availability of coverage to the targeted recipients. When insurance policy coverages are compared to determine whether coverage in a policy offered by an organization is not generally otherwise commercially available, the comparison is based on the specific characteristics of the mailpiece recipients (*e.g.*, geographic location or demographics).

b. Except as specified in 5.5c, the types of insurance considered generally otherwise commercially available include, but are not limited to, homeowner's, property, casualty, marine, professional liability (including malpractice), travel, health, life, airplane, automobile, truck, motorhome, motorbike, motorcycle, boat, accidental death, accidental dismemberment, Medicare supplement (Medigap), catastrophic care, nursing home, and hospital indemnity insurance.

c. Coverage is considered not generally otherwise commercially available if either of the following conditions applies:

(1) The coverage is provided by the nonprofit organization itself (*i.e.*, the nonprofit organization is the insurer).

(2) The coverage is provided or promoted by the nonprofit organization in a mailing to its members, donors, supporters, or beneficiaries in such a way that the members, donors, supporters, or beneficiaries may make tax-deductible donations to the nonprofit organization of their proportional shares of any income in excess of costs that the nonprofit organization receives from the purchase of the coverage by its members, donors, supporters, or beneficiaries.

* * * * *

An appropriate amendment to 39 CFR part 111 will be published to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–20185 Filed 9–3–04; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Parts 310 and 320

Restrictions on Private Carriage of Letters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the Postal Service regulations on enforcement and suspension of the Private Express Statutes to correct obsolete addresses.

EFFECTIVE DATE: September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Stanley F. Mires, (202) 268–2958.

SUPPLEMENTARY INFORMATION: Amendment of parts 310 and 320 is necessary to correct the addresses for inquiries and other correspondence regarding enforcement of the Private Express Statutes.

List of Subjects in 39 CFR Parts 310 and 320

Advertising; Computer technology.

■ For the reasons set forth above, the Postal Service amends 39 CFR Chapter I, Subchapter E as follows:

PART 310—[AMENDED]

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 39 U.S.C. 401, 404, 601–606; 18 U.S.C. 1693–1699.

■ 2a. Revise § 310.5(b) to read as follows:

§ 310.5 Payment of postage on violation.

* * * * *

(b) The amount equal to postage will be due and payable not later than 15 days after receipt of formal demand from the Inspection Service or the Chicago Rates and Classification Service Center (RCSC) unless an appeal is taken to the Judicial Officer Department in accordance with rules of procedure set out in part 959 of this chapter.

* * * * *

■ 2b. Revise § 310.6 to read as follows:

§ 310.6 Advisory opinions.

An advisory opinion on any question arising under this part and part 320 of this chapter may be obtained by writing the Senior Counsel, Ethics and Information, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1127. A numbered series of advisory opinions is available for inspection by the public in the Library of the U.S. Postal Service, and copies of individual opinions may be obtained upon payment of charges for duplicating services.

PART 320—[AMENDED]

■ 3. The authority citation for part 320 continues to read as follows:

Authority: 39 U.S.C. 401, 404, 601–606; 18 U.S.C. 1693–1699.

■ 4. Amend § 320.3 in the following manner—

■ a. Revise § 320.3(a) to read as set forth below; and

■ b. Amend § 320.3(b) by removing the words ''properly identified postal inspector'' and adding the words ''properly identified representative of the RCSC'' in their place.

§ 320.3 Operations under suspension for certain data processing materials.

(a) Carriers intending to establish or alter operations based on the suspension granted pursuant to § 320.2 shall, as a condition to the right to operate under the suspension, notify the National Administrator for the Private Express Statutes, U.S. Postal Service, RCSC, 3900 Gabrielle Lane, Rm. 111, Fox Valley, IL 60597–9599, of their intention to establish such operations not later than the beginning of such operations. Such notification, on a form available from the office of the National Administrator for the Private Express Statutes, shall include information on the identity and authority of the carrier and the scope of its proposed operations.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 04–20184 Filed 9–3–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV054–081; FRL–7808–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to partially approve and partially disapprove revisions to the Clark County portion of the Nevada State Implementation Plan. These revisions concern rules adopted by the Clark County Board of County Commissioners 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. These provisions of the Clean Air Act are designed to prevent significant deterioration in attainment areas and to attain the National Ambient Air Quality Standards in nonattainment areas. EPA is also approving as a revision to the Nevada State Implementation Plan a State regulation prohibiting the construction of certain types of major new or modified power plants that are under exclusive State jurisdiction in the nonattainment areas within Clark County. The intended

effect of today's final action is to ensure that Clark County's permitting rules are consistent with a ruling by the Ninth Circuit, see *Hall* v. *EPA*, 273 F.3d 1146 (9th Cir. 2001) and with the requirements of the Clean Air Act, as amended in 1990. EPA is amending the appropriate section of the Code of Federal Regulations to reflect the outcome of *Hall* v. *EPA.* Lastly, under section 110(k)(6) of the Act, EPA is correcting or clarifying certain previous final rulemaking actions taken by EPA on revisions to the Clark County portion of the Nevada State Implementation Plan.

DATES: *Effective Date:* This rule is effective on October 7, 2004.

ADDRESSES: You can inspect copies of the docket for this action during normal business hours at the 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. Clark County's amended rules are available at the Clark County Department of Air Quality and Environmental 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.

Table of Contents

I. Proposed Action

A. The State's Submittal

On June 2, 2004 (69 FR 31056), we proposed a partial approval and partial disapproval of the rules listed in Table 1 as revisions to the Nevada State Implementation Plan (SIP). Specifically, we proposed to approve submitted Clark County Air Quality Regulations (CCAQR) sections 0, 11, 12 (except subsections 12.2.18 and 12.2.20), 58 and 59 and to approve submitted Nevada Administrative Code section 445B.22083. We proposed to disapprove submitted CCAQR subsections 12.2.18 and 12.2.20 and CCAQR subsection 52.8.

TABLE 1.—SUBMITTED RULES [1]

Agency	Rule #	Rule title	Adopted	Submitted
DAQEM	0	Definitions	10/07/03	10/23/03
DAQEM	11	Ambient Air Quality Standards	10/07/03	10/23/03
DAQEM	12	Preconstruction Review for New or Modified Stationary Sources	10/07/03	10/23/03
DAQEM	52.8	Gasoline Dispensing Facilities—Section 52 Offset Program	10/07/03	10/23/03
DAQEM	58	Emission Reduction Credits	10/07/03	10/23/03
DAQEM	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

[1] In Clark County, the Board of County Commissioners is responsible for adopting, modifying, or repealing the Clark County Air Quality Regulations (CCAQR). Clark County's administrative departments were recently reorganized, and the Clark County Department of Air Quality Management (DAQM), cited in the proposed rule as the applicable local air pollution control agency, has been subsumed within a new county department named the Clark County Department of Air Quality and Environmental Management (DAQEM). The DAQEM, like its predecessor (i.e., the DAQM), is responsible for administering the Clark County Air Quality Regulations. In this final rule, we use the term ''DAQEM'' to refer to the local air agency, and term ''SEC'' to refer to the State Environmental Commission.

We proposed a partial approval and a partial disapproval because, while we determined that most of the rules complied with the relevant Clean Air Act (CAA or Act) requirements, we determined that certain severable subsections of the rules did not so comply. We took this proposed action after finding the SIP submittal dated October 23, 2003, containing the local New Source Review (NSR) rules, to be complete on November 18, 2003. The SIP submittal dated November 20, 2003, containing the State regulation,[2] was deemed complete by operation of law on May 20, 2004.

Our June 2, 2004 proposed action contains more information on the rules and our evaluation.

B. Vacature of EPA Approval of Previous Versions of These Rules

In our June 2, 2004 proposed rule, we also proposed to delete 40 CFR 52.1470(c)(36) and (37) in recognition of the vacature by the Ninth Circuit Court of Appeals of our approval of previous versions of the Clark County New Source Review (NSR) rules in *Hall* v. *EPA*, 273 F.3d 1146 (9th Cir. 2001).

C. Correction or Clarification of Previous EPA SIP Actions on Clark County Rules

Lastly, in our June 2, 2004 proposed rule, we proposed to correct certain provisions of the Clark County portion of the Nevada SIP that we approved in error and to revise certain provisions of the Clark County portion of the Nevada SIP that warrant clarification. Specifically, we proposed 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 40 CFR 52.1470 (''Identification of plan''). We also proposed 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) are not approved into the Clark County portion of the Nevada SIP, and to clarify that SIP section 33 (Chlorine in Chemical

[2] NAC 445B.22083 prohibits new power plants or major modifications to existing power plants under State jurisdiction (*i.e.*, plants that generate electricity using steam produced by burning of fossil fuels but not including any plant which uses technology for a simple or combined cycle combustion turbine), within the Las Vegas Valley nonattainment area and certain other areas within Clark County. See the proposed rule at 69 FR 31058–31059 for more information on this State regulation.

Processes) was, and continues to be, approved into the Clark County portion of the Nevada SIP as part of our approval of the overall post-1982 ozone plan for Las Vegas Valley.

