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your business qualifies and in what way and to what degree this proposal will economically affect your business.

An Initial Regulatory Flexibility Analysis discussing the impact of this proposal on small entities is available in the docket for inspection or copying where indicated under "ADDRESSES." The analysis indicates that the only businesses which will be directly affected by the amended bridge opening schedule, the excursion boat operators, will be able to adjust their schedules without impact on their businesses. However, one marina operator whose marina is located upriver from the bridge feels that the scheduling change will indirectly affect him. He feels that the change will cause him to lose business because boat owners will relocate their vessels down river, below the bridge.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard has reviewed the environmental impact of this proposal and concluded that under section 2.B.2 of the NEPA Implementing Procedures, COMDTINST M16475.1B, this proposal is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the human environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. § 499; 49 CFR § 1.46; 33 CFR § 1.05(g).

2. Part 117 is amended by revising paragraphs (b) introductory text, (b)(1) and (b)(2) of § 117.667 to read as follows:

§ 117.667 St. Croix River.

* * * * *

(b) The draw of the S36 Bridge, Mile 23.4, at Stillwater, shall open on signal as follows:

(1) From May 15 through October 15, Monday through Friday, except Federal holidays:

(i) From 8 a.m. to 10 p.m., every hour on the hour;

(ii) From 10 p.m. to 8 a.m., if at least two hours notice is given.

(2) From May 15 through October 15, Saturdays, Sundays, and Federal holidays:

(i) From 8 a.m. to midnight, every hour on the hour;

(ii) From midnight to 8 a.m., if at least two hours notice is given.

* * * * *

Dated: September 23, 1993.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Commander,
Second Coast Guard District.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX-14-1-5455; FRL-4787-2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan Addressing PM-10 for El Paso

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes approval of a revision to the Texas PM-10 State Implementation Plan (SIP) for El Paso, Texas. PM-10 is defined as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The EPA is also proposing to approve the PM-10 SIP for El Paso, Texas, as meeting the requirements of section 179B of the Clean Air Act (CAA) regarding implementation plans and revisions for international border areas. **DATES:** Comments on this proposed action must be received in writing on or before November 8, 1993.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Region 6 Office indicated. Copies of the documents

relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Texas Air Control Board, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Telephone (214) 655-7258.

SUPPLEMENTARY INFORMATION:

El Paso, Texas, was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the CAA, upon enactment of the Clean Air Act Amendments (CAAA) of 1990.¹ Please reference 56 FR 56694 (November 6, 1991, codified for Texas at 40 CFR 81.344) and 57 FR 13498, 13537 (April 16, 1992). The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of part D, title I of the CAA. Subpart 1 contains provisions generally applicable to all nonattainment areas and Subpart 4 contains provisions specifically applicable to PM-10 nonattainment areas. At times, Subparts 1 and 4 overlap or conflict. The EPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in this action.

The EPA has issued a "General Preamble" describing the EPA's preliminary views on how the EPA intends to review SIPs and SIP revisions submitted under Title I of the CAA, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). The reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this proposed action and the supporting rationale. In this rulemaking action on the El Paso, Texas, moderate PM-10 SIP, the EPA is

¹ The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM-10 national ambient air quality standards (see Public Law No. 101-549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

proposing to apply its interpretations, taking into consideration the specific factual issues presented. Thus, the EPA will consider any timely submitted comments before taking final action on this proposal.

On November 15, 1991, the Governor of Texas submitted to the EPA the SIP revision for PM-10 concerning El Paso, Texas. The CAA specifies that States containing those moderate PM-10 nonattainment areas designated nonattainment under section 107(d)(4) of the Act were to submit SIPs to the EPA by November 15, 1991, and outlines certain required items to be included in the SIPs. These required items, due November 15, 1991, unless otherwise noted, include: (1) A comprehensive, accurate, and current inventory of actual emissions from all sources of PM-10 in the nonattainment area (section 172(c)(3) of the CAA); (2) a permit program to be submitted by June 30, 1992, which meets the requirements of section 173 for the construction and operation of new and modified major stationary sources of PM-10 (section 189(a)(1)(A)); (3) a demonstration (including air quality modeling) that the plan provides for attainment of the PM-10 National Ambient Air Quality Standards (NAAQS) as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable (section 189(a)(1)(B)); (4) provisions to assure that Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), for control of PM-10 will be implemented no later than December 10, 1993 (sections 172(c)(1) and 189(a)(1)(C)). For sources emitting insignificant (*de minimis*) quantities of PM-10, the EPA's policy is that it would be unreasonable and would not constitute RACM to require controls on the source (please reference 57 FR 13540). Also, when evaluating RACM and RACT, the technological and economic feasibility of the controls are relevant considerations (57 FR 13540-13544); (5) quantitative emission reduction milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress (RFP) toward attaining the PM-10 NAAQS (section 189(c)); (6) contingency measures due November 15, 1993 (please reference 57 FR 13510-13512 and 13543-13544), that are to be implemented if the EPA determines that the area has failed to make RFP or to attain the primary standards by the applicable date (section 172(c)(9)); and

(7) control requirements for major stationary sources of PM-10 precursors, unless the EPA determines inappropriate. The CAA, in section 189(e), states that control requirements applicable to major stationary sources of PM-10 will also be applicable to major stationary sources of PM-10 precursors, except where the Administrator determines that such sources do not significantly contribute to PM-10 levels that exceed the PM-10 ambient standards in the area.

As outlined below, the State of Texas' SIP revision for PM-10 concerning El Paso, a moderate PM-10 nonattainment area, was reviewed against the applicable requirements. The reader is referred to the El Paso PM-10 SIP submittal and the EPA's supporting technical information for pertinent details regarding each requirement. These items are available for public review at the addresses indicated above.

Section 110(k) of the CAA sets out provisions governing the EPA's review of SIP submittals (see 57 FR 13565-13566). In this action, the EPA is proposing to grant approval of the plan revision submitted to the EPA on November 15, 1991, for El Paso, Texas, because it meets all of the applicable requirements of the CAA.

Analysis of State Submission

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.² See also section 110(l) of the CAA. Also, the EPA must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, the State of Texas held a public hearing on September 5, 1991, to entertain public comment on the PM-10 implementation plan for El Paso. Following the public hearing the plan was adopted by the

² Section 172(c)(7) of the CAA requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

State and signed by the Governor on November 5, 1991, and submitted to the EPA on November 15, 1991, as a proposed revision to the SIP.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter dated December 31, 1991, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted, in this action, the EPA proposes to approve the Texas PM-10 SIP submittal for El Paso and invites public comment on the action.

2. PM-10 Emission Inventory

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Further, section 110(a)(2)(K) generally authorizes the EPA to request any data necessary to perform air quality modeling for the purpose of predicting, among other things, impacts on the PM-10 NAAQS.

The State of Texas included two inventories in the El Paso PM-10 Moderate SIP: (1) An inventory for El Paso County (the City of El Paso is located in El Paso County) based on actual emissions for the year 1990; and (2) An inventory for El Paso County based on permit allowable emissions (where appropriate) for the year 1994. For 1990, the State calculated 1,082 tons/year of PM-10 emissions from point sources, 1,691 tons/year from area sources, and 4,640 tons/year from mobile sources (includes PM-10 emissions from paved and unpaved roads), for a total of 7,413 tons/year of PM-10 emissions. Projecting for 1994, and accounting for growth factors, the State calculated 1,413 tons/year of PM-10 emissions from point sources, 1,740 tons/year from area sources, and 4,399 tons/year from mobile sources (includes PM-10 emissions from paved and unpaved roads), for a total of 7,552 tons/year of PM-10 emissions. It is important to note that there were calculation errors in the two emission inventories submitted by the State. These calculation errors are discussed in detail in the Technical Support Document. Only one of the errors resulted in greatly different emissions estimates. This error involved PM-10 emissions from agricultural tilling. Instead of 126 tons/year, the 1990 inventory should have calculated PM-10 emissions from agricultural tilling operations to be 1,025 tons/year. The State was asked to re-examine its attainment

demonstration, as discussed below in Section 4, to account for this additional amount of PM-10 emissions.

By cover letter dated November 20, 1992, from Lane Hartsock, Deputy Director of Air Quality Planning, Texas Air Control Board (TACB), to Thomas H. Diggs, Chief of the Air Planning Section, EPA Region 6, the State submitted a revised emissions inventory addressing the calculation errors. The State used this revised inventory for an additional attainment demonstration which will be discussed in Section 4 below.

3. Nonattainment New Source Review Permit Program

The State of Texas has submitted new source review regulatory revisions to the EPA. These revisions, submitted by cover letter from the Governor dated May 13, 1992, were submitted in part to meet requirements found in sections 173 and 189(a)(1)(A) of the CAA for the construction and operation of new and modified major stationary sources of PM-10. These revisions were due independently of the November 15, 1991, moderate PM-10 nonattainment area SIP requirements addressed in this action and will be addressed in detail in a separate Federal Register notice.

4. Demonstration of Attainment of the PM-10 NAAQS by December 31, 1994, but for Emissions Emanating From Mexico

As noted, the initial moderate PM-10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B)(i) of the CAA). Alternatively, the State must show that attainment by December 31, 1994, is impracticable (section 189(a)(1)(B)(ii)).

There have been several air quality studies conducted in the El Paso/Juarez air basin. Special receptor modeling and other studies in El Paso and across the United States border in Juarez, Mexico, conducted by the TACB, the EPA, the El Paso City-County Health District (EPCCHD), and Mexico's Secretariat of Urban Development and Ecology (SEDUE) (now known as the Secretariat for Social Development or SEDESOL), have included PM-10 and meteorological monitoring in both El Paso and Juarez, trends analyses of the monitoring data, trajectory analyses demonstrating PM-10 transport from Juarez into El Paso, and laboratory analyses of air samples. The most extensive study was performed in December of 1990—an 18 day project entitled the "El Paso/Juarez Winter PM-

10 Receptor Modeling Scoping Study." Results from the study showed that generally, PM-10 concentrations were higher in Juarez, Mexico, than in El Paso, and a monitoring station in Juarez consistently reported higher PM-10 values than any other station during the special study period. In addition, when high PM-10 concentrations were measured in El Paso, trajectory analyses showed that many of the air parcels came from source regions within Juarez or areas outside Juarez in Mexico.

Section 179B(a) of the CAA provides that notwithstanding any other provision of law, a SIP required under the CAA shall be approved by the Administrator if: (1) The plan meets all requirements applicable to it under the CAA other than a requirement that such plan demonstrate attainment and maintenance of the relevant NAAQS by the specified attainment date; and (2) the submitting State establishes to the satisfaction of the Administrator that the SIP would be adequate to attain and maintain the relevant NAAQS by the specified attainment date, but for emissions emanating from outside of the United States. See generally 57 FR 13569-13570. In addition, for PM-10 nonattainment areas, section 179B(d) of the CAA specifies that notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to a PM-10 nonattainment area in such State, such State would have attained the NAAQS for PM-10 by the applicable attainment date, but for emissions emanating from outside the United States, then such PM-10 nonattainment area in the State shall not be subject to the reclassification to serious area provisions of section 188(b)(2) (failure to attain after the applicable attainment date). The EPA has construed this reclassification restriction to also extend to section 188(b)(1) of the CAA that pertains to reclassification before the attainment date where the EPA determines an area cannot practically timely attain (57 FR 13569, footnote 42).

The State of Texas references section 179B of the CAA when presenting their demonstration. As set out in more detail below, the State has submitted a demonstration showing that the El Paso PM-10 moderate nonattainment area would be in attainment of the PM-10 NAAQS both currently and by December 31, 1994, based on dispersion modeling of United States (El Paso County) PM-10 emissions alone. Based on the EPA's review, the demonstration appears to be satisfactory. Accordingly, the EPA is proposing to approve the demonstration as showing that the SIP provides for timely attainment of the

PM-10 NAAQS but for emissions emanating from Mexico.

The State of Texas used five years of hourly meteorological data (National Weather Service data from the El Paso International Airport for the years 1985-1989) and two sets of emissions inventory data for El Paso County (1990 actual point, area, and mobile source emissions, and 1994 projected allowable emissions) to model PM-10 NAAQS impacts in El Paso County. The State used a Gaussian Plume Multiple Source Air Quality Algorithm (Regional Air Model (RAM)) for modeling 1990 and 1994 PM-10 emissions, and also used the Valley Screening method for estimating PM-10 NAAQS impacts of significant elevated point sources on mountainous terrain, such as the nearby Franklin Mountains (1994 inventory only). PM-10 reductions due to some State-adopted control measures addressed in this proposal were not included in the modeling of the 1994 emissions inventory.

Based on the Gaussian Plume Multiple Source Air Quality Algorithm (RAM) modeling runs, the 1990 annual average PM-10 design concentration for the five year study period was 40.10 ug/m³, below the annual PM-10 NAAQS of 50 ug/m³. The annual PM-10 NAAQS is attained when the expected annual arithmetic mean concentration is less than or equal to 50 ug/m³ (40 CFR 50.6). The 1990 24-hour PM-10 design concentration for the five year study period was 91.45 ug/m³, below the 24-hour PM-10 NAAQS of 150 ug/m³. The 24-hour NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m³ is equal to or less than one (40 CFR 50.6). For 1994, the modeling runs produced a maximum annual design concentration of 41.64 ug/m³ and a maximum 24-hour design concentration of 114.08 ug/m³, both below their respective NAAQS threshold levels. Please reference the Technical Support Document and the El Paso PM-10 SIP for pertinent details on the above modeling demonstrations.

As mentioned above in Section 2, the State was asked to re-examine the attainment demonstration using a revised inventory. The State submitted a revised attainment demonstration by cover letter dated November 20, 1992, to the EPA. This additional modeling resulted in insignificant increases in the maximum predicted PM-10 concentrations in El Paso County. Based on the revised modeling runs, the 1990 annual average PM-10 design concentration for the five year study period was 40.45 ug/m³, below the annual PM-10 NAAQS of 50 ug/m³. The

1990 24-hour PM-10 design concentration for the five year study period was 93.52 ug/m³, below the 24-hour PM-10 NAAQS of 150 ug/m³. For 1994, the revised modeling runs produced a maximum annual design concentration of 41.92 ug/m³ and a maximum 24-hour design concentration of 114.19 ug/m³, both below their respective NAAQS threshold levels. Please reference the revised El Paso PM-10 SIP documentation from Lane Hartsock dated November 20, 1992, for pertinent details on the above revised modeling demonstrations.

Complex terrain screening for the 1994 inventory was performed on all elevated point sources which had 24-hour average emissions of 0.5 gram per second or more. The Valley Screening method was used to determine PM-10 impacts on elevated terrain at plume height for each of the significant sources. Predicted impacts on the nearby Franklin Mountains at plume height for the indicated sources were negligible.

5. RACM and RACT for Control of PM-10 and Additional Control Measures

As noted, the initial moderate PM-10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C) of the CAA). The General Preamble contains a detailed discussion of the EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539-13545 and 13560-13561). The EPA's interpretation of this requirement is set out here only in broad terms.

The State should first identify available control measures, evaluating them for their reasonableness in light of the feasibility of the controls and the attainment needs of the area. A State may reject an available control measure if the measure is technologically infeasible or the cost of the control is unreasonable. The SIP must demonstrate attainment of the NAAQS as expeditiously as practicable but no later than December 31, 1994 (unless the State demonstrates that attainment by that date is impracticable). Therefore, if a State adopts less than all available measures but demonstrates, adequately and appropriately, that RFP and attainment of the PM-10 NAAQS is assured, and application of all such available measures would not result in attainment any faster, then a plan which requires implementation of less than all available measures may be approved as meeting the RACM requirement. As a suggested starting point for determining RACM, the EPA has identified available

control measures for sources of fugitive dust, residential wood combustion, and prescribed burning (see 57 FR 18072-18074 (April 28, 1992)). The State should add to the list of available measures in an area any measures that public commenters demonstrate may well be reasonably available in a particular circumstance.

The RACT for a particular source is similarly determined. The EPA's longstanding definition of RACT is the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (see 57 FR 13541). Thus, the EPA recommends that available control technology be applied to those existing sources in the area that are reasonable to control in light of the attainment needs of the area and the feasibility of controls.³

A State should submit a reasoned justification for partial or full rejection of any available control measure (including any available control technology) that explains, with appropriate documentation, why each rejected control measure is infeasible or otherwise unreasonable and, therefore, does not constitute RACM (or RACT) for the area. In those PM-10 nonattainment areas where mobile sources significantly contribute to the PM-10 air quality problem, States also must address the section 108(f) transportation control measures (see 57 FR 13561).

The SIP for moderate PM-10 nonattainment areas subject to section 179B must similarly provide for the implementation of RACM (including RACT). In such areas the implementation of potentially available control measures may not be "reasonably" available and, therefore, would not be required by RACM (including RACT) where it can be shown that the PM-10 NAAQS could be attained as expeditiously as practicable in the nonattainment area disregarding emissions emanating from outside the United States. By directing the EPA under section 179B to approve the SIP or SIP revision for a moderate PM-10 area showing that it would timely attain the NAAQS "but for" foreign emissions and by excluding such an area from reclassification to serious, Congress has avoided penalizing such areas by not making them responsible for control of emissions emanating from a foreign country over which they have no

³ The EPA has issued technological and economic parameters that should be considered in determining RACT for a particular source (see 57 FR 18073-18074).

jurisdiction. The reclassification exclusion avoids subjecting such areas to the more stringent or "best" available control measures applicable in serious PM-10 nonattainment areas (section 189(b)(1)(B)). Further, section 179B(a)(2) by its plain terms requires the State to establish only that the SIP submitted would be "adequate" to timely attain and maintain the NAAQS, "but for" emissions from outside the United States.

Thus, no State is relieved from meeting all other applicable moderate area PM-10 SIP requirements, including the requirement to implement RACM. However, neither is any State required to shoulder more of a regulatory and economic burden than States not similarly affected, by having to implement measures that go well beyond those which the SIP demonstrates would otherwise be adequate to attain and maintain the PM-10 NAAQS "but for" emissions emanating from outside the United States. Such a requirement would be inconsistent with the apparent purpose of section 179B. Nevertheless, because the NAAQS reflect public health and welfare standards, the EPA encourages states to reduce emissions beyond the minimum necessary to satisfy the "but for" test in order to reduce the PM-10 concentrations to which their populations are exposed by virtue of the additional contribution from international transport.

The State of Texas in the El Paso SIP reviewed RACM and RACT for control of PM-10. Following is an analysis of the measures employed to control PM-10 in El Paso, Texas.

A. Fugitive Dust Control Measures

An evaluation of available fugitive dust control measures for the City of El Paso is included in appendix N of the El Paso PM-10 Moderate SIP. The State of Texas has incorporated provisions into the TACB Regulation I which control fugitive particulate emissions from materials handling, construction, roads, streets, alleys, and parking lots in the El Paso area. A Memorandum of Understanding (MOU), dated November 5, 1991, between the City of El Paso and the TACB, included in the SIP submittal, will serve as the basis for defining the division of responsibility for, and the commitments to carry out, pertinent provisions of Regulation I. In any event, the TACB has the ultimate enforcement authority to ensure the implementation of these fugitive dust control measures. Each pertinent section of Regulation I will be discussed below. Even though the TACB demonstrated that the El Paso PM-10 nonattainment

area would be in attainment by December 31, 1994, without including the fugitive dust control measures, the State of Texas is implementing control measures for fugitive dust in the El Paso area. The State has authority under section 116 of the CAA to require these controls, and the EPA is proposing to approve the following provisions of TACB Regulation I as control measures beyond RACM which strengthen the Texas SIP. Moreover, as discussed later, the EPA is proposing to treat these and the other control measures that go beyond the minimum RACM requirement as fulfilling the requirement for contingency measures.

Section 111.141. This section cites certain provisions in Regulation I applicable to the El Paso area (including the Fort Bliss Military Reservation except for tactical training areas) and also cites appropriate compliance dates, with compliance being no later than December 31, 1991, for some provisions, and no later than December 10, 1993, for the remaining provisions.

Section 111.143. Part one of this section requires maximum control of material storage piles through application of water or suitable chemicals or other coverings. Part two of this section requires proper installation, maintenance and use of hoods, fans, and filters to enclose, collect, and clean emissions of any dusty materials (if applicable). Finally, part three of this section requires covering of all open bodied trucks, trailers, and railroad cars transporting materials which can create airborne particulate matter in public areas within the City of El Paso. It is important to note that this section was previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1-2, 1989). This section was previously submitted to the EPA by cover letter from the Governor dated August 21, 1989.

Section 111.145. This section requires dust control (e.g., paving or chemical stabilization) at all construction and demolition sites in the City of El Paso, including control of access points to paved roads. It is important to note that parts 1 and 2 of this section were previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1-2, 1989). These parts were previously submitted to the EPA by cover letter from the Governor dated August 21, 1989.

Section 111.147. Part one of this section requires dust control measures (i.e., paving, watering, chemical stabilization) for the following unpaved

surfaces in the El Paso area: industrial facility roadways, public thoroughfares, commercial roads, residential roads, alleys (paving at the rate of at least 15 miles per year), and levee roads. Part two of this section requires removal of soil or other materials from roads by means of mechanical sweepers, including removal of sand applied on public thoroughfares for snow or ice control in the City of El Paso. In addition, a sweeping schedule and recordkeeping of such activities is specified. Also, this section gives the Executive Director, with the concurrence of the EPA, the option of granting a waiver from paving requirements for industrial roadways, provided the roadway owner can demonstrate that the cost of paving is economically unreasonable compared to other forms of dust control specified in section 111.147(1). It is important to note that parts 1(B) through 1(D) of this section were previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1-2, 1989). These parts were previously submitted to the EPA by cover letter from the Governor dated August 21, 1989.

Section 111.149. This section requires parking surfaces in the City of El Paso with more than five parking spaces to be paved or uniformly covered with gravel. Temporary parking lots must apply water or suitable oil or chemicals to control dust, while all parking lots with more than 100 parking spaces must be paved or covered by an equivalent method to paving as determined by the Executive Director of the TACB. The equivalent method shall not include the utilization of waste materials from industrial processes. It is important to note that this section was previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1-2, 1989). This section was previously submitted to the EPA by cover letter from the Governor dated August 21, 1989.

B. Off-road Recreational Vehicles

The State considers, and the EPA agrees, that PM-10 emissions due to off-road recreational vehicles are de minimis. According to the EPCCHD, there is no significant off-road vehicle use in the City of El Paso. As discussed earlier, where sources of PM-10 contribute insignificantly to the PM-10 problem in the area, the EPA's policy is that it would be unreasonable to require the sources to implement potentially available control measures. Therefore, such potentially available control

measures are not "reasonably" available and RACM does not require controls on insignificant PM-10 sources (57 FR 13540).

C. Residential Wood Combustion Control Measures

An evaluation of available residential wood combustion control measures for the City of El Paso is included in appendix O of the El Paso PM-10 Moderate SIP. The State of Texas has incorporated provisions into Regulation I (section 111.111(c)) which require an episodic curtailment program to be implemented in the City of El Paso regarding wood combustion. This program mandates operating restrictions for solid fuel heating devices in the City of El Paso, including the Fort Bliss Military Reservation, during periods when National Weather Service data indicates that an atmospheric stagnation condition exists or is predicted to exist. The program contains exemptions to account for burn down periods, sole sources of heat, and temporary power losses. The City of El Paso also enforces an episodic curtailment program regarding wood combustion under Chapter 9.38 of the City Code. This City ordinance was submitted as part of the SIP. The TACB and the City of El Paso are working together on producing pamphlets and other materials for educating the public regarding residential wood combustion devices and wood smoke, as called for in the November 5, 1991, MOU between the City and the TACB. As in the case of fugitive dust control measures, this MOU between the City of El Paso and the TACB, submitted as a part of the SIP, serves as the basis for defining the division of responsibility for, and the commitments to carry out, the provisions of Section 111.111(c) and Chapter 9.38 of the City Code, both concerning solid fuel heating devices. Nevertheless, the TACB is responsible for the ultimate implementation and enforcement of this program. The TACB is implementing these residential wood combustion control measures even though attainment of the PM-10 standards for the El Paso area was demonstrated by December 31, 1994, without consideration of these adopted control measures. Thus, the EPA is proposing to approve the El Paso residential wood combustion control measures as control measures beyond RACM which strengthen the Texas SIP. As discussed further below, the EPA is proposing to treat these and other control measures that go beyond the minimum RACM requirement as fulfilling the requirement for contingency measures.

D. Prescribed Burning Control Measures

Prescribed burning, including agricultural or silvicultural burning, is controlled by the TACB Regulation I under Sections 111.101, 111.103, 111.105, and 111.107, which detail prohibitions for outdoor burning and general requirements for allowable outdoor burning. Please reference these sections of Regulation I attached to the Technical Support Document. It is important to note that these sections were previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1-2, 1989). These sections were previously submitted to the EPA by cover letter from the Governor dated August 21, 1989. As stated earlier, the TACB is implementing these prescribed burning control measures even though attainment of the PM-10 standards for the El Paso area was demonstrated by December 31, 1994, without consideration of these adopted control measures, and the EPA is proposing to approve these and other measures as fulfilling the contingency measure requirement.

E. Point Sources

For El Paso, RACT includes control of existing stationary point sources for stack, process, and fugitive particulate emissions. RACT for a particular point source is determined on a case-by-case basis and considers the technological and economic feasibility of reducing emissions from that source. The State of Texas included an analysis of RACT for El Paso point sources that had total suspended particulate emissions equal to or greater than 25 tons per year. The analysis, concerning stack, process, and fugitive particulate emissions, is found in appendix P of the El Paso PM-10 SIP. This analysis was comprised of a current listing of RACT (appendix P) at specific emission points of PM-10 for El Paso point sources. Appendix P provides a description of control equipment and emissions in tons per year for the point sources. The TACB enforces RACT through federally enforceable permit conditions. The EPA is proposing to approve the El Paso PM-10 SIP as adequately containing RACT for stationary point sources.

In summary, the EPA is proposing to find that the State of Texas' PM-10 SIP for the El Paso nonattainment area includes adequate RACT/RACM as discussed in detail above. The State of Texas included a listing of RACT, federally enforceable in approved permits, being used at all major and other stationary sources in the El Paso

area. In addition, the EPA views the State's prescribed burning, fugitive dust, and residential wood combustion control measures in Regulation I and the City ordinance as contingency measures that go beyond the core RACM control strategy. This is discussed further below. The EPA is also proposing to approve the MOU between the City of El Paso and the TACB which serves to define the division of responsibility for, and the commitments to carry out, the provisions of Regulation I and Chapter 9.38 of the City Code (City of El Paso episodic curtailment program regarding wood combustion).

6. Milestones and Reasonable Further Progress

Section 189(c) of the CAA requires that plan revisions for moderate PM-10 nonattainment areas contain quantitative milestones which are to be achieved every three years until the area is redesignated to attainment. The milestones must also demonstrate to the EPA that reasonable further progress (RFP) toward attainment of the PM-10 NAAQS is being met (see 57 FR 13539).

The EPA has attempted to reconcile the quantitative milestones and periodic reporting called for in section 189(c) with the EPA's proposed decision under section 179B to approve the El Paso PM-10 SIP as meeting the requirements for an international border area implementation plan. The State demonstrated that the El Paso nonattainment area would attain the PM-10 NAAQS both currently and by December 31, 1994, using current and projected United States (El Paso County) emissions alone. Also, the PM-10 problem in the El Paso area is international in scope (contribution from Mexico). Therefore, the EPA believes it is reasonable for El Paso to satisfy section 189(c) by reporting every three years, beginning on November 15, 1994, the air quality progress actually made in response to the implementation of control measures, and information addressing a potential change in circumstances in the area that may, in turn, warrant further air quality protection efforts. Specifically, the State should report to the EPA every three years the following information regarding the El Paso nonattainment area: (1) The status and effectiveness of the existing controls, including quantification of emission reductions achieved relative to those projected in the El Paso PM-10 SIP submittal, the subject of this proposed action, (2) significant changes in the inventory due to new source growth or other activities (to allow for a comparison with the 1990 base year PM-10 emission inventory,

and the projected 1994 PM-10 emission inventory); and (3) an evaluation of any additional controls which may be feasible to reduce exposures and/or bring the area into attainment.

Reasonable further progress is defined in section 171(1) of the CAA as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. Since part D does not dictate annual incremental reductions for moderate PM-10 areas, the EPA has broad discretion in determining RFP under section 171(1). The EPA is proposing to approve as satisfying RFP the annual incremental reduction in emissions provided for by the RACM (including RACT) being implemented in the area. Section 189(c) provides that the quantitative milestones also must demonstrate RFP. Thus, the EPA will assess the State's compliance with RFP for this area in conjunction with determining its compliance with the quantitative milestone requirement described above. Thus, when the State demonstrates the El Paso area's compliance with the quantitative milestone requirement it should also demonstrate that RFP has been achieved during each of the relevant three years.

7. Contingency Measures

As per section 172(c)(9) of the CAA, all nonattainment SIPs must contain contingency measures (due November 15, 1993) that are to be implemented if the area fails to make RFP or to attain the NAAQS by the applicable date (see 57 FR 13510-13512 and 13543-13544). These contingency measures are to be implemented immediately after the EPA determines failure of RFP or attainment of standards. The CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures (57 FR 13511). However, since the purpose of the contingency measure requirement is to provide for the implementation of additional air quality control measures beyond the core control strategy to ensure that emissions reduction progress continues to be made in the event of SIP failure to produce RFP or attainment, contingency measures must consist of other available control measures that are not included in the RACM (including RACT) control strategy.

As addressed in the discussion of control measures, above, the State is implementing several control measures in El Paso that are in excess of those

needed to provide for timely attainment "but for" emissions from Mexico and that go beyond the RACM (including RACT) requirement. In this action, the EPA is proposing to approve the fugitive dust, residential wood combustion, and prescribed burning control measures previously discussed in this action, as contingency measures for the El Paso PM-10 SIP. Implementation of these measures should result in a PM-10 emission reduction of around 400-500 tons per year. These measures appear to go beyond RACM (including RACT). The State has demonstrated that the El Paso nonattainment area would be in attainment of the PM-10 NAAQS no later than December 31, 1994, based on U.S. emissions alone, without these control measures.

Section 172(c)(9) of the CAA specifies that contingency measures shall "take effect * * * without further action by the State or the Administrator." The EPA interprets this requirement to mean that no further rulemaking activities by the State or the EPA would be needed to implement the contingency measures (57 FR 13512). The EPA expects all actions needed to affect full implementation of the measures to occur within 60 days after the EPA notifies the State of its failure to achieve RFP or to attain (57 FR 13512).

The EPA is proposing to accept the control measures submitted by the State of Texas that are in excess of those necessary to provide for timely attainment of the PM-10 NAAQS "but for" emissions from Mexico, and that go beyond RACM (including RACT), as fulfilling the requirement for contingency measures because the measures will provide for continued emissions reduction progress beyond the core control strategy. It is the EPA's determination that since the State has acted to implement these precautionary measures along with the primary RACM (including RACT) control strategy that these measures essentially provide advance contingency benefit and satisfy the requirement that they "take effect without further action by the State or the Administrator."

The implementation of these control measures in conjunction with the primary control strategy should not disqualify treating them as contingency measures under section 172(c)(9) of the CAA. Section 172(c)(9) indicates that the SIP shall provide for the implementation of contingency measures to be undertaken if the area fails to make RFP or to timely attain the NAAQS. The State of Texas is, in effect, accelerating its implementation of contingency measures for El Paso. Alternatively, these measures would be

undertaken at some later time if the area failed to make RFP or timely attain "but for" emissions from Mexico. It would, quite simply, be absurd to penalize or otherwise discourage the State from taking the arguably more precautionary air quality management step of accelerating the implementation of the contingency measures.

Finally, the EPA notes that the magnitude of emissions reduction progress provided by these measures appears reasonable in light of improved PM-10 air quality on the U.S. side of the border over the last three years. There have been no exceedances of the PM-10 annual standard, and 3 recorded exceedances of the 24-hour PM-10 standard (one in October, 1991, and two in October, 1992 at one site), since 1990. The three recorded exceedances were 166 ug/m³, 159 ug/m³, and 158 ug/m³, not too far over the 24-hour standard of 150 ug/m³. In addition, the TACB commits to developing future contingency measures provided that adequate information from Mexico becomes available. It is anticipated that the EPA, the TACB, the City of El Paso, and SEDUE (now SEDESOL) will continue their cooperative effort in studying the PM-10 air quality in the El Paso/Juarez air basin. The EPA agrees with the State of Texas that the PM-10 air quality problem in the El Paso/Juarez air basin is international in scope, and agrees with the State's commitment to provide future contingency measures if adequate information becomes available.

8. PM-10 Precursors

Section 189(e) of the CAA states that control requirements applicable to major stationary sources of PM-10 are also applicable to major stationary sources of PM-10 precursors, except where the Administrator determines that such sources do not significantly contribute to PM-10 levels that exceed the PM-10 ambient standards in the area. The General Preamble contains guidance addressing how the EPA intends to implement section 189(e) (see 57 FR 13539-13540 and 13541-13542).

The State of Texas used annular denuder samplers during the December, 1990, special PM-10 study as a method to differentiate between gas and particulate phase compounds in the ambient air.⁴ The results of the annular denuder sampling showed that a large majority of the sulfur compounds found

⁴ Annular denuder sampling is one of many possible reasonable techniques that could be employed for assessing precursor contribution. EPA intends to assess the reasonableness of such techniques on a case by case basis (see 57 FR 13539).

on the samples were in the form of gaseous sulfur dioxide (SO₂), and not in the sulfate particulate phase, suggesting that secondary sulfate was only a minor contributor to high PM-10 concentrations in the study. For nitrogen compounds, a large majority of the compounds found in the samples were also gaseous, suggesting that nitrate was also a minor contributor to high PM-10 concentrations in the study. The concentrations of the particulate phase sulfates and nitrates constituted a small fraction of the 24-hour PM-10 standard, ranging from about 3-12 ug/m³, or 2-8 % of the 24-hour PM-10 standard (150 ug/m³). It is also important to note that the annular denuder sampling was conducted during a time of the year (December) in which adverse meteorological conditions would be expected in the El Paso/Juarez air basin. Further, based on review of the PM-10 monitoring data from both El Paso and Juarez, and of the trajectory analyses, it is very likely that emissions from Mexico contribute to the PM-10 precursor concentrations in El Paso. Thus, the concentrations referenced above are conservative estimates. Based upon the preceding study, PM-10 precursors do not appear to significantly contribute to high PM-10 concentrations in El Paso, Texas, and the EPA is proposing to grant the El Paso area the exclusion from control requirements as authorized under section 189(e) of the CAA.

9. Enforceability Issues

All required measures and other elements in the SIP must be enforceable by the State and the EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). The criteria include, for example: Ensuring that the rules contained in the SIP are explicit in their applicability to the regulated sources; ensuring that compliance dates are clearly specified; ensuring that compliance periods and test methods are clearly noted; ensuring that adequate recordkeeping is required; and ensuring that any exemptions or variances are clear in their applicability and in how they are triggered. In addition to enforceable requirements, nonattainment area plan provisions must contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The State of Texas has an enforcement program that will ensure that certain control measures contained in the El Paso PM-10 SIP (i.e., Regulation I and the City Ordinance) are adequately enforced. The State has also entered into an MOU with the City of El Paso which serves to define the division of responsibility regarding, and the commitments to carry out, the provisions of Regulation I and Chapter 9.38 of the City Code pertaining to control measures for fugitive dust and residential wood combustion devices. RACT for stationary point sources is enforced by the TACB through federally enforceable permit conditions.

10. Summary

The Governor of Texas submitted the moderate PM-10 SIP for El Paso to the EPA on November 15, 1991. The El Paso SIP analyzed PM-10 emissions from point and area sources around the El Paso region. Using a Gaussian Plume Multiple Source Air Quality Algorithm (RAM), the State demonstrated that the El Paso nonattainment area would attain the PM-10 NAAQS both currently and by December 31, 1994, using current and projected United States (El Paso County) emissions alone. The State also conducted a comprehensive RACM/RACT analysis, including a RACT analysis for El Paso stationary point sources. The State has adequately addressed RACT for El Paso stationary sources through federally enforceable permits. Further, the State has adopted certain provisions found in Regulation I which incorporate control measures for fugitive dust, prescribed burning, and residential wood combustion devices that go beyond RACM and that the EPA is proposing to approve as fulfilling the requirement for contingency measures. The State has also entered into an MOU with the City of El Paso which serves to define the division of responsibility regarding, and the commitments to carry out, the provisions of the TACB Regulation I and Chapter 9.38 of the City Code pertaining to control measures for fugitive dust and residential wood combustion devices.

Proposed Action

The EPA is proposing to approve the El Paso, Texas, moderate PM-10 SIP. The EPA is also proposing to approve the El Paso, Texas, moderate PM-10 SIP as meeting the requirements of section 179B of the CAA. All required SIP items have been adequately addressed as discussed in this Federal Register action, and the State of Texas has

conducted a comprehensive RACM/RACT analysis.

Based on the above evaluation, the EPA proposes to approve the El Paso, Texas, moderate PM-10 nonattainment SIP. Additional requirements, such as the nonattainment new source review program for the area, will be addressed independent of this action.

Request for Public Comments

The EPA requests comments on all aspects of this proposal including the EPA's proposal to approve the PM-10 SIP for El Paso, Texas, as meeting the requirements of section 179B of the CAA regarding implementation plans and revisions for international border areas. As indicated at the outset of this action, the EPA will consider any comments received by 30 days from date of publication.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Nitrogen

dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 20, 1993.

W.B. Hathaway,

Acting Regional Administrator (6A).

[FR Doc. 93-24814 Filed 10-7-93; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

Reef Fish Fishery of the Gulf of Mexico; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public hearing.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public hearing to receive public testimony on a proposed regulatory amendment for an experimental one-year move of the reef fish longline/buoy gear boundary line from 20 fathoms to 15 fathoms in two regions off Florida.

DATES: Written comments on the proposed actions must be received by November 12, 1993. The hearing is scheduled for Wednesday, October 27, 1993, from 7 p.m. to 10 p.m.

ADDRESSES: Comments should be addressed to Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609. The hearing will be held at the Madeira Beach City Hall Auditorium, 300 Municipal Drive, Madeira Beach, Florida (813-391-9951).

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, 813-228-2815.

SUPPLEMENTARY INFORMATION: This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Beverly Badillo at the above Council address by October 20, 1993.

Dated: October 4, 1993.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-24753 Filed 10-5-93; 9:22 am]

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