

## Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

## Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under ADDRESSES.

## Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that Order, because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

■ 2. A new temporary § 165.T09–230 is added to read as follows:

### § 165.T09–230 Safety Zone; Lake Huron, Harbor Beach, MI.

(a) *Location.* The safety zone will encompass all waters of Lake Huron surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°51′00″ N, 082°38′15″ W (NAD 83).

(b) *Effective time and date.* This section is effective from 7 p.m. until 11 p.m. on July 19, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16. Section 165.23 also contains other general requirements.

Dated: June 20, 2003.

**P.G. Gerrity,**

*Commander, Coast Guard, Captain of the Port Detroit.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TX–42–1–6274a; FRL–7521–2]

### Approval and Promulgation of Implementation Plans for Texas; Approval of Section 179B Demonstration of Attainment, Carbon Monoxide Motor Vehicle Emissions Budget for Conformity, and Contingency Measure for El Paso Carbon Monoxide Nonattainment Area

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving, through direct final action, a revision to the Texas State Implementation Plan (SIP), submitted to show attainment of the Carbon Monoxide (CO) National Ambient Air Quality Standard (NAAQS) in the El Paso CO nonattainment area, but for emissions emanating from outside of the United States. The EPA is also approving the El Paso area's CO emissions budget, and a CO contingency measure requirement. The State submitted the revisions to satisfy sections 179B and other Part D requirements of the Federal Clean Air Act (CAA).

**DATES:** This rule is effective on September 2, 2003, without further notice, unless we receive adverse comment by August 1, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2377.

Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Joe Kordzi, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7186.

**SUPPLEMENTARY INFORMATION:**

Throughout this document “we,” “us,” and “our” means EPA.

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**I. What Is the Background for This Action?**

El Paso, Texas, was designated nonattainment for CO and classified as moderate under sections 107(d)(4)(A) and 186(a) of the CAA. The El Paso CO nonattainment area is restricted to a narrow strip along the Rio Grande, adjacent to Ciudad Juarez, Mexico.

The CAA requires that CO nonattainment areas designated moderate and above demonstrate attainment through air quality modeling or any other analytical method determined by the Administrator to be at least as effective. Section 179B of the CAA contains special provisions for nonattainment areas that are affected by emissions emanating from outside the United States. Under section 179B, the EPA will approve a SIP if the area meets all other CAA requirements, and establishes that implementation of the plan would achieve attainment of the CO standard by the CAA statutory deadline “but for emissions emanating from outside the United States.” This is the type of demonstration that the State of Texas has made.

**II. What Did the State Submit and How Did We Evaluate It?**

**A. Modeling**

The Governor of the State of Texas submitted a revision to the Texas SIP for the El Paso CO moderate nonattainment area via a letter dated September 27, 1995, which was supplemented in February 1998. This included air quality modeling, under section 179B of the CAA, that demonstrates that El Paso would attain the CO NAAQS, but for

emissions emanating from outside of the United States.

El Paso and Juarez, Mexico, share an air-shed. However, emission inventory data was not available for Juarez, so modeling of the entire air-shed was not possible. In such an instance, section 179B allows an area such as El Paso to perform modeling using only U.S. pollutant emission data in performing the attainment demonstration.

In its demonstration, Texas used two models, RAM, and CAL3QHC. RAM modeling was used to estimate background CO concentrations, and CAL3QHC was used to estimate hot-spot concentrations, or those areas that are the most likely to produce the highest concentrations of CO. Using RAM modeling, Texas identified the worst-case meteorological episode conducive for CO concentration. This was subsequently used in the CAL3QHC modeling to determine CO concentrations at six selected intersections. These concentrations were then combined with hourly variables in the 8-hour period with the highest RAM-determined background CO concentration. The modeling results for El Paso indicate that the area would attain the CO standard but for emissions emanating from outside the United States. Texas performed its CO modeling analyses for El Paso, according to EPA guidance, using conservative inputs to EPA guideline models.

