1823(c)(4), 1823(e)(2); Sec. 401(h), Pub.L. 101–73, 103 Stat. 357.

2. Section 360.6 is added to part 360 to read as follows:

**§ 360.6 Treatment by the Federal Deposit Insurance Corporation as conservator or receiver of financial assets transferred in connection with a securitization or participation.**

(a) *Definitions.* (1) *Beneficial interest* means debt or equity (or mixed) interests or obligations of any type issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

(2) *Financial asset* means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

(3) *Participation* means the transfer or assignment of an undivided interest in all or part of a loan or a lease from a seller, known as the ''lead'', to a buyer, known as the ''participant'', without recourse to the lead, pursuant to an agreement between the lead and the participant. *Without recourse* means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation.

(4) *Securitization* means the issuance by a special purpose entity of beneficial interests:

(i) The most senior class of which at time of issuance is rated in one of the four highest categories assigned to long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by one or more nationally recognized statistical rating organizations; or

(ii) Which are sold in transactions by an issuer not involving any public offering for purposes of section 4 of the Securities Act of 1933, as amended, or in transactions exempt from registration under such Act pursuant to Regulation S thereunder (or any successor regulation).

(5) *Special purpose entity* means a trust, corporation, or other entity with a distinct standing at law separate from the insured depository institution that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

(b) The FDIC shall not, by exercise of its authority to disaffirm or repudiate contracts under 12 U.S.C. 1821(e), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an insured depository institution in connection with a securitization or participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the ''legal isolation'' condition as it applies to institutions for which the FDIC may be appointed as conservator or receiver, which is addressed by this section.

(c) Paragraph (b) of this section shall not apply unless the insured depository institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

(d) Paragraph (b) of this section shall not be construed as waiving, limiting, or otherwise affecting the power of the FDIC, as conservator or receiver, to disaffirm or repudiate any agreement imposing continuing obligations or duties upon the insured depository institution in conservatorship or receivership.

(e) Paragraph (b) of this section shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically limited by this section, including, but not limited to, any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(f) The FDIC shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by an insured depository institution solely because such agreement does not meet the ''contemporaneous'' requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act.

(g) This section may be repealed by the FDIC upon 30 days notice and opportunity for comment provided in the **Federal Register**, but in the event of such repeal, the section shall continue to be effective with respect to any transfers made before the date of the repeal.

By order of the Board of Directors.

Dated at Washington, DC this 31st day of August, 1999.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 99–23384 Filed 9–8–99; 8:45 am]

**BILLING CODE 6714–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[Region 2 Docket No. NJ35–2–196; FRL–6434–1]**

### Approval and Promulgation of Air Quality Implementation Plans; New Jersey; Approval of Carbon Monoxide State Implementation Plan Revision; Determination of Carbon Monoxide Attainment

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

**ACTION:** Proposed rule.

**SUMMARY:** In today's action, the EPA is determining that the New York-Northern New Jersey-Long Island carbon monoxide nonattainment area has attained the carbon monoxide National Ambient Air Quality Standards. As a consequence of this determination, EPA is proposing to approve a State Implementation Plan revision submitted by the State of New Jersey on August 7, 1998. That revision removes New Jersey's oxygenated gasoline program as a carbon monoxide control measure from the State's SIP.

**DATES:** Comments must be received on or before October 12, 1999.

**ADDRESSES:** All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, NY 10007–1866.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the following addresses:

Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:** Michael P. Moltzen, Air Programs

Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3710.

**SUPPLEMENTARY INFORMATION:**

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## 1. What Action is EPA Taking Today?

EPA is determining that the New York-Northern New Jersey-Long Island carbon monoxide (CO) nonattainment area [1] (''the New York City CO nonattainment area'', ''the New York City area,'' or ''the area'') has attained the CO National Ambient Air Quality Standards (NAAQS). EPA is also determining that New Jersey's oxygenated gasoline (oxyfuel) program is no longer needed to maintain the CO NAAQS. As a consequence of these determinations, EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Jersey on August 7, 1998. That revision removes New Jersey's oxyfuel program as a CO control measure from the State's CO SIP. In today's action, EPA is proposing to approve removal of the oxyfuel program because it has been determined that the program is no longer necessary to keep ambient CO concentrations below the CO NAAQS.

