 2016 submittal, the State specifies the contingency trigger as a violation of the CO standard based upon air quality monitoring data from the El Paso monitoring network. In the event that a monitored violation of the CO standard occurs in any portion of the maintenance area, the State will first analyze the data to determine if the violation was caused by actions outside TCEQ's jurisdiction (e.g., emissions from Mexico or another state) or within its jurisdiction. If the violation was caused by actions outside TCEQ's jurisdiction, TCEQ will notify the EPA. If TCEQ determines the violation was caused by actions within TCEQ's jurisdiction, TCEQ commits to adopt and implement the identified contingency measures as expeditiously as practicable, but no later than 18 months.

The State specifically identifies the following contingency measures to re-attain the standard:

- Vehicle idling restrictions.
- Improved vehicle I/M.

The LMP indicates that the State may evaluate other potential strategies to address any future violations in the most appropriate and effective manner possible. Based on the above, we find that the contingency measures provided in the State's El Paso CO LMP are sufficient and meet the requirements of section 175A(d) of the CAA.

#### *E. Transportation and General Conformity*

Transportation conformity is required by section 176(c) of the CAA. The EPA's conformity rule requires that transportation plans, programs, and projects that are funded under 23 U.S.C. or the Federal Transit Act conform to SIPs. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS.

The transportation conformity rule (40 CFR parts 51 and 93) and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and

maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While the EPA's LMP Option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP Option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the CO NAAQS would result.<sup>8</sup> Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in section 93.158(a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

While areas with maintenance plans approved under the LMP Option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State must document and ensure that:

- a. Transportation plans and projects provide for timely implementation of SIP transportation control measures in accordance with 40 CFR 93.113;
- b. Transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108;
- c. The MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105;
- d. Conformity of transportation plans is determined no less frequently than every four years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;
- e. The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;
- f. Projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and
- g. Project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

The EPA confers regularly with the El Paso Area MPO and Transportation

<sup>8</sup> 78 FR 48611, 48613 (August 9, 2013).

Policy Board, TCEQ, the Texas Department of Transportation, the Federal Highway Administration, and the Federal Transit Administration to review the Transportation Improvement Program for the El Paso Area to determine if the area is meeting the transportation conformity requirements under 40 CFR part 93, subpart A. The El Paso Area is currently meeting the requirements of 40 CFR part 93, subpart A.

Based on the evaluation outlined above, the LMP satisfies the requirements of the Act for the second 10-year update to the El Paso CO maintenance area.

### III. Final Action

The EPA is approving the CO LMP for the El Paso Area submitted by the TCEQ on September 21, 2016 as a revision to the Texas SIP because the State adequately demonstrates that the El Paso Area will maintain the CO NAAQS and meet all the criteria of a LMP through the second 10-year maintenance period. The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on May 22, 2017 without further notice unless we receive relevant adverse comment by April 20, 2017. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action

merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

Samuel Coleman was designated the Acting Regional Administrator on March 13, 2017, through the order of succession outlined in Regional Order R6-1110.1, a copy of which is included in the docket for this action.

Dated: March 13, 2017.

**Samuel Coleman,**

*Acting Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

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

### Subpart SS—Texas

- 2. In § 52.2270 (e), the second table entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" is amended by adding an entry to the end of the table to read follows:

#### § 52.2270 Identification of plan.

*	*	*	*	*
---	---	---	---	---

(e) \* \* \*

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/ effective date	EPA approval date	Comments
Second 10-year Carbon Monoxide maintenance plan (limited maintenance plan) for the El Paso CO area.	El Paso, TX .....	9/21/2016	3/21/2017 [Insert Federal Register citation].	

\* \* \* \* \*  
 [FR Doc. 2017-05379 Filed 3-20-17; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2017-0043; FRL-9959-00-Region 9]

**Approval and Promulgation of Implementation Plans; California; California Mobile Source Regulations**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the California State Implementation Plan (SIP) consisting of state regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines. The EPA is approving the SIP revision because the regulations meet the applicable requirements of the Clean Air Act. Approval of the regulations as part of the California SIP makes them federally enforceable.

**DATES:** This rule is effective on May 22, 2017 without further notice, unless the EPA receives adverse comments by April 20, 2017. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2017-0043 at <http://www.regulations.gov>, or via email to John Ungvarsky, at [Ungvarsky.John@epa.gov](mailto:Ungvarsky.John@epa.gov). For comments submitted at [Regulations.gov](http://Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from [Regulations.gov](http://Regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** John Ungvarsky, EPA Region IX, (415) 972-3963, [ungvarsky.john@epa.gov](mailto:ungvarsky.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

**Table of Contents**

- I. Background
- II. The State’s Submittal
  - A. What regulations did the state submit?
  - B. Are there other versions of these regulations?
  - C. What is the purpose of the submitted regulations?
  - D. What requirements do the regulations establish?
- III. EPA’s Evaluation and Final Action
  - A. How is the EPA evaluating the regulations?
  - B. Do the state regulations meet CAA SIP evaluation criteria?
  - C. Final Action and Public Comment.
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

**I. Background**

Under the Clean Air Act (CAA or “Act”), the EPA establishes national ambient air quality standards (NAAQS) to protect public health and welfare, and has established such ambient standards for a number of pervasive air pollutants including ozone, carbon

monoxide, nitrogen dioxide, sulfur dioxide, lead and particulate matter. Under section 110(a)(1) of the CAA, states must submit plans that provide for the implementation, maintenance, and enforcement of the NAAQS within each state. Such plans are referred to as SIPs and revisions to those plans are referred to as SIP revisions. Section 110(a)(2) of the CAA sets forth the content requirements for SIPs. Among the various requirements, SIPs must include enforceable emission limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of the CAA. See CAA section 110(a)(2)(a).

As a general matter, the CAA assigns mobile source regulation to the EPA through title II of the Act and assigns stationary source regulation and SIP development responsibilities to the states through title I of the Act. In so doing, the CAA preempts various types of state regulation of mobile sources as set forth in section 209(a) (preemption of state emissions standards for new motor vehicles and engines), section 209(e) (preemption of state emissions standards for new and in-use off-road vehicles and engines),<sup>1</sup> and section 211(c)(4)(A) [preemption of state fuel requirements for motor vehicle emission control, *i.e.*, other than California’s motor vehicle fuel requirements for motor vehicle emission control—see section 211(c)(4)(B)]. For certain types of mobile source emission standards, the State of California may request a waiver (for motor vehicles) or authorization (for off-road engines and equipment) for standards relating to the control of emissions and accompanying enforcement procedures. See CAA sections 209(b) (new motor vehicles) and 209(e)(2) (most categories of new and in-use off-road vehicles).

<sup>1</sup> EPA regulations refer to “nonroad” vehicles and engines whereas California regulations refer to “off-road” vehicles and engines. These terms refer to the same types of vehicles and engines, and for the purposes of this action, we will be using the state’s chosen term, “off-road,” to refer to such vehicles and engines.