

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.