D. May 20, 2004 Federal Register Direct Final and Proposed Rule on CCAQR Section 11

On May 20, 2004, we published a direct final rule (69 FR 29074) and a proposed rule (69 FR 29120) approving the same version of CCAQR section 11 for which we subsequently proposed approval in our June 2, 2004 action. On our own initiative, we withdrew the direct final rule with respect to CCAQR section 11 in a partial withdrawal action that we published on July 2, 2004 (69 FR 40324). We withdrew the direct final action on CCAQR section 11 to avoid confusion with our subsequent proposed rule. EPA's May 20, 2004 proposed rule provided for a 30-day public comment period. We received no comments on the May 20, 2004 proposal. In today's notice, we are finalizing action proposed both on May 20, 2004 and again on June 2, 2004 to approve CCAQR section 11, as adopted on October 7, 2003 and submitted to EPA on October 23, 2003, into the Clark County portion of the Nevada SIP.

II. Public Comments

EPA's June 2, 2004 proposed rule provided for a 30-day public comment period. During this period, we received comments from the following parties:

(1) Ray Bacon, Executive Director, Nevada Manufacturers Association (''NMA''), letter dated June 28, 2004, calling for clarification of which DAQEM rules are proposed to be part of the SIP and which are not, citing inadequate public access to NSR materials, recommending that only an offset ratio of 1:1 be made part of the SIP, calling for elimination of conflicting and confusing definitions, calling for the redesignation of Clark County to ''attainment'' for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS) and the revision of the NSR program accordingly, and calling for a revision of EPA's evaluation of the SIP submittals to reflect the current Federal NSR regulations;

(2) Christine Robinson, Director, Clark County Department of Air Quality and Environmental Management (DAQEM), letter dated July 1, 2004, citing an apparent error in EPA's interpretation of the requirements for oxides of nitrogen (NO_X) under the existing SIP NSR program, but supporting EPA's overall conclusions about the comparative stringency of the submitted NSR program relative to the existing SIP NSR program; and

(3) Robert W. Hall, President, Nevada Environmental Coalition, Inc. (''NEC''), letter dated July 2, 2004, objecting to the proposed approval of the submitted NSR program as inconsistent with sections 110(l), 116, 171(1), and 193 of the Act, particularly as those sections relate to the pollutants for which Las Vegas Valley has been designated nonattainment (*i.e.*, particulate matter (PM–10), CO, and ozone).

Responses to all comments can be found in the following paragraphs.

NMA Comment #1: EPA proposes to approve all of CCAQR sections 58 and 59 (and corresponding provisions of section 12) concerning offsets. However, not all of those requirements are intended to implement the Federal CAA NSR program, nor does DAQEM submit them for that purpose. DAQEM intends only subsection 59.1 (''Federal Offset Requirements'') to be part of the SIP revision, not subsection 59.2 (''Local Offset Requirements''). Similarly, subsections 59.3, 59.4, and 59.5 contain certain provisions that are meant to be federally enforceable (*i.e.*, part of the SIP), and some that are exclusively local. Subsection 12.2.6, or portions thereof, also appears to be a requirement, in whole or in part, that is not intended for CAA NSR purposes and is not subject to this approval. EPA and DAQEM should identify with precision which requirements of DAQEM NSR rules are to be federally approved and enforceable and which are not; this clarified rule should then be subject to notice and comment before final SIP approval. As a consequence, the approval should be suspended and subject to notice and comment after the clarifications are made public.

Response to NMA Comment #1: NMA is correct in that certain provisions of the submitted NSR program were not intended to be approved as part of the Nevada SIP. By letter dated July 12, 2004, from Jolaine Johnson, Acting Administrator, Nevada Division of Environmental Protection, to Deborah Jordan, Director, Air Division, U.S. EPA—Region IX, DAQEM and the State requested EPA to withdraw the approval of subsection 59.2 as part of the SIP. As a result, we no longer have authority to act on subsection 59.2 (''Local Offset Requirements''), and subsection 59.2 will therefore not become federally enforceable. We do not believe that the State's withdrawal of subsection 59.2 necessitates a new round of notice and comment under the Administrative Procedure Act because we did not rely on subsection 59.2 in our June 2, 2004 proposed rule. That is, we did not rely on subsection 59.2 to satisfy any Federal NSR (nonattainment NSR or PSD) requirements nor to justify our proposed partial approval of the submitted NSR program under either sections 110(l) or 193 of the Act. The withdrawal of subsection 59.2 does not change our conclusion or the underlying rationale set forth in the proposed rule in any way.

We note that the submitted NSR program contains a revised minor (Clark County Air Quality Regulations use a related term, ''non-major'') stationary source review program and a revised major stationary source review program (nonattainment NSR and PSD) and that both minor and major source review programs are required under the Act. See sections 110(a)(2)(C), 161, and 172(c)(5) of the Act. Furthermore, for SIP revisions to be approved by EPA, SIP revisions must also comply with certain other requirements of the Act, such as section 110(l), which prohibits approval of SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. Thus, certain requirements in the submitted NSR program may not be needed to satisfy CAA NSR requirements for major sources and major modifications, but are necessary to provide EPA with the basis to approve the overall NSR program revision to supercede the existing SIP-approved Clark County NSR program under section 110(l). Thus, all of the provisions in the NSR submittal dated October 7, 2003, with the exception of those specific provisions which EPA proposed to disapprove and with the added exception of subsection 59.2 discussed above, are necessary to provide EPA with the basis to approve the updated NSR program, and, upon EPA approval, will become federally enforceable.

NMA Comment #2: An additional and separate source of confusion is the lack of adequate posting and public access to the relevant NSR requirements. As of the date of these comments, DAQEM's Web site posts the text of its section 0, 12, 58, and 59 requirements as regulations adopted on December 4, 2001. The EPA proposed rule for Clark County's SIP approval is based on DAQEM regulations EPA states were adopted on October 7, 2003 and which are available only by written request. The problem is that the text of the Clark County rules EPA apparently proposes to approve into the SIP is substantially different from the text of the DAQEM rules posted on DAQEM's Web site. To compound the problem, EPA has stated ''While we can only act on the most

recently submitted version, we have reviewed materials provided with previous submittals.'' Neither the proposed rule itself nor the Technical Support Document (TSD) explain what are the ''materials'' or ''previous submittals'' on which EPA relies. As a result, public comment on the appropriateness of such reliance is impossible. Before finalizing the SIP approval, EPA and DAQEM should identify the specific regulatory texts which form the basis for EPA's proposed SIP approval; these should be made available to the public. To the extent EPA relies on any materials other than these regulations, the proposed SIP approval should identify the specific material and the nature of EPA's reliance on it.

Response to NMA Comment #2: We disagree with NMA's contention that our proposed action lacked adequate public access to the relevant materials. The specific regulatory texts which form the basis for EPA's proposed SIP action are as follows: CCAQR sections 0, 11, 12, 52.8, 58, and 59 (not including subsection 59.2, as discussed above in Response to NMA Comment #1), as adopted by the Clark County Board of County Commissioners on October 7, 2003 and as submitted to EPA by NDEP on October 23, 2003; and Nevada Administrative Code (NAC) section 445B.22083, as adopted by the State Environmental Commission on March 29, 1994 and submitted to EPA by NDEP on November 20, 2003. With the exception of subsection 59.2, this is the exact list identified in Table 1 of our proposed rule. See 69 FR at 31057. Also, in our proposed rule, at 69 FR 31056, column 3, we indicated that members of the public could inspect copies of the State's submittals, EPA's technical support documents, and other supporting documentation at EPA Region IX offices, could inspect copies of the State's submittals at NDEP offices in Carson City, or could inspect copies of the revised Clark County NSR rules at DAQEM offices in Las Vegas. We did not rely on DAQEM's Web site for public access to the relevant materials.

In the proposed rule, at 69 FR 31057, we describe the various Clark County NSR submittals sent to us pursuant to the Act, as amended in 1990, and our actions related to them. In the discussion in the proposed rule, we explain that our approval of previous Clark County NSR submittals (then contained in Clark County Health District Air Pollution Control Regulations sections 0, 12, and 58) was vacated in *Hall* v. *EPA* (273 F.3d 1146, 9th Cir. 2001), that we received a revised Clark County NSR program on February 25, 2003 that included the then-current CCAQR sections 0, 11, 12, 58, and 59, as adopted on December 4, 2001, but that this February 25, 2003 submittal was superceded by the Clark County NSR submittal dated October 23, 2003. Further, our proposed rule indicates that the October 23, 2003 submittal of the Clark County NSR rules is the one that forms the basis for our proposed action. We rely on superceded SIP submittals only to the extent that they inform our understanding of the evolution of the Clark County NSR program from the version that formed the basis for our prior SIP approval action (*see* 64 FR 25210, May 11, 1999), which was subsequently vacated in the *Hall* decision, through the adoption in October 2003 by Clark County of the version of the NSR program that formed the basis for our proposed action. We believe that we described this regulatory history in sufficient detail in our June 2, 2004 proposed rule to have allowed for informed public comment on our proposed action.

NMA Comment #3: Clark County's NSR rules and EPA's approval incorporate an unnecessarily and inappropriately stringent 2 to 1 offset ratio requirement for major sources and major modifications involving CO or PM–10. EPA explains in the TSD that CAA requirements to show noninterference with reasonable further progress would be satisfied at ratio of 1 to 1. Thus, the 2 to 1 offset ratio is unnecessarily stringent, particularly in light of the additional respects in which the new Clark County NSR rules have significantly increased the rate of progress to attainment. Accordingly, the level of offsets which may be ''federally enforceable'' as part of the applicable SIP should be limited to offsets in the ratio of 1 to 1 but not any higher ratio.

Response to NMA Comment #3: In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the minimum requirements of the Clean Air Act and our regulations. Section 173(c)(1) of the Act specifies that emissions ''shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.'' The Act specifically provides discretion to establish an offset ratio in an amount that is greater than a ratio of 1 to 1. Accordingly, the State's offset program is consistent with, and meets the minimum requirements of, the Act. Moreover, our rationale for approval of the submitted NSR program (and supercession of the existing NSR program) under sections 110(l) and 193 of the Act rely in part on the submitted program's 2 to 1 offset ratio. See the proposed rule at 69 FR at 31061, column 3 (section 110(l) evaluation for CO); 69 FR at 31062, column 1 (section 110(l) evaluation for PM–10); and 69 FR 31064 (section 193 evaluations for CO and PM–10). In this regard, we note that the appropriate comparison for the purposes of sections 110(l) and 193 is between the submitted NSR program and the SIP-approved NSR program (from the early 1980's), not the locally-adopted (but not SIP-approved version) of the NSR program (adopted in December 2001) that is being administered by DAQEM. (The submitted Clark County NSR program (adopted in October 2003) will not be in effect until 30 days after we publish our final approval of the program in the **Federal Register**.)

NMA Comment #4: EPA proposes to retain in the approved SIP 33 definitions from section 1 (''Definitions'') of the former Clark County rules. EPA states that while these definitions may not affect this NSR action, they may be needed for other existing non-NSR SIP rules. We request that these definitions be deleted because retaining them may create confusion. Two examples include the terms ''minor source'' and ''source of air contaminant.'' An additional and separate source of confusion is that the numeric citations for the defined terms do not correspond to the number citations currently used by DAQEM. The proposal to retain section 1 definitions should be withdrawn and all terms should be revised and consolidated into a single regulation that would then be made part of the SIP.

Response to NMA Comment #4: We agree that EPA's approval of a second Clark County rule (*i.e.*, CCAQR section 0) entitled ''Definitions'' into the SIP is not ideal and may cause confusion. However, there should be no confusion in the NSR context because, upon the effective date of our final approval, new or modified sources in Clark County will be subject to the requirements in CCAQR sections 12 and 59 that rely on the ambient standards in CCAQR section 11, the credits in section 58, and the terms defined in CCAQR section 0, such as ''nonmajor stationary source'' (*see* paragraph (c) under ''stationary source'' in section 0) and will not be subject to the requirements in the Clark County District Board of Health Air Pollution Control Regulations section 15 (referred to herein as ''existing SIP section 15'' or ''SIP section 15'') that rely on the ambient standards in Board of Health Air Pollution Control Regulations section 11 and the terms defined in existing SIP section 1, such

as ''minor source'' and ''significant,'' since, at that time, SIP section 15 will be entirely superceded in the SIP by CCAQR sections 12 and 59.

For the reasons stated in our proposed rule, at 69 FR at 31067, we continue to believe that the SIP should retain 33 specific defined terms from existing SIP section 1 because other Clark County rules currently approved in the SIP continue to rely on these terms. Clark County and the State of Nevada have not submitted the updated versions (that rely on the defined terms in CCAQR section 0 rather than SIP section 1) of these SIP rules, and until that submittal is made and approved by EPA as a SIP revision, we must retain the 33 specific defined terms from existing SIP section 1 on which these SIP rules rely. Specific examples of existing SIP rules that rely on certain definitions in existing SIP section 1 include the following:

- Clark County District Board of Health Air Pollution Control Regulations (*i.e.*, ''existing SIP'' or ''SIP'') section 2 relies on the following terms defined in SIP section 1: ''air contaminant,'' ''air pollution control committee,'' ''board,'' and ''source of air contaminant;''
- Existing SIP section 4 relies on the following terms defined in SIP section 1: ''air contaminant'' and ''source of air contaminant;''
- Existing SIP section 5 relies on the following term defined in SIP section 1: ''smoke;''
- Existing SIP section 18 relies on the following terms defined in SIP section 1: ''minor source'' and ''single source'' and the term ''minor source'' relies on the term ''significant;'' and
- Existing SIP section 23 relies on the following terms defined in SIP section 1: ''affected facility,'' and ''integrated sampling.''

Lastly, while we recognize that there is a difference between the numeric references for specific defined terms in the version of section 1 that DAQEM provides on its website and those cited by EPA in our June 2, 2004 proposed rule, the numeric references from the version of section 1 that we cite in the proposed rule are those that we incorporated by reference into the Code of Federal Regulations (CFR) and, as such, reflect the EPA-approved version of SIP section 1. See 40 CFR 52.1470(c)(17)(i) and (ii) and 40 CFR 52.1470(c)(24)(iii) and see also the rules posted for Clark County, Nevada on our Web site at *http://www.epa.gov/region09/air/sips.* The version of section 1 that Clark County posts on its Web site appears to be a ''cleaned-up'' version of SIP section 1 in which revision marks have been removed and for which the terms have been renumbered to reflect added and deleted terms. In contrast, the version of SIP section 1 cited by EPA in the proposed rule represents an amalgam of terms approved by EPA at different times in 1981 and 1982. See the related discussion in the proposed rule at 69 FR at 31057, column 1.

NMA Comment #5: By operation of federal law, a portion of Clark County is still designated as a serious nonattainment area for CO; as a result, NSR requirements for nonattainment areas apply. However, the reality is that control of mobile and stationary sources has substantially improved air quality in Clark County, to the point that it now qualifies for redesignation as an attainment area for CO. Such redesignation is now in order. On January 28, 2003, EPA declared that no exceedances of the CO standard had been recorded in Clark County since 1998. Stationary sources are an insignificant source of CO emissions in Clark County and the burdensome nonattainment regulation of stationary sources is no longer necessary to show progress towards or to maintain air quality standards. We therefore request that EPA redesignate the area as expeditiously as possible and, with DAQEM, revise the NSR rules for stationary sources accordingly.

Response to NMA Comment #5: We agree that certain changes in NSR program requirements are allowed once an area has been redesignated from nonattainment to attainment. However, the Las Vegas Valley CO nonattainment area cannot be redesignated to attainment until all of the redesignation criteria set forth in section 107(d)(3)(E) of the Act have been met. In our January 28, 2003 proposed rule on the serious area CO plan (68 FR 4141 at 4142), we cited the record of clean data over recent years from the DAQEM CO monitoring network, but that action did not propose a finding of CO attainment (but did propose approval of the Las Vegas Valley CO attainment plan and vehicle inspection and maintenance program). We expect to propose an attainment finding for CO in the near future, but we note here such a finding is but one of the five criteria that must be met before a CO nonattainment area can be redesignated to attainment. Another criterion relates to approval by EPA of a CO maintenance plan, which EPA understands to be currently under development by Clark County. Upon redesignation, EPA will consider any submitted changes to the requirements under Clark County's NSR program for new or modified stationary sources of CO in light of the County's future CO maintenance strategy.

NMA Comment #6: EPA proposes to evaluate the submitted Clark County NSR program on the basis of Federal NSR regulations that are no longer in effect. This approach creates completely unnecessary and unjustified confusion. The Clark County NSR program should be evaluated based on current Federal NSR regulations. Review and evaluation of Clark County's NSR program based on current Federal NSR regulations is mandated by the CAA.

Response to NMA Comment #6: Our June 2, 2004 proposed rule explains that we evaluated the submitted NSR program 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. See 69 FR at 31058, column 3. We disagree that this approach creates unnecessary confusion, and we disagree that the Act or our regulations prohibits us from taking this approach. One significant, on-going source of confusion that will be resolved by this final rule will be the need by DAQEM to reconcile the NSR program requirements under the County's adopted (but not EPA-approved) Air Quality Regulations with those under the NSR program approved by EPA as part of the SIP. As it stands now, new or modified stationary sources in Clark County must comply with two sets of NSR rules: current, locally-adopted CCAQR sections 12 and 59 (and related provisions in sections 0, 11, and 58) and SIP-approved section 15 (and related provisions in SIP sections 1 and 11). The submitted NSR program represents a comprehensive revision to Clark County's EPA-approved NSR program from the early-1980's (and contained in sections 1, 11, and 15), and as such, compliance with both sets of rules is at the very least challenging and at worst confounding for the regulated community. Today's final rule will close this ''SIP gap'' and thereby ease the associated regulatory confusion.

The proposed rule indicated (69 FR 31057, column 3) that our approach does not establish any precedent for evaluating whether a proposed NSR SIP fulfills the requirements of the revised NSR regulations that were published on December 31, 2002. Furthermore, we indicated at 69 FR at 31058, that the NSR revision that is the subject of this action does not relieve Clark County, like other State and local agencies, from adopting and submitting revisions to its SIP-approved NSR rules implementing the minimum program requirements set forth in the revised Federal NSR regulations (published on December 31, 2002) no later than January 2, 2006. Today's final rulemaking simply means

that the NSR revisions that are due by January 2, 2006 will be using CCAQR sections 0, 11, 12, 58, and 59, as submitted on October 23, 2003, as the SIP baseline NSR regulatory program instead of the 1980's-era sections 1, 11, and 15. None of the statutory or regulatory provisions cited by NMA require EPA to wait several more years to approve all of the necessary NSR revisions in a single rulemaking.