Under Clean Air Act (CAA) section 211(m), states with certain CO nonattainment areas are required to implement oxyfuel programs. Under section 211(m)(6), once such an area subsequently attains the CO NAAQS, oxyfuel requirements may be removed if it is demonstrated that the program is not needed for maintaining attainment in that area. Air quality trends show that CO concentrations throughout the New York City area have been below the CO NAAQS for more than four years. Complete monitoring data for the area demonstrating this trend can be found in the technical support document for this notice.

EPA has determined, through use of EPA's MOBILE computer model and air quality dispersion modeling, that the oxyfuel program is no longer necessary for New Jersey because it has been demonstrated through technical analyses that the CO NAAQS will not be violated anywhere in the area if the program is removed as a control strategy. By using these modeling tools, EPA and New Jersey have determined that improved CO levels are attributable primarily to three sources of emission reductions: (1) turnover of vehicle fleets in the area to more sophisticated cleaner technology vehicles; (2) implementation of reformulated gasoline year round; and (3) the recent implementation of the enhanced vehicle inspection and maintenance (I/M) program in New York (enhanced I/M in New Jersey is anticipated to begin this winter). This modeling, which is discussed in section 5. C of this notice and detailed in the technical support document, supports the conclusion that levels of CO meeting the NAAQS are able to be maintained without the wintertime oxyfuel program in place.

## 2. What is the Oxygenated Gasoline Program and How Does it Apply to New Jersey?

The oxygenated gasoline (oxyfuel) program is designed to reduce CO pollution from gasoline powered vehicles including passenger cars, sport utility vehicles and light trucks, which, combined, are significant contributors of CO emissions. EPA established a NAAQS for CO for the protection of human health. *See* 40 CFR 50.8; 50 FR 37501 (Sept. 13, 1985). Inhalation of CO results in inhibition of the blood's capacity to carry oxygen to organs and tissues. Persons with heart disease, infants, elderly persons, and individuals with respiratory diseases are particularly sensitive to CO. Effects of CO on healthy adults include impaired exercise capacity, visual perception, manual dexterity, learning functions, and ability to perform complex tasks.

The Clean Air Act (CAA) sets forth a number of SIP requirements for states with areas designated as nonattainment for the CO NAAQS. Section 211(m) of the CAA requires states with CO nonattainment areas, having design values of 9.5 parts per million (ppm) CO or above for any two-year period after 1989, to implement oxyfuel programs. The requirement for an oxyfuel program is to apply during the high CO season, which is generally during the colder winter months when cars tend to have higher tailpipe CO emissions. Oxyfuel programs require that, during the high CO season, gasoline contain at least 2.7% oxygen by weight. This requirement was intended to assure more complete gasoline combustion, thus achieving a reduction in tailpipe emissions.

The requirement for an oxyfuel program applies to certain areas in New Jersey because portions of the State are included in the New York City CO nonattainment area which had a design value for CO above 9.5 ppm. The New Jersey nonattainment area includes the counties of Bergen, Essex, Hudson, Union, and parts of Passaic. Specifically in Passaic County it includes the cities of Clifton, Paterson, and Passaic. Because the CAA section 211(m) requirement applies to the larger of the Consolidated Metropolitan Statistical Areas (CMSA) or the metropolitan statistical area in which the nonattainment area is located, the oxyfuel requirement for the area applies throughout the larger CMSA. New Jersey's portion of the larger CMSA, within which the sale of oxyfuel is required, consists of the following counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic (the entire county), Somerset, Sussex, Union and Warren.