**B. CO Motor Vehicles Emissions Budget**

The Governor of Texas submitted the 1996 CO motor vehicle emissions budget of 96.90 tons/day on September 27, 1995. The finding that the budget of the El Paso CO attainment plan was adequate was made in a letter on September 1, 1999.<sup>1</sup> It is EPA’s conclusion that the SIP demonstrates attainment with the budget and contains the measures necessary to support the budget. Today, we are approving this budget, under section 176(c) of the CAA.

**C. Contingency Measures**

Nonattainment areas must adopt contingency measures that are implemented in the event the area does not attain the standard by the attainment date. Under section 187(a)(4) of the CAA’s CO requirements, El Paso must have at least a basic Inspection and Maintenance (I/M) program. However, El Paso was also bound to the CAA’s ozone requirements for serious

areas, which under section 182(c)(3), requires an enhanced program. These two programs yield different levels of CO reductions. The difference in emissions reductions could be called incremental credit. That is, incremental reductions in CO are reductions produced by a control program more stringent than required by CO provisions in the CAA.

The El Paso area is not subject to the section 187(a)(2)(A) Vehicle Miles Traveled (VMT) forecasts and the section 187(a)(3) contingency measures requirements, because its design value was below 12.7 ppm. It is, however, subject to the section 172(c)(9) contingency measures requirement. The CAA does not specify how many contingency measures are needed or the magnitude of the emission reductions (or VMT reductions) they must provide. In the EPA’s General Preamble,<sup>2</sup> EPA provides its belief that for moderate areas that fail to attain by the attainment date, States may select contingency measures for the reduction of CO emissions. EPA believes that one appropriate choice of contingency measures would be to provide for the implementation of sufficient VMT reductions or emissions reductions to counteract the effect of 1 year’s growth in VMT. The State used this approach to calculate the magnitude of emission reductions it must provide, which is approximately 10.4 tons per day of CO reductions in El Paso. A basic I/M program would produce 43 tons per day of CO reductions. The low-enhanced I/M program approved for El Paso was credited in the SIP for 89 tons per day of CO reductions, which is 46 tons per day of CO reductions beyond the reductions obtained from a basic program. This is well above the 10.4 tons per day the State calculated was required to meet the contingency requirements. The more stringent requirements of the low-enhanced program generate these incremental reductions in CO, thus fulfilling the requirement. The EPA is approving all of the incremental credit of 46 tons per day into the SIP as meeting the CO contingency measures requirement.

**D. Has the EPA Approved Other Parts of the SIP Before Now?**

All CO nonattainment areas must adopt SIPs that contain the following core elements:<sup>3</sup>

<sup>2</sup> EPA has issued a “General Preamble” describing EPA’s preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act (57 FR 13498, April 16, 1992, and 57 FR 18070, April 28, 1992).

<sup>3</sup> As outlined in section 187 of the CAA, additional requirements pertain to moderate

<sup>1</sup> EPA later determined that this motor vehicle emission budget was adequate for transportation conformity purposes (see 64 FR 55911, October 15, 1999).

1. An inventory of all actual emissions of CO sources in the area (sections 187(a)(1) and 172(c)(3) of the CAA);
2. A revised inventory every three years (sections 187(a)(5) and 172(c)(3));
3. A permit program for the construction and operation of new and modified major stationary sources of CO (sections 172(c)(5) and 173);
4. Contingency measures that are to be implemented if the area fails to attain the standard by the deadline (section 172(c)(9));
5. An I/M program that meets applicable requirements (section 187(a)(4)); and
6. An oxygenated fuels program, if the design value was 9.5 ppm or above based on 1988 and 1989 data (section 211(m)); The EPA:
  1. Approved an emissions inventory on September 12, 1994 (59 FR 46766);
  2. Approved an oxygenated fuels program on September 12, 1994 (59 FR 46766);
  3. Approved a permit program for new and modified major sources of CO on September 27, 1995 (60 FR 49781);
  4. Received a periodic update of the CO inventory;
  5. Approved the Texas Motorist Choice Vehicle Inspection and Maintenance Program (includes El Paso) on November 14, 2001 (66 FR 57261); and
  6. Is approving a CO contingency measure in this action.