DAQEM Comment #1: In the discussion of NO_X requirements (69 FR 31063), the statement is made that section 12 of the Clark County regulations represents a relaxation of the ''control technology requirements for new or modified sources (from LAER to BACT).'' In fact, the NSR regulation in the current SIP contains no provisions for NO_X nonattainment areas and contains no control technology requirements for NO_X (Section 15.14). Thus, superseding that section with the Section 12 imposition of a BACT requirement is actually a strengthening of the NSR rules.

Response to DAQEM Comment #1: We agree that the existing SIP NSR program (sections 1, 11, and 15) has no provisions for NO_X nonattainment areas, but we disagree with DAQEM's conclusion that the existing SIP NSR program contains no control technology requirements for NO_X. Subsection 15.13.1 sets forth the existing SIP NSR requirements for ''all new, reconstructed or modified sources'' of NO_X ''throughout Clark County'' and thereby establishes a control technology requirement, at the very least, of best available control technology (BACT) (see subsection 15.13.9.2). Furthermore, we concluded in the proposed rule that SIP subsections 15.14.1 (''all new, or reconstructed, or modified stationary sources * * * of * * * particulate precursors * * * in the Las Vegas Valley * * *'') and 15.14.1.3 (''Each new or modified source * * * shall incorporate * * * lowest achievable emission rate.'') tighten the control technology requirement (*i.e.*, to the lowest achievable emission rate (LAER)) for new or modified NO_X sources in Las Vegas Valley, not on the basis of NO_X as a precursor to nitrogen dioxide (for which the entire county is attainment), but rather as a ''particulate precursor,'' which is defined in section 1 as ''a gaseous air contaminant which can undergo gas-to-particle conversion processes in the ambient air to form particulate matter. Examples: (1) Ammonia, sulfur dioxide, chlorine, and nitrogen oxides can be converted to ammonium sulfate, ammonium nitrate, and ammonium chloride. (2) Volatile organic compounds can be converted to organic and elemental carbon particulate.'' See the subsection entitled ''Nitrogen Dioxide SIP Planning Considerations,'' in the Technical Support Document (TSD) for our proposed action on the submitted Clark County NSR program.

The difference between DAQEM's interpretation and EPA's interpretation of the NO_X requirements in Las Vegas Valley under the existing SIP NSR program highlights the ambiguity of the term ''particulate precursor.'' In our June 2, 2004 proposed rule, we did not recognize this existing SIP term as ambiguous, and evaluated the NO_X control requirements in Las Vegas Valley accordingly, but upon reconsideration in light of DAQEM's comment, we have concluded that the term ''particulate precursor,'' as defined in section 1, is ambiguous because the term refers to examples of the types of gaseous air contaminants that can theoretically lead to secondary particulate formation (*i.e.*, can be particulate precursors) rather than to a list of gaseous air contaminants that are in fact significant precursors to particulate under the actual ambient conditions found in Las Vegas Valley.[3]

Given the ambiguity we now recognize in the term ''particulate precursor,'' as used for the purposes of the existing SIP NSR program, we conclude that, while it is clear that at least BACT-level of control is required for all new or modified NO_X sources throughout Clark County, it is unclear whether the most stringent control technology requirement (LAER) applies to new or modified NO_X sources in Las Vegas Valley under the existing SIP NSR program. However, this uncertainty only strengthens our conclusion from the proposed rule, that despite the incremental relaxation in the control technology requirement in Las Vegas Valley for new or modified NO_X sources (a relaxation that we now recognize as uncertain), supercession of the existing SIP NSR program by the submitted NSR program would not interfere with continued attainment of the nitrogen dioxide NAAQS or any other applicable requirement of the Act. See our proposed rule at 69 FR at 31063, column 1.

NEC Comment #1: Two of the applicable requirements that would be violated with the approval of the submitted NSR program as a SIP revision are CAA sections 116 and 193. The logic of sections 116 and 193 is very clear. When an existing plan fails to result in the attainment of the NAAQS, no subsequent revision of the plan's requirements can be less stringent than the rules that have already failed to result in attainment. With EPA's continued assistance, DAQEM is again proposing regulations that are less stringent than those that have already failed to result in attainment of the NAAQS. EPA has failed to address section 116 requirements in their entirety in the proposed rule and TSD and proposes approval of the submitted NSR program despite an admission of relaxations in its section 193 discussion of CO and PM–10.

Response to NEC Comment #1: NEC contends that CAA section 116 requires that SIP revisions that would supercede pre-existing EPA-approved SIP rules be no less stringent than those EPA-approved SIP rules individually or collectively. NEC contends that EPA has ignored the requirements of CAA section 116, but NEC misreads CAA section 116. Section 116 provides:

> ''Except as otherwise provided in sections 119(c), (e), and (f) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977), 209, 211(c)(4), and 233 (preempting certain State regulation of moving sources) nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan * * * such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan * * *.''

NEC's reading of section 116 as imposing requirements for SIP revisions or a blanket prohibition on relaxation of SIPs would be inconsistent with CAA sections 110(l) and 193, which specify the criteria to be applied in evaluating SIP revisions. In pertinent part, CAA section 110(l) provides:

> ''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.''

CAA section 110(l) does not preclude SIP relaxations but requires that relaxations not interfere with specified requirements of the Act including requirements for attainment and reasonable further progress. Thus, if an area can demonstrate that it will continue to attain or maintain the NAAQS and meet any applicable

[3] In a recent final rule on the Las Vegas Valley PM–10 attainment plan, we concluded that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not significantly contribute to violations of the PM–10 standards. See 69 FR 32273, at 32274, column 1 (June 9, 2004).

reasonable further progress goals or other specific requirements, it may revise SIP provisions, even if the revision amounts to a relaxation. *See Hall* v. *EPA,* 273 F.3d 1146, 1160 (9th Cir. 2001) (explaining that to make a finding under CAA section 110(l), ''EPA must be able to conclude that the particular plan revision before it is consistent with the development of an overall plan capable of meeting the Act's attainment requirements.''). Our proposed rule provides a detailed evaluation of the submitted NSR program under section 110(l). We have compared the submitted NSR program and the EPA-approved (*i.e.,* existing SIP) NSR program that it would replace and evaluated the effect of the changes to the NSR program within the context of ambient air quality trends and compliance with CAA attainment planning requirements. We conclude that replacement of the existing SIP NSR program with the submitted NSR program would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. See 69 FR at 31060–31063.

Even if a SIP revision is approvable under section 110(l), CAA section 193 imposes additional restrictions on modifications to certain SIP control requirements in nonattainment areas that were in effect prior to the 1990 Clean Air Act Amendments (''pre-1990 control requirements''). In pertinent part, CAA section 193 provides:

> ''No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.''

Thus, while NEC's interpretation of CAA section 116 as providing a broad prohibition against SIP relaxations is erroneous, CAA section 193 does limit nonattainment areas from backsliding from the emissions reductions achieved by pre-1990 control requirements. In our proposed rule, we provide a detailed evaluation of the submitted NSR program under CAA section 193. See 69 FR at 31063–31065. In that evaluation, which covers the two pollutants (CO and PM–10) for which Las Vegas Valley was designated nonattainment at the time of the 1990 CAA Amendments and remains so designated, we indicate specific instances where the requirement under the submitted NSR program, such as the control technology requirement for minor sources, would be less stringent (BACT) than under the existing SIP NSR rules (LAER). Thus, we acknowledge the relaxation of certain program elements, but our evaluation under CAA section 193 does not end there. We evaluated the NSR programs as a whole taking into account all of the programs' elements (such as the control technology requirements, major stationary source thresholds, offset ratios, etc.) in concluding that the submitted NSR program will result in equivalent or greater mitigation of CO and PM–10 emissions increases due to new source growth relative to the existing SIP NSR program.[4]

Thus, in summary, EPA concludes that although the SIP revision does relax certain CO and PM–10 provisions of the NSR program, the SIP revision as a whole satisfies section 110(l) because it is consistent with the area's overall control strategy, which takes into account ambient trends and CAA planning requirements and which was recently approved by EPA in separate rulemakings (see response to NEC comment #6), and it satisfies section 193 because the submitted NSR program provides equivalent or greater mitigation of emissions increases compared to the existing SIP NSR program.

NEC Comment #2: Clark County was recently declared a nonattainment area for ozone. The relaxations in proposed controls for the ozone precursor pollutants (volatile organic compounds (VOC) and NO_X) that are in the proposed SIP are a relaxation from the existing SIP. The situation is similar to the relaxations for CO and PM–10. Instead of dealing with the issue, EPA has chosen to keep that relaxation from the discussion.

Response to NEC Comment #2: Contrary to NEC's contention, the regulatory context for review of the submitted Clark County NSR program is different for ozone than for CO or PM–10. For the latter pollutants, the nonattainment designations were re-affirmed by the 1990 CAA Amendments and continue to the present day. In contrast, for ozone, prior to the 1990 CAA Amendments, implementation of an effective control strategy for the only ozone NAAQS then in existence (the 1-hour ozone NAAQS) led to our redesignation of Las Vegas Valley from nonattainment to attainment. Las Vegas Valley continues to attain the 1-hour ozone NAAQS to the present day. In 1997, EPA promulgated a revised NAAQS for ozone based on an 8-hour average. Following significant legal challenges to the 8-hour ozone NAAQS, we promulgated designations earlier this year for all areas of the country for the 8-hour ozone NAAQS, and Clark County was one of the areas that we designated as nonattainment. (The 1-hour ozone NAAQS continues to be in effect until June 2005 when it will be revoked.) In our proposed rule, we acknowledge this recent designation for the 8-hour ozone NAAQS at 69 FR 31062, column 3. More recently, we deferred the effective date of the designation until September 13, 2004 to allow the State the opportunity to provide us with information that would support a nonattainment area boundary other than the county boundary. See 69 FR 34076 (June 18, 2004). A nonattainment designation triggers certain CAA requirements and will lead to future SIP revisions that must be submitted prior to dates yet to be established by EPA.

We provide a section 110(l) evaluation in our June 2, 2004 proposed rule of the submitted NSR program with respect to the ozone NAAQS. See 69 FR at 31062–31063. In that discussion, we acknowledge certain incremental relaxations in the VOC control technology requirement but, similar to our discussion of PM–10 and CO, we conclude that other aspects of the overall NSR submittal provide us with the basis to conclude that the submitted NSR program (and supercession of the existing SIP NSR program) would not interfere with attainment and reasonable further progress towards attainment of the ozone NAAQS, or any other requirement under the Act. In support of this conclusion in the case of the ozone NAAQS, we point to the following: (1) The submitted NSR program would replace a ''potential-to-potential'' test with the ''actual-to-potential'' test for evaluating proposed stationary source modifications with the result that a greater number of modifications would be subject to new source review (and thereby to the control technology requirements, etc.) under the submitted NSR program than under the existing SIP NSR program (see 69 FR 31061, column 1); (2) significant Clark County non-NSR SIP rules and EPA motor vehicle tailpipe and fuel regulations that regulate VOC emissions would be unaffected by this action (see 69 FR 31062, column 3); (3) the

[4] CAA section 193 uses the phrase ''equivalent or greater emission reductions,'' but, in the context of NSR programs, which are not specifically designed to produce emissions reductions themselves but to assure that stationary source growth occurs in a manner that is consistent with an area's overall control strategy, the phrase means equivalent or greater mitigation of emissions increases due to new stationary source growth.

relaxation under the submitted NSR program with respect to the VOC control technology requirement for minor VOC sources in Las Vegas Valley would be incremental (LAER to BACT) instead of total (LAER to uncontrolled) (see, generally, 69 FR at 31064, column 2); and (4) there would be an incremental strengthening (BACT to LAER) under the submitted NSR program of the VOC control technology requirement for new or modified major VOC sources in areas generally upwind of Las Vegas Valley (see 69 FR 31062).

Although the CAA section 110(l) evaluation summarized above was prepared in connection with the 1-hour ozone NAAQS, the same rationale also applies to the 8-hour ozone NAAQS. Thus, in summary, EPA concludes that although the SIP revision does relax certain VOC provisions of the NSR program, the SIP revision as a whole satisfies section 110(l) because it is consistent with the area's EPA-approved ozone control strategy, and because, given the trade-offs concerning VOC requirements between the two programs as discussed above and the inherent difficulty in determining with precision the net effect on VOC emissions of replacement of the existing SIP NSR program with the submitted NSR program (which would depend upon assumptions regarding the number and potential-to-emit of future new and modified sources in addition to their proposed locations within Clark County), we believe that it is reasonable to conclude that the submitted NSR program provides equivalent or greater mitigation of VOC emissions increases compared to the existing SIP NSR program.

The State and Clark County developed the approved ozone control strategy to attain the 1-hour ozone NAAQS, but it also serves as the base control strategy from which the State and Clark County will develop an 8-hour ozone control strategy. EPA will be establishing the schedule that the State and Clark County must follow to develop an 8-hour control strategy in a final rule implementing the 8-hour ozone NAAQS.

NEC Comment #3: EPA accepts relaxations in control technology requirements by discussing NSR offset requirements. Offset requirements are completely different than control requirements. Over the past 20+ years since approval of the existing SIP NSR program, neither EPA nor DAQEM have required or enforced the offset requirement in Clark County, despite numerous sources that have triggered the requirement, and for that reason, the public does not have much confidence that either will now start enforcing it. As a result, the offsets requirements that EPA relies on in the proposed approval amount to ''paper only'' emissions reductions.

Response to NEC Comment #3: In our proposed rule, we rely on the offset requirements in the submitted NSR program to mitigate the higher level of emissions from new or modified sources that might otherwise occur from a more stringent control technology requirement (*e.g.*, LAER for minor sources) than the submitted program (BACT for minor sources). We also note the improved regulatory structure of the new NSR rule that clearly specifies the ''quality'' of offsets required. By ''quality,'' we refer to the requirements, such as those set forth in CCAQR section 59, subsection 59.4, that emission reductions used to satisfy a Federal offset requirement must be surplus, permanent, quantifiable and federally enforceable, as those terms are defined in CCAQR section 0.[5] From a practical standpoint, the added regulatory clarity should enhance compliance with the requirements by permit applicants as well as enforcement of those requirements by DAQEM and EPA.

NEC Comment #4: The discussion regarding Clark County's local, road paving, and offset credit program fails to discuss the fact that the program has been a misleading program all along. The offset credits under the local program cannot be replicated because they are not real. The local offset program was never intended to reduce air pollution. Despite this, the EPA and DAQEM continue to support the local emission reduction credit program used by favored sources to evade Federal offset requirements that EPA and DAQEM say are part of the submitted NSR rules.

Response to NEC Comment #4: As discussed above in response to NMA comment #1, DAQEM and the State requested EPA to withdraw the approval of subsection 59.2 as part of the SIP. As a result, we no longer have authority to act on subsection 59.2 (''Local Offset Requirements''), and subsection 59.2 will therefore not be approved into the SIP. Subsection 59.2 (specifically, subsection 59.2.7.1) contains the provisions allowing use of Road Paving Credits as PM–10 offsets. In accordance with CCAQR regulations (see CCAQR subsection 59.2.1), the Road Paving Credits are not available for use by new major sources or major modifications of PM–10 to comply with Federal offset requirements. We are therefore not addressing the issue of whether those credits would hypothetically be valid in meeting Federal offset requirements. As we state in response to NEC comment #4, we expect that the more detailed specifications in submitted CCAQR section 59, subsection 59.4 (and the related definitions set forth in CCAQR section 0) regulating the creation and use of emissions reductions for the purposes of satisfying the offset requirements will enhance both compliance and enforcement efforts compared to the existing SIP NSR program.

NEC Comment #5: One way to ascertain if reasonable further progress has been made is to review air quality in 1980 and compare it to today. The Las Vegas Valley was in nonattainment for particulate matter, ozone, and CO in 1980. As of the writing of this comment, some of the rules were changed, but the valley remains in nonattainment for all three pollutants.

Response to NEC Comment #5: The Clean Air Act defines ''reasonable further progress'' as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' See CAA section 171(1). Thus, reasonable further progress (RFP) is judged from an emissions standpoint and does not correlate directly to ambient concentrations, which reflect meteorological conditions that vary from year to year as well as emissions trends. However, over the long term, as NEC suggests, the trend in concentrations should be downward if there has in fact been ''reasonable further progress.'' In Las Vegas Valley, as discussed on a pollutant-by-pollutant basis in the following paragraphs, the monitoring data shows improvement for all three pollutants for which Las Vegas Valley is, or was, nonattainment, *i.e.*, CO, particulate matter (TSP and PM–10), and (one-hour) ozone, relative to conditions that prevailed in the valley in the late 1970's and early 1980's.

Carbon Monoxide. In the late 1970's and early 1980's, the *1982 Air Quality Implementation Plan Update* (June 1, 1982) indicates that the number of days per year during which an exceedance of the CO NAAQS was recorded was about

[5] Section 15, subsection 15.14.4.3.3, appears to establish certain requirements for creation and use of offsets under the existing SIP NSR program. However, a typographical error in the listing of this particular subsection in both our proposed rulemaking (see 47 FR 7267, February 18, 1982), and final rulemaking (see 47 FR 26620, June 21, 1982) cast doubt on the validity of EPA's approval of that subsection into the SIP. Also, see 40 CFR 52.1470(c)(24)(iii).

30. In contrast, since 1998, there have been no recorded exceedances of the CO NAAQS. See our proposed approval of the 2000 Las Vegas Valley serious area CO SIP at 68 FR 4141, at 4142, column 1 (January 28, 2003). The carbon monoxide control strategy has relied primarily on Federal motor vehicle emissions standards, wintertime State and local fuel specifications, and an ''enhanced'' vehicle inspection and maintenance program to improve CO conditions in Las Vegas Valley. In our June 2, 2004 proposed rule, we discuss how the submitted NSR program is consistent with the CO control strategy and the serious area CO SIP (which we recently approved). See 69 FR at 31061, column 3 and 31062, column 1.

Particulate Matter. During the 1977 through 1979 period, the number of days per year during which an exceedance of the particulate matter NAAQS (then defined in terms of total suspended particulate (TSP)) was recorded averaged 14 based on summaries of monitoring data compiled for the *Revised Air Quality Implementation Plan* (November 18, 1980). The particulate matter NAAQS was revised to refer to PM–10, rather than TSP, in 1987, so a direct comparison between current conditions and those in the late 1970's is not possible. Nonetheless, a comparison between the older TSP data and the current PM–10 data provides a rough, if imprecise, basis for evaluating relative progress in reducing particulate matter concentrations in the valley over time. In that regard, we note that, during the 1997 through 1999 period, the number of days per year during which an exceedance of the PM–10 NAAQS was recorded averaged 10 based on data compiled for the *PM–10 State Implementation Plan for Clark County* (June 2001). Thus, while progress in attaining the particulate matter NAAQS has been slow, the approved 2001 PM–10 attainment plan is the first Las Vegas Valley plan to contain a comprehensive set of regulations addressing fugitive dust sources, the predominant sources of ambient PM–10 in the valley. We approved the fugitive dust regulations, CCAQR sections 90 through 94, as part of the final rule approving the 2001 Las Vegas Valley PM–10 attainment plan. See 69 FR 32273 at 32276 (June 9, 2004). Also as part of the 2001 PM–10 attainment plan approval, we approved the demonstration of attainment of the PM–10 NAAQS in Las Vegas Valley by the end of 2006. In our June 2, 2004 proposed rule, we discuss how the submitted NSR program is consistent with the PM–10 control strategy and serious area PM–10 attainment plan (which we recently approved). See 69 FR at 31062, columns 1 and 2.

Ozone. During the 1980 through 1983 period, the number of days per year in which an exceedance was recorded varied from 1 to 14 based on data contained in the *Air Quality Implementation Plan, Post 1982 Update* (July 1984). By the mid-1980's, the 1-hour ozone NAAQS had been attained in Las Vegas Valley, and EPA redesignated the area as an ''attainment'' area for the 1-hour ozone NAAQS in 1986. See 51 FR 41788 (November 19, 1986). The ozone control strategy relied primarily on Federal motor vehicle emissions standards and local stationary source regulations, including, among others, Clark County District Board of Health Air Pollution Control Regulation Section 33 (''Chlorine in Chemical Processes''). Our proposed rule on the submitted NSR program, at 69 FR at 31062, column 3, notes that, since 1986, 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 1-hour ozone NAAQS of 0.12 ppm. In our proposed rule, we discuss how the submitted NSR program is consistent with the 1980's-era 1-hour ozone control strategy. See 69 FR at 31062, columns 2 and 3, and 31063, column 1.

As noted in response to NEC comment #2, EPA recently designated Clark County as a nonattainment area for the 8-hour ozone NAAQS (promulgated by EPA in 1997) but deferred the effective date for that designation until September 13, 2004. Upon the effective date of the new designation, certain changes in the Clark County NSR program will be required under either the submitted or existing SIP NSR program (*e.g.*, LAER and offsets for VOC and NO_X major sources and major modifications throughout Clark County or designated subportion thereof).

NEC Comment #6: DAQEM has yet to produce an accurate and comprehensive emissions inventory for the nonattainment area. DAQEM uses air quality calculations that are not credible in order to justify the desired paper-only end result. For example, the emissions inventory from the ''moderate area'' plans from the mid-1990's show little resemblance to the current ''serious area'' plans. A specific instance is demonstrated by the PM–10 emissions estimates from vacant land that doubled between the ''moderate area'' PM–10 plan, which was withdrawn, and the ''serious area'' PM–10 plan. It is also not credible that the plans project lower emissions despite a population that has tripled in 20 years. Also, certain emissions sources are completely missing from the inventories, such as new power plants and a proposed airport.

The amount of industry emissions has increased since 1979 and for that reason alone, LAER triggers should not be relaxed. We cannot go from LAER to less than that without having an impact on attainment. PM–10 emissions have not been reduced in reality. DAQEM has utilized drastically lower emission factors to estimate emissions. There is no justification for the data presented in the proposed approval. Industry has grown but the emissions inventory does not show the same increase in emissions since the emission factors have been reduced.

Another trick DAQEM has mastered over the years is the manipulation of the choice of monitoring sites and management's ability to shut down monitors just as they appear to reach the level of NAAQS exceedances. DAQEM places only the official monitors in areas of the valley that have proven through previous monitoring to rarely report exceedances.

According to CAA section 188(e), the ''serious area'' PM–10 attainment date may also be extended if the rules are followed. Clark County has not followed the rules. One criteria for an extension is that the plan for the area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State. The EPA has admitted that many of the control and offset requirements of the proposed plan are not as stringent as the existing plan. DAQEM has noted that most sources in the nonattainment area are non-major sources. It is these non-major sources that represent the majority of emissions whose emissions are being relaxed the most by the proposed regulation. For all of the reasons herein, we object to the proposed 5-year extension to 2006 for attainment.

Response to NEC Comment #6: NEC objects to several aspects of the Las Vegas Valley CO and PM–10 attainment plans, including the characterizations of baseline ambient conditions based on data from the monitoring network, the emissions inventories, the control measures, and the attainment demonstrations. We are taking no action today related to these plans but do recognize that, in our June 2, 2004 proposed rule on the submitted NSR program, our rationale for determining that the submitted NSR program would not interfere with attainment of the CO and PM–10 NAAQS under section

110(l) of the Act was based in part on our evaluations, and proposed approvals (in separate notices published in January 2003), of the CO and PM–10 attainment plans. See 68 FR 4141 (January 28, 2003) (CO plan proposed approval) and 68 FR 2954 (January 22, 2003) (PM–10 plan proposed approval).

Specifically, in our section 110(l) evaluation for CO, we based our conclusion in part on our previous evaluation and proposed approval (in the January 28, 2003 notice) of the CO attainment plan's inventories, including how those inventories account for stationary sources, our proposed approval of the plan's conclusion that stationary sources are not a significant contributor to CO levels in the valley, and our proposed approval of the attainment demonstration with reliance on on-road motor vehicle measures (*e.g.*, emissions standards, fuels, an inspection and maintenance program, and transportation control measures) not stationary source controls. See 69 FR at 31061–31062 and the related discussion in the TSD on our proposal on the submitted NSR program at pages 31 through 37.

With respect to PM–10, we based our conclusion in part on our evaluation and proposed approval (in the January 22, 2003 notice) of the PM–10 attainment plan's inventories, including how those inventories account for stationary source emissions, the plan's conclusion that stationary sources are not a significant contributor to PM–10 NAAQS violations in the valley, and the plan's attainment demonstration based on implementation of new fugitive dust controls, not stationary source controls.

Subsequent to publication of our June 2, 2004 proposed rule on the submitted NSR program, we took final actions, after due consideration of public comments, to approve the inventories and strategies in the CO and PM–10 attainment plans, and thus, our continued reliance on those plan elements in support of today's final approval of the submitted NSR program under section 110(l) is appropriate. (The final rule approving the CO plan was signed on July 23, 2004 but has not yet been published in the **Federal Register**; the final rule approving the PM–10 plan was published at 69 FR 32273 (June 9, 2004).)

Most of the specific issues raised by NEC on the attainment plans in this comment were raised previously in the context of our January 2003 proposed approvals on the CO and PM–10 plans, and thus, we rely primarily on our consideration of those comments as documented in the Response to Comments Documents prepared in conjunction with our final actions on the plans but also address newly-raised issues in the following paragraphs, which are organized by general subject matter.

Lack of Accurate and Comprehensive Emissions Inventories for the Nonattainment Area: We disagree with this contention and believe that the baseline inventories in these plans represent comprehensive, accurate, and current estimates of actual emissions in the nonattainment area for the reasons set forth in our Response to Comments Documents for the CO and PM–10 attainment plan approvals. See CO Plan Final Rule Response to Comments Document, responses to NEC comments 12, 14, and 17 through 23; and PM–10 Plan Final Rule Response to Comments Document, pages 7 through 13.

Emissions Trends Inversely Proportional to Population Growth: For CO, through 2010, the beneficial effect of motor vehicle and fuel-related CO control measures on CO emissions will more than offset region-wide increases in vehicle-miles-traveled and thereby provide for a net downward trend in CO emissions. See CO Plan Final Rule Response to Comments Document, response to NEC comment #6. For PM–10, the explanation lies in the adoption, implementation, and enforcement of a comprehensive set of regulations (Clark County sections 90 through 94) that address the sources of approximately 90% of the PM–10 emissions inventory in Las Vegas Valley, *i.e.*, fugitive dust sources, including open areas, vacant lots, unpaved roads, unpaved alleys, and unpaved easement roads, unpaved parking lots, paved roads and street sweeping equipment, and construction activities. See the TSD for our proposed rulemaking on the submitted NSR program under the subsection entitled ''PM–10 SIP Planning Considerations.''

Significant Differences in Current Emissions Estimates Compared to Estimates Published in Previous Plans: Changes in EPA-approved emissions calculation procedures and models necessitate a re-figuring of emissions in updated plans, and the emissions estimates in the current CO and PM–10 plans are well documented and represent an improvement over the corresponding estimates in previous submitted plans. See CO Plan Final Rule Response to Comments Document, response to NEC comment #12; and PM–10 Plan Final Rule Response to Comments Document, responses to comments #7, #8 and #11.

Stationary Source Trends: For CO, the attainment plan reasonably assumes that emissions from major sources would remain unchanged after the baseline date (1996) due to the offset requirement for such sources but assumes that emissions from minor sources would increase in proportion to growth projections for the manufacturing sector. See CO Plan Final Rule Response to Comments Document, response to NEC comment #22. For PM–10, the attainment plan reasonably assumes that emissions from stationary sources would remain relatively constant from 1998 through the attainment year (2006) as the growth in PM–10 emissions that would otherwise be expected to occur roughly in proportion to population is offset by the combination of the application of LAER (all new major stationary sources and major modifications) or BACT (all other new stationary sources and modifications) and the expected downturn in two important PM–10 stationary source categories (sand and gravel operations and asphalt concrete manufacturing) due to declining rates of population growth and associated construction activity. See the TSD for our proposed rulemaking on the submitted NSR program under the subsection entitled ''PM–10 SIP Planning Considerations.''

Inadequate Monitoring Network: We disagree with this contention and conclude in our final actions on the CO and PM–10 plans that the data from the monitoring network were sufficient for development of the attainment plans although we acknowledge certain deficiencies in the monitoring network that Clark County is in the process of fixing. See CO Plan Final Rule Response to Comments Document, responses to NEC comment #8; and PM–10 Plan Final Rule Response to Comments Document, pages 2 through 7.

Extension of PM–10 Attainment Date and Most Stringent Measures (MSM) Evaluation: We believe that Clark County has adequately identified the significant source categories for which best available control measures (BACM) and most stringent measures (MSM) must be provided, has demonstrated that adopted BACM and MSM are being implemented as expeditiously as practicable, and has provided adequate technological or economic justifications for rejecting additional control measures that theoretically could have provided for a 2001 attainment date. See PM–10 Plan Final Rule Response to Comments Document, pages 30 through 37 and pages 40 through 42. Finally, we note that NSR itself is not a ''measure'' that need be considered as a ''most stringent measure'' under section 188(e). NSR affects new or modified sources whereas BACM and MSM represent measures to reduce emissions from existing sources. We note that any revisions to an NSR

program, such as the replacement of a LAER requirement by a BACT requirement for non-major (minor) sources, applies only prospectively, and that, for example, air permits that apply LAER level of control for non-major sources and issued prior to the change in the NSR program would not be affected by the change in the NSR program. That is, the permit condition or conditions that apply LAER to the given source remain enforceable after the change in the NSR program. Only new sources and source modifications that receive permits after the effective date of the change in the NSR program would be affected.

NEC Comment #7: If actual credible data was reported, the Apex Valley would have been declared a nonattainment area years ago. Instead, the EPA is helping DAQEM develop another relaxation of the regulations in the form of process called a ''Natural Events Action Plan'' (NEAP). The NEAP's sole purpose to cast out data that does not fit the pre-conceived outcome that the EPA and DAQEM have projected for health-based NAAQS. We do not believe that the NEAP has any lawful statutory basis and the practice is highly misleading. We reaffirm our request for full NEAP disclosure without further delay.

Response to NEC Comment #7: In light of this comment, we have reconsidered our evaluation of the submitted NSR program under section 110(l) as it relates to PM–10 emissions in Apex Valley, and we now believe that our conclusion in the proposed rule that there would be an incremental relaxation in NSR requirements under the submitted NSR program (relative to the existing SIP NSR program) in that area with respect to PM–10 but that such relaxation would be acceptable in part because of the future development of a Natural Events Action Plan was in error. We no longer believe it appropriate to rely on the development of a Natural Events Action Plan for Apex Valley to support our revised evaluation. As explained further below, our evaluation of the submitted NSR program was predicated on a mistaken interpretation of the PM–10 requirements for new or modified sources in Apex Valley under the existing SIP NSR program. Our revised interpretation of the existing SIP NSR requirements in Apex Valley has not changed our basic conclusion, *i.e.*, that the submitted NSR program would not interfere with attainment of the PM–10 NAAQS under section 110(l) of the Act, but it has changed the underlying rationale for that conclusion.

In the proposed rule, we relied solely on existing SIP subsection 15.14.1 to conclude that the requirements of subsection 15.14 (such as LAER and, for some sources, offsets) apply to new or modified sources of PM–10 in Apex Valley. In pertinent part, subsection 15.14.1 states: ''This section applies to all new, or reconstructed, or modified stationary sources of * * * particulate * * * proposing to locate: (1) in the Las Vegas Valley, or * * * (3) *in any other area in Clark County in which the air quality standards are exceeded*'' (emphasis added). We interpreted subsection 15.14.1 as extending the requirements of that subsection (*i.e.*, LAER, and in some cases, offsets) outside of the designated nonattainment area (*i.e.*, Las Vegas Valley) to Apex Valley because Apex Valley had become an *area in Clark County in which the air quality standards are exceeded* by virtue of the fact that PM–10 NAAQS exceedances have been recorded in that area in recent years. (The current designations under section 107(d) of the Act for the two hydrographic areas (#216 and #217) that comprise Apex Valley are ''unclassifiable'' for the PM–10 NAAQS, see 40 CFR 81.329, and EPA has not initiated the process to redesignate either one of the areas to ''nonattainment.'')

Upon reconsideration, we now believe that our sole reliance on subsection 15.14.1 was mistaken. We should have also considered existing SIP subsection 15.13.1, and the definition of ''nonattainment area'' in existing SIP section 1, and in so doing, we find that the phrase ''*in any other area in Clark County in which the air quality standards are exceeded*'' in subsection 15.14.1 is correctly interpreted to refer to an area that has been established as a ''nonattainment area'' by the Governor of Nevada and not just any area in which a monitor has recorded exceedances of the standard.

Existing SIP subsection 15.13 requires BACT level of control but does not require offsets. In pertinent part, existing SIP subsection 15.13.1 specifies that subsection 15.13 ''applies to all new, reconstructed, or modified sources of * * * particulate * * * *in the attainment areas of Clark County*'' (emphasis added). Existing SIP section 1 (''Definitions'') does not define the term ''attainment area'' but does so by negative implication by defining the term, ''non-attainment area,'' to be ''an area which has been determined to exceed any national ambient air quality limit for any pollutant for which there is a standard. The Non-attainment Area for Clark County, Nevada has been established by the Governor of the State of Nevada and such area coincides with the boundaries of the Hydrographic Area 212 (Las Vegas Valley) as reported in the document ''Water Resources—Information Series—Report 6'' issued by the Nevada State Engineer's Office in September, 1968. By negative implication, an ''attainment area'' then is an area that has not been determined to exceed a given NAAQS through a process involving the Governor. As such, subsection 15.13, rather than subsection 15.14, applies to new or modified PM–10 sources in Apex Valley under the existing SIP NSR program because it is comprised by two areas that remain designated as ''unclassifiable'' for the PM–10 NAAQS (in this context, ''unclassifiable'' and ''attainment'' represent designations with equivalent regulatory requirements), and although exceedances of the PM–10 NAAQS have been measured there, Apex Valley has not been ''determined to exceed'' through any process involving the State of Nevada or, more specifically, the Governor and thus does not represent an ''*area in Clark County in which the air quality standards are exceeded*'' for the purposes of subsection 15.14.

This revised interpretation is supported by the recognition of some of the enforceability problems that flow from our previous interpretation. These problems include lack of fair notice to regulated sources as to when the requirements under subsection 15.14 (*i.e.*, LAER and, in some cases, offsets) are triggered for new sources and modifications (*e.g.*, it could be upon one exceedance, or sufficient exceedances to constitute a violation of the NAAQS, or some other triggering event), when the requirements no longer apply (*e.g.*, after a year of clean data or some other indication that the area no longer is exceeding the standard), and what area is affected (*e.g.*, the immediate area surrounding the monitoring station, the section 107(d) area (codified in 40 CFR part 81, subpart C) in which the monitor is located, or the entire valley in which the monitor is located, which in this case involves two section 107(d) areas, or some other geographic area). Any process under which the Governor makes a determination that a NAAQS is exceeded in a given area would invariably identify an effective date, identify criteria for ''attaining'' the standard once again, and delineate boundaries for the affected area, and thereby avoid the enforceability problems associated with our previous interpretation.

With the revised interpretation of the requirements for new or modified PM–10 sources in Apex Valley under the

existing SIP NSR program, we now find that there would be no relaxation in either the control technology requirement (BACT applies under both the existing SIP and submitted NSR programs) or offset requirement (none under either program) and thus approval of the submitted NSR program would not interfere with attainment of the PM–10 NAAQS in Apex Valley. Since our revised rationale for approving the submitted NSR program under section 110(l) as it relates to PM–10 in Apex Valley rests fundamentally on an interpretation of existing regulatory requirements, we are not required to conduct supplemental notice and comment due to the exemption for interpretive rules under section 553(b) of the Administrative Procedure Act.

If, and when, EPA redesignates Apex Valley, or some portion thereof, to nonattainment for PM–10 under section 107(d) of the Act, then the Clark County portion of the Nevada SIP will need to be revised to provide for, among other things, implementation of reasonably available control measures (RACM) to reduce emissions from existing PM–10 sources. In addition, the Clark County NSR program will need to be revised to require LAER and offsets for new major sources and major modifications proposing to locate in the area so designated.

NEC Comment #8: We object to EPA's failure to implement a Federal Implementation Plan (FIP) under section 110(c)(1).

Response to NEC Comment #8: We acknowledge that our deadlines for promulgating CO and PM–10 ''serious area'' FIPs under section 110(c)(1)(A) of the Act have passed, but our authority to promulgate them under that section has also now expired, with the exception of CO contingency provisions, due to our recent final actions approving the CO and PM–10 plans for Las Vegas Valley. Our decision not to take final action on the CO contingency provisions has no effect on our final action today on the submitted NSR program.

III. EPA Action

As authorized under section 110(k)(3) of the Act, EPA is partially approving and partially disapproving the revised Clark County NSR program. Our final action is a partial approval because we are approving submitted CCAQR sections 0, 11, 12 (except subsections 12.2.18 and 12.2.20), 58, and 59 (except subsection 59.2, which was withdrawn) and submitted State regulation NAC 445B.22083, based on our determination that these rules comply with relevant CAA requirements for permitting of new or modified stationary sources in Clark County and that supercession of related existing SIP provisions (*i.e.*, parts of section 1 and all of sections 11 and 15) is consistent with section 110(l) and 193 of the CAA. That is, we have determined that supercession of the existing SIP Clark County NSR program with the submitted NSR program will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act, consistent with section 110(l) as interpreted by the Ninth Circuit in *Hall* v. *EPA,* and will provide for equivalent or greater emission reductions of nonattainment pollutants as called for in CAA section 193. This action incorporates the rules, or portions of rules, that we are approving into the Nevada SIP. Furthermore, our approval of the submitted NSR program provides us with the basis to withdraw EPA's nonattainment area visibility FIP authority as it relates to new source review by DAQEM in Clark County (see 40 CFR 52.1488(b)).

This final approval of section 0 (''Definitions''), as submitted on October 23, 2003, in its entirety results in the supercession of all of the definitions in existing SIP section 1 (''Definitions'') *except* for the following 33 terms: 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). Also, this final approval of section 0 results in the supercession of all 29 of the section 0 definitions that were submitted to EPA on July 23, 2001 as part of the Las Vegas PM–10 attainment plan and approved by EPA on June 9, 2004 (see 69 FR 32273, at 32277).[6]

Our action also constitutes a partial disapproval because we are disapproving submitted CCAQR section 12, subsections 12.2.18 and 12.2.20, and submitted CCAQR section 52, subsection 52.8. We are disapproving submitted CCAQR section 12, subsections 12.2.18 and 12.2.20, which relate to regulation of hazardous air pollutants, as inappropriate for inclusion in the SIP.[7] We are disapproving submitted CCAQR subsection 52.8 because it cannot be evaluated properly in the absence of a SIP submittal of the entire rule (*i.e.*, CCAQR section 52). These disapproved rules are not incorporated into the SIP. No sanctions flow from this partial disapproval action under section 179 of the Act because the disapproved provisions do not constitute required SIP submissions.

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

Third, under section 110(k)(6), we are correcting certain provisions of the Clark County portion of the Nevada SIP that we approved in error and are revising certain provisions of the Clark County portion of the Nevada SIP that warrant clarification. Specifically, we are deleting 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). This action deletes these rules from the federally enforceable SIP. We are adding

[6] In our TSD (dated April 23, 2004) for the proposed action on the Clark County NSR rules, we compared the definitions in section 0, as adopted locally on December 4, 2001 and submitted to EPA on February 25, 2003, with the corresponding definitions in a previous version of section 0 that had been submitted as part of the Las Vegas PM–10 attainment plan and concluded that there were no substantive differences between the two sets of definitions. In this final rule, we recognize that the February 25, 2003 submittal was superceded by the October 23, 2003 submittal, but we have concluded that there are no substantive differences between the set of definitions in the October 23, 2003 submittal and the corresponding set of definitions submitted as part of the Las Vegas PM–10 attainment plan.

[7] HAP regulations are not inappropriate for approval as part of a SIP in every instance, see, *e.g.*, 40 CFR part 51, Appendix S, IV. C.6, but in this instance, CCAQR subsections 12.2.18 and 12.2.20 do not apply to sources subject to the criteria pollutant provisions contained in other subsections of CCAQR section 12 and thus are inappropriate because they would not contribute to attainment of a NAAQS nor are they needed to satisfy the non-criteria pollutant requirements of the Federal NSR regulations.

paragraphs to 40 CFR 52.1483 (''Malfunction regulations'') 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 part of the applicable SIP.[8] Lastly, we are revising the 40 CFR 52.1470(c)(33) 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.

IV. Statutory and Executive Order Reviews

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 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 November 8, 2004. 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compound.

Dated: August 25, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, 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. 7401 *et seq.*

Subpart DD—Nevada

■ 2. Section 52.1470 is amended as follows:

■ a. Adding paragraphs (c)(5)(i), (c)(16)(viii)(C), (c)(17)(ii)(A), (c)(53), and (c)(54);

■ b. Revising paragraph (c)(33)(i)(A); and

■ c. Removing and reserving paragraphs (c)(36) and (c)(37).

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(5) * * *

(i) Previously approved on May 14, 1973 in paragraph (c)(5) of this section and now deleted without replacement: Section 15 (Prohibition of Nuisance Conditions) and Section 29 (Odors in the Ambient Air).

* * * * *

(16) * * *

(viii) * * *

(C) Previously approved on August 27, 1981 in paragraph (c)(16)(viii) of this section and now deleted without replacement: Section 40, Rule 40.1 (Prohibition of Nuisance Conditions); Section 42, Rule 42.2 (open burning); and Section 43, Rule 43.1 (Odors in the Ambient Air).

(17) * * *

(ii) * * *

(A) Previously approved on August 27, 1981 in paragraph (c)(17)(ii) of this

[8] We had indicated in our June 2, 2004 proposed rule that we would clarify the disapproval status of these rules by revising the appropriate paragraphs in 40 CFR 52.1470, but we are instead adding text to 40 CFR 52.1483, which is a specific section of 40 CFR part 52, subpart DD (Nevada) that lists regulations that address upset conditions and that have been submitted to EPA as revisions to the Nevada SIP but that have been specifically disapproved by EPA.

section and now deleted without replacement: Section 1, Rules 1.79, 1.94.

* * * * *

(33) * * *

(i) * * *

(A) Las Vegas Valley Air Quality Implementation Plan, Post 1982 Update for Ozone adopted on October 16, 1984 (including section 33 (Chlorine in Chemical Processes)), adopted May 18, 1984).

* * * * *

(53) The following plan revision was submitted on October 23, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Department of Air Quality and Environmental Management.

(*1*) New or amended rules adopted on October 7, 2003 by the Clark County Board of County Commissioners: Clark County Air Quality Regulations section 0 (Definitions), section 11 (Ambient Air Quality Standards), section 12 (Preconstruction Review for New or Modified Stationary Sources), excluding subsection 12.2.18 and 12.2.20, section 58 (Emission Reduction Credits), and section 59 (Emission Offsets), excluding subsection 59.2 (''Local Offset Requirements'').

(54) The following plan revision was submitted on November 20, 2003 by the Governor's designee.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(*1*) Nevada Administrative Code section 445B.22083, adopted March 3, 1994 (effective March 29, 1994), by the State Environmental Commission.

■ 3. Section 52.1483 is amended as follows:

■ a. Redesignating paragraph (a)(1)(i) as paragraph (a)(1)(iii);

■ b. Adding new paragraphs (a)(1)(i) and (a)(1)(ii); and

■ c. Revising newly designated paragraph (a)(1)(iii).

§ 52.1483 Malfunction regulations.

(a) * * *

(1) * * *

(i) Previously approved on May 14, 1973 and deleted without replacement on August 27, 1981: Section 12 (Upset, Breakdown, or Scheduled Maintenance).

(ii) Section 25, Rule 25.1, submitted by the Governor on July 24, 1979.

(iii) Section 25, Rules 25.1–25.1.4, submitted by the Governor on November 17, 1981.

■ 4. Section 52.1488 is amended by revising paragraph (b) to read as follows:

§ 52.1488 Visibility protection.

* * * * *

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.26 are hereby incorporated and made a part of the applicable plan for the State of Nevada. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of Nevada except for that portion applicable to the Clark County Department of Air Quality and Environmental Management.

* * * * *

[FR Doc. 04–20137 Filed 9–3–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2004–CO–0002; FRL–7809–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Colorado Springs Revised Carbon Monoxide Maintenance Plan and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Colorado. On April 12, 2004, the Governor of Colorado submitted a revised maintenance plan for the Colorado Springs carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan contains a revised transportation conformity budget for the year 2010 and beyond. In addition, the Governor submitted revisions to Colorado's Regulation No. 11 ''Motor Vehicle Emissions Inspection Program.'' In this action, EPA is approving the Colorado Springs CO revised maintenance plan, revised transportation conformity budget, and the revisions to Regulation No. 11. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on November 8, 2004, without further notice, unless EPA receives adverse comment by October 7, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–2004–CO–0002, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/index.jsp.* Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *russ.tim@epa.gov.*
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME Docket Number R08–OAR–2004–CO–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available at *http://docket.epa.gov/rmepub/index.jsp,* 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. EPA's Regional Materials in EDOCKET and federal regulations.gov Web site 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