On November 15, 1992, New Jersey submitted to EPA its oxyfuel program contained in New Jersey Administrative Code Title 7, chapter 27, subchapter 25, ''Control and Prohibition of Air Pollution by Vehicular Fuels'' (adopted September 1, 1992, and operative November 1, 1992). EPA proposed to approve this submission, along with a number of other revisions to New Jersey's CO SIP, on November 10, 1994 (59 FR 56019). On February 7, 1995, New Jersey modified its oxyfuel regulations to shorten the length of the control period to four months each year—from November 1 through the last day of February. 27 N.J.R. 787(a), February 21, 1995. On February 12, 1996, EPA approved New Jersey's oxyfuel program into the SIP for the control period November 1 through the last day of February. 61 FR 5299. On July 25, 1996, EPA approved oxyfuel programs for Connecticut and New York at 61 FR 38574 and 61 FR 38594, respectively. EPA approved those oxyfuel programs for the New York City area for the same four-month period. At the same time, EPA made a final determination that November 1 through the end of February is the control period when the New York City area is prone to high ambient CO concentrations. 61 FR 38594.

## 3. What is the Purpose and Content of New Jersey's SIP Revision?

New Jersey submitted a proposed CO SIP revision to EPA on August 7, 1998. That submittal proposed to revise the SIP to remove New Jersey's oxyfuel program as a CO control measure. The

[1] This area is comprised of counties in Northern New Jersey, downstate New York and Southwestern Connecticut. The Connecticut portion of the area was redesignated to attainment on March 10, 1999 at 64 FR 12005. The remainder of the area is still designated nonattainment.

SIP revision documents that the New Jersey Department of Environmental Protection (NJDEP) held a public hearing on August 11, 1997 to take comment on the State's proposed rulemaking to remove the State requirements for its oxyfuel program in Northern New Jersey. On July 17, 1998, the NJDEP filed the adoption of its rulemaking proposal with the State's Office of Administrative Law. The adopted rulemaking was published in the New Jersey Register on August 17, 1998. 30 N.J.R. 3025.

The August 7, 1998 CO SIP revision contains the following elements, on which EPA is proposing action today:

(1) Air quality and ''hot spot'' modeling data demonstrating that the New Jersey portion of the New York City nonattainment area attains the NAAQS for carbon monoxide;

(2) The removal of the requirements for the oxyfuel program in Northern New Jersey.

That submittal also contained an update to the State's carbon monoxide attainment demonstration and an update to the carbon monoxide emission inventory. EPA is not taking action on these updates at this time because they are not directly related to, or required for, the action EPA is proposing today. Rather, these updates will be more appropriately included in an eventual SIP change to redesignate Northern New Jersey for attainment of the CO NAAQS. New Jersey's August 7, 1998 SIP submittal does not request redesignation, although the State has expressed an interest in redesignating the nonattainment area to attainment in the future. EPA will act on these updates after New Jersey formally requests redesignation.

New Jersey's SIP revision and today's action primarily concern the removal of requirements for the oxyfuel program in Northern New Jersey. Removal of the oxyfuel program is supported by the State's demonstration, using monitored air quality data and vehicle emission and air dispersion modeling data, that the area is attaining the CO NAAQS, and will continue to attain even without implementation of the oxyfuel program in Northern New Jersey. In addition New Jersey's submittal provides analysis of multi-state air quality and impacts of oxyfuel removal in New Jersey on the New York portion of the New York City area. This includes an analysis by New Jersey of certain congested intersections in New York City. EPA has supplemented this analysis, specifically with respect to the New York intersection analysis, to confirm that the area will continue to attain the CO NAAQS with the removal of oxyfuel. Based on the analyses, the area has been demonstrated to attain the CO NAAQS without oxyfuel in New Jersey. For further detail regarding analysis of the technical demonstration, the reader is referred to section 5 below and also to the technical support document for this proposal.

Based on EPA's determination that the New York City area is attaining the CO NAAQS, and the demonstration of maintenance for the area, EPA is proposing to approve New Jersey's SIP revision, submitted on August 7, 1998, which removes the State's oxyfuel program from its CO SIP.

### 4. What is EPA's Authority for Approving Oxyfuel Removal?

Section 211(m) of the Clean Air Act (CAA) generally requires states to adopt oxygenated gasoline programs for certain areas that, as of 1990, failed to meet the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO). Section 211(m)(6) adds, however, that, ''Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is *in attainment* for carbon monoxide. * * *'' (emphasis added).

In EPA's redesignation of the Camden County, New Jersey CO nonattainment area, EPA elaborated on its interpretation of section 211(m)(6). 60 FR 62741 (Dec. 7, 1995). In that rulemaking, EPA explained, ''Whether an area is 'in attainment' depends solely on a determination of whether an area is attaining the NAAQS (a determination based on the air quality of the area) * * *.'' 60 FR 62744. EPA concluded that once it determines that a CO nonattainment area is actually attaining the CO NAAQS, and the area demonstrates that it does not need oxyfuel to maintain the NAAQS, section 211(m) no longer requires a state to adopt an oxyfuel program into its state implementation plan (SIP) so long as the area continues to maintain the CO standard. Thus, New Jersey was not required in the first instance to adopt an oxyfuel program for Camden County because the area was attaining the CO NAAQS, and the State demonstrated that the area could maintain the standard without additional emissions reductions.

In the Camden rulemaking, EPA also briefly addressed the applicability of section 211(m)(6) to those areas attaining the CO NAAQS that had already adopted an oxyfuel program:

> Where a state that is in fact attaining the CO NAAQS has an oxygenated gasoline program as part of an approved SIP, the program would remain in the SIP; section 211(m)(6) only would allow the state to submit a SIP revision to remove the program, and then only if it is not needed for maintenance and its removal complied with section 110(l). Also the entire nonattainment area must be actually achieving the CO NAAQS before oxygenated gasoline would not be required in any portion of the MSA or CMSA in which an area is located. Furthermore, unless the area is redesignated to attainment, the oxygenated gasoline program requirement would again become effective upon a subsequent violation of the standard.

60 FR 62745.

New Jersey has already adopted an oxyfuel program for the Northern New Jersey nonattainment area. In order to remove the program, the above criteria must be met. The following section evaluates New Jersey's request to drop the oxyfuel program for the Northern New Jersey nonattainment area against these criteria.

### 5. How Have the Criteria for Oxyfuel Removal Been Met?

To determine if a state can remove its oxyfuel program prior to redesignation for attainment, certain criteria must be met. These criteria, which are derived directly from our policy for section 211(m)(6) (discussed above in section 4.), are stated below. Following each is a brief discussion of how New Jersey has met these criteria. A more detailed technical discussion can be found in the technical support document for this **Federal Register** document.

#### *A. Is the entire designated nonattainment area actually attaining the CO NAAQS?*

The entire New York City CO nonattainment area has attained the CO NAAQS since 1995. The applicable CO NAAQS is 9.0 ppm averaged over an eight-hour period. The last CO NAAQS violation occurred in 1994.[2] A summary and short discussion of the air quality monitoring data which shows that the entire three-state area attained the CO NAAQS follows for each state. Complete data and a detailed discussion of it can be found in the technical support document for this notice.

1. Monitored Air Quality in New Jersey

Six carbon monoxide (CO) monitors meeting EPA siting criteria are maintained in the Northern New Jersey portion of the New York City CO nonattainment area. Locations for these monitors were selected to assure good representation of both CO exposure to

[2] A violation occurs when two non-overlapping exceedances are recorded at the same monitoring site during the same calendar year. An exceedance occurs when an average CO concentration greater than or equal to 9.5 ppm is recorded over an eight-hour period.

people and the maximum CO concentrations which would occur. Monitoring stations (one each) are located in the following cities and towns: Fort Lee, Hackensack, Newark, Jersey City, North Bergen and Elizabeth.

Monitoring data from these locations is collected and quality-assured in accordance with 40 CFR part 58. In 1994 New Jersey experienced two violations of the CO NAAQS. These violations were recorded at monitoring stations in North Bergen and Elizabeth in Northern New Jersey (see table 5.1). Since 1995, no subsequent violations were recorded in Northern New Jersey. In accordance with EPA's protocol for determining CO violations, the following table lists the second highest recorded CO concentrations, in parts per million (ppm), at each monitoring station for the calendar years 1994 through 1998:

TABLE 5.1—NEW JERSEY CO AIR QUALITY DATA SUMMARY (SECOND MAXIMA)

[Parts per million CO]

| | Fort Lee | Hackensack | Newark | Jersey City | North Bergen | Elizabeth |
|---|---|---|---|---|---|---|
| 1994 | 5.3 | 7.0 | 6.0 | 5.9 | *10.7 | *11.3 |
| 1995 | 5.0 | 4.8 | 5.3 | 6.2 | 8.1 | 7.7 |
| 1996 | 3.5 | 4.0 | 3.8 | 4.9 | 6.7 | 6.0 |
| 1997 | 3.4 | 6.1 | 3.8 | 4.3 | 6.7 | 5.1 |
| 1998 | 3.7 | 3.7 | 2.6 | 4.1 | 5.6 | 5.1 |

*Indicates the second highest concentration exceeded the CO NAAQS, triggering a violation.

2. Monitored Air Quality in New York

Eight CO monitors meeting EPA siting criteria have been maintained over the period 1994 to 1998 in the New York portion of the New York City CO nonattainment area. Locations for these monitors were selected to assure good representation of both CO exposure to people and the maximum CO concentrations which would occur. Monitoring stations are located at the following areas: Manhattan (4), Bronx (1), Brooklyn (2) and Nassau County (1).

Monitoring data from these locations is collected and quality-assured in accordance with 40 CFR 58. Since 1994, no violations of the CO NAAQS were recorded in the New York portion of the area. In accordance with EPA's protocol for determining CO exceedances, the following table lists the second highest recorded CO concentrations, in ppm, at each monitoring station for the calendar years 1994 through 1998:

TABLE 5.2—NEW YORK CO AIR QUALITY DATA SUMMARY (SECOND MAXIMA)

[Parts per million CO]

| | Bot. Gardens Bronx | Downtown Brooklyn | Park Slope Brooklyn | Nassau County | E 57th St. Manhattan | Canal St. Manhattan | E 59th St. Manhattan | E 34th St. Manhattan |
|---|---|---|---|---|---|---|---|---|
| 1994 | (‡) | 6.4 | 4.5 | 5.4 | 4.9 | 7.2 | 7.3 | 6.7 |
| 1995 | 3.6 | 7.9 | 5.8 | 5.0 | 5.4 | 7.0 | 7.9 | 6.5 |
| 1996 | 3.3 | 6.1 | 3.4 | 4.9 | 3.9 | 4.4 | 6.3 | 5.0 |
| 1997 | 3.5 | 4.3 | 2.7 | 4.7 | 3.2 | 4.2 | 6.1 | 3.8 |
| 1998 | 3.2 | 4.1 | 2.4 | 4.0 | 4.0 | 4.2 | 5.8 | 3.9 |

‡ No data was available at this site for this year.

3. Monitored Air Quality in Connecticut

Two CO monitors meeting EPA siting criteria are maintained in the Southwest Connecticut portion of the New York City CO nonattainment area. Locations for these monitors were selected to assure good representation of both CO exposure to people and the maximum CO concentrations which would occur. Monitoring stations are located in the following cities: Bridgeport and Stamford.

Monitoring data from these locations are collected and quality-assured in accordance with 40 CFR part 58. Since 1994, no violations of the CO NAAQS were recorded in the Southwest Connecticut portion of the area. In accordance with EPA's protocol for determining CO exceedances, the following table lists the second highest recorded CO concentrations, in ppm, at each monitoring station for the calendar years 1994 through 1998:

TABLE 5.3—CONNECTICUT CO AIR QUALITY DATA SUMMARY (SECOND MAXIMA)

[Parts per million CO]

| | Bridgeport | Stamford |
|---|---|---|
| 1994 | 5.8 | 6.2 |
| 1995 | 4.9 | 5.4 |
| 1996 | 3.0 | 4.1 |
| 1997 | 4.0 | 5.1 |
| 1998 | 2.8 | 3.8 |

*B. Is the program to be removed already approved into the SIP? If so, has the state submitted a SIP revision request, which complies with CAA section 110(l), to remove the oxyfuel program from the SIP?*

The oxyfuel program was approved into the New Jersey SIP on February 12, 1996. Subsequently, New Jersey submitted a SIP revision on August 7, 1998 to remove New Jersey's oxyfuel program as a CO control measure from the SIP. CAA section 110(l) requires that a state's SIP revision cannot interfere with a state's attainment or rate of progress toward attainment. EPA has determined that New Jersey's August 7, 1998 SIP revision meets the requirements of section 110(l) because it demonstrates that removal of the oxyfuel program from the SIP will not interfere with any state's CO attainment (see discussion in the following

subsection). This action will also not interfere with any state's attainment of any other criteria pollutants.

*C. Is maintenance of the CO NAAQS, without implementation of oxyfuel, demonstrated for the entire area?*

Attainment has been demonstrated in the entire area without the use of oxygenated fuels. New Jersey submitted an attainment demonstration which shows that each of their previously modeled SIP intersections attains the CO standard even if oxyfuel is removed. In addition, New Jersey performed an analysis for certain congested intersections in New York City demonstrating attainment of the CO standard at those intersections without the oxyfuel program in Northern New Jersey. A summary and discussion of the modeled air quality findings for the New Jersey, New York and Connecticut portions of the area follows. Additional details regarding these analyses can be found in the technical support document for this notice.

1. Modeled Air Quality in New Jersey

New Jersey's 1998 CO SIP submittal included an updated attainment demonstration showing how the State can attain the CO standard without the oxyfuel program in New Jersey. This demonstration included all of the locations which were originally modeled in New Jersey's 1992 CO SIP, submitted on November 15, 1992. All modeling procedures employed by New Jersey in its current analysis are the same as those followed in the State's 1992 CO SIP. The modeling protocol employed by the State includes use of a vehicle emissions model and an ambient air dispersion model.

In-use automobile emissions were determined through the use of the most recent EPA-approved mobile emissions computer model, ''MOBILE5b.'' This model takes into account local area parameters such as elevation and temperature, and vehicle information including registration distribution, mileage accumulation fractions, fuel type, vehicle operation modes, and type of inspection program, if any. Data results from this modeling analysis are then used as input to an ambient air dispersion model. CAL3QHC, which is the most current EPA-approved plume dispersion model, uses this information as well as street intersections, traffic signal timing, road type, and monitored background information as data inputs. Based on these inputs, CAL3QHC predicts maximum CO concentrations, in parts per million, for ''worst case'' meteorological conditions at the locations of concern. Additional details regarding this and additional modeling demonstrations considered in EPA's proposed approval can be found in the technical support document for this notice.

Twenty-five locations in five counties in the Northern New Jersey portion of the New York City area were modeled. The results of modeling done for Northern New Jersey demonstrate no violations of the CO NAAQS at any of the modeled locations when oxyfuel is removed. Results show only 3 intersections had modeled CO concentrations above 7.2 ppm. The maximum predicted concentration was 8.0 ppm. Additional details regarding these results can be found in the technical support document.

2. Modeled Air Quality in New York

In order to demonstrate that removal of oxyfuel in Northern New Jersey would not cause or contribute to exceedances of the CO NAAQS in the New York portion of the New York City area, New Jersey analyzed certain locations in New York. These locations were chosen by EPA, and agreed upon by both New York, New Jersey, Connecticut and EPA Regions 1 and 2 during several meetings, to be traffic intersections which have historically demonstrated the highest modeled CO concentrations (see New York's November 15, 1992 CO SIP submittal), and which are representative of CO exposure in New York's portion of the area. Confirmation of agreement to this protocol was detailed in a letter dated August 22, 1997, from EPA Regional Administrator Jeanne M. Fox to NJDEP Commissioner Robert C. Shinn. The agencies ultimately agreed upon a total of 11 intersections located over six counties. Additional detail on these analysis locations can be found in the technical support document.

New Jersey's 1998 CO SIP revision could not fully demonstrate attainment at all 11 New York locations under then-current conditions. Since that analysis was performed, New York's enhanced I/M program began being implemented. As mentioned previously, this program can contribute significantly to reductions of CO. Consequently, EPA chose to reconsider New Jersey's 1998 submittal to take into account the effects of New York's enhanced I/M program on predicted CO concentrations at the New York locations originally predicted to exceed the CO NAAQS. The results of this re-analysis show that all 11 New York locations will now continue to attain the CO NAAQS once oxyfuel is removed. Details regarding the analyses for New York can be found in the technical support document.

3. Modeled Air Quality in Connecticut

Prior to today's action, EPA approved the redesignation of the Southwest Connecticut portion of the New York City CO nonattainment area. As part of its action to approve Connecticut's redesignation, EPA reviewed a maintenance demonstration for Southwest Connecticut. EPA determined that CO maintenance is demonstrated in Southwest Connecticut without reliance on oxyfuel implementation anywhere in the New York City CMSA. Additional detail on the CO maintenance demonstration analysis for Connecticut can be found at 63 FR 58637 (November 2, 1998) and 64 FR 12005 (March 10, 1999).

**6. Conclusion**

EPA is determining that the New York-Northern New Jersey-Long Island carbon monoxide nonattainment area has attained the carbon monoxide National Ambient Air Quality Standards. As a consequence of this determination, and our determination that the criteria listed in section 5 of this notice have been adequately met, EPA is proposing to approve New Jersey's August 7, 1998 SIP revision to remove the State's oxygenated gasoline program from the federally approved State Implementation Plan. EPA's authority to approve removal of a state's oxyfuel program is set forth at Clean Air Act section 211(m)(6). EPA has determined that the criteria of section 211(m)(6) have been satisfied and removal of the oxyfuel program at this time is appropriate.

EPA can only approve removal of the oxyfuel program in New Jersey, pursuant to CAA section 211(m)(6), because of EPA's determination that the area is actually attaining the CO NAAQS. In the unlikely event that the New York City CO nonattainment area subsequently records a violation of the CO NAAQS, EPA's basis for approval of oxyfuel removal would no longer exist and the requirements of section 211(m) would again become effective for New Jersey. This means that the State would need to implement an oxyfuel program in accordance with the requirements of CAA section 211(m).

**7. Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

*B. Executive Orders on Federalism*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule will not have a substantial direct effect on 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 12612.

The rule affects only two states, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

*C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed SIP revision is not subject to E.O. 13045 because it proposes approval of a state program revision, and it is not economically significant under E.O. 12866.

*D. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments, in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action proposes to approve amendments to state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Dated: August 31, 1999.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 99–23279 Filed 9–8–99; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[DE101–1025b; FRL–6434–7]**

### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Proposed Approval of Miscellaneous Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Delaware to various State rules and definitions which have historically been State-enforceable, and which Delaware had formally submitted as SIP revisions, but which EPA had not yet taken formal action. Provisions include control of particulate matter from petroleum refining operations, control of sulfur dioxide emissions from sulfuric acid manufacturing operations, and definitions and provisions associated with source monitoring, recordkeeping and reporting. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by October 12, 1999.

**ADDRESSES:** Written comments should be addressed to Marcia L. Spink, Associate Director, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814–2108, at the EPA Region III address above, or by e-mail at frankford.harold@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 20, 1999.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

[FR Doc. 99–23275 Filed 9–8–99; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 46 CFR 151

**[USCG–1999–5117]**

**RIN 2115–AF77**

### Barges Carrying Bulk Liquid Hazardous Material Cargoes

**AGENCY:** Coast Guard, DOT.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Coast Guard requests comments on the type and scope of any necessary revisions to the barges carrying bulk liquid hazardous material cargoes regulations. The regulations are almost 30 years old and do not include current safety issues, technology standards, and industry practices. At this early stage of the rulemaking process we need information to help us identify potential regulatory revisions.

**DATES:** Comments and related material must reach the Docket Management Facility on or before March 7, 2000.

**ADDRESSES:** To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–5117), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

A copy of the Chemical Transportation Advisory Committee's (CTAC) recommended changes to the Coast Guard carriage regulations for barges carrying bulk liquid hazardous material cargoes is available in the public docket at the above address, on the Internet at http://dms.dot.gov, or you may obtain a copy by contacting the project manager at the number in **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** For questions on this advance notice of proposed rulemaking, call Mr. Thomas Felleisen, Hazardous Materials Standards Division, Coast Guard, telephone 202–267–0085. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

#### Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this advance notice (USCG–1999–5117), indicate the specific section or question in this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by