#### *E. How Close Is El Paso to Attainment of the CO Standard?*

Data from the El Paso monitoring network from 1999 to the end of 2002 appear to indicate that the area is in attainment of the CO standard. The State has informed EPA that it may request redesignation in the near future.

### **III. What Is Our Final Action?**

The EPA is approving a revision to the Texas SIP, which was submitted to show attainment of the CO standard in the El Paso CO nonattainment area by the applicable attainment date, but for emissions from Mexico. The revision satisfies section 179B of the CAA.

The EPA believes that all section 179B approvals should be on a contingency basis. This modeling-based approval is valid only as long as the area's modeling continues to show that the El Paso CO area would be in attainment, but for emissions from outside the United States. If the EPA later determines by rulemaking that additional CO reductions are needed

from sources in the United States, the EPA will require Texas to submit a new CO attainment SIP for El Paso.

The EPA is also approving El Paso's CO motor vehicle emissions budget, under section 176(c) of the CAA. Lastly, the EPA is approving the use of 46 tons per day in incremental CO reduction credits from the Texas low-enhanced vehicle inspection and maintenance program, as fulfillment of the State's CO attainment contingency measure requirement for the El Paso nonattainment area under section 172(c)(9).

#### **IV. Why Is This a "Final Action?"**

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the section 179B attainment demonstration SIP, the associated motor vehicle emissions budget, and the attainment contingency measures for the El Paso CO nonattainment area, if adverse comments are received. This rule will be effective on September 2, 2003, without further notice unless we receive adverse comment by August 1, 2003. If EPA receives 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 at this time.

#### **V. Regulatory Assessment Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 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 approves 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 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 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.*).

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

nonattainment areas with design values above 12.7 ppm, and to severe nonattainment areas.

Congress and to the Comptroller General of the United States. 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 2, 2003. 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, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 20, 2003.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

*Authority:* 42 U.S.C. 7402 *et seq.*

#### Subchapter SS—Texas

■ 2. The table in § 52.2270(e) entitled "EPA approved nonregulatory provisions and quasi-regulatory measures in the Texas SIP" is amended by adding to the end of the table three entries for the El Paso carbon monoxide nonattainment area to read as 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 nonattainment area	State submittal/effective date	EPA approval date	Comments
* * *	* * *	* * *	* * *	* * *
Section 179B Demonstration of Attainment for Carbon Monoxide for El Paso.	El Paso CO non-attainment area.	09/27/95	07/02/03 <b>Federal Register</b> page number.	Supplemented 02/11/98.
Carbon Monoxide On-Road Emissions Budget for Conformity.	El Paso CO non-attainment area.	09/27/95	07/02/03 .....	
Contingency Measure for El Paso Carbon Monoxide Area.	El Paso CO non-attainment area.	09/27/95	07/02/03 <b>Federal Register</b> page number.	

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[OPP-2003-0155; FRL-7316-5]

#### Glyphosate; Pesticide Tolerance; Technical Correction

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

**ACTION:** Final rule; technical correction.

**SUMMARY:** EPA issued a final rule in the **Federal Register** of Wednesday, June 18, 2003 (68 FR 36472), concerning tolerances on corn, field, forage, at 6.0 parts per million (ppm) and on grain, aspartic fractions to reduce the tolerance from 200 ppm to 100 ppm. This document is being issued to correct typographical errors.

**DATES:** This document is effective on July 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jim Tompkins, Registration Division 7505C,

Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5697; e-mail address: tompkins.jim@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0155. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket,

the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html), a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents