

withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The 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. If no such comments are received, the public is advised that this action will be effective on March 18, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### IV. Administrative Requirements

##### A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

##### B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, 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 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 impose any new requirements, the Administrator certifies 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* versus

*EPA.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

##### C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

##### D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a major rule as defined by 5 U.S.C. 804(2).

##### E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 25, 1996.  
Valdas V. Adamkus,  
Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

2. Section 52.770 is amended by adding paragraph (c)(111) to read as follows:

##### §52.770 Identification of Plan.

\* \* \* \* \*

(c) \* \* \*

(111) On November 21, 1995, and February 14, 1996, Indiana submitted a rule for the control of volatile organic compound emissions from volatile organic liquid storage operations in Clark, Floyd, Lake, and Porter Counties.

(i) *Incorporation by reference.* 326 Indiana Administrative Code 8-9: Volatile Organic Liquid Storage Vessels, Section 1: Applicability, Section 2: Exemptions, Section 3: Definitions, Section 4: Standards, Section 5: Testing and procedures, Section 6: Record keeping and reporting requirements. Adopted by the Indiana Air Pollution Control Board May 3, 1995. Filed with the Secretary of State December 19, 1995. Published at Indiana Register, Volume 19, Number 5, February 1, 1996. Effective January 18, 1996.

[FR Doc. 97-1081 Filed 1-16-97; 8:45 am]

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#### 40 CFR Parts 52 and 81

[CA-98-1-7196a; FRL-5661-6]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of California; Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Monterey Bay Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** The EPA is, through direct final procedure, approving the redesignation of the Monterey Bay Area from nonattainment to attainment for ozone. Through this direct final action, EPA is also approving for the Monterey Bay Area the maintenance plan, 1990 base year emissions inventory, emission statement rule, volatile organic compound (VOC) reasonably available control technology (RACT) rule 419 and oxides of nitrogen (NO<sub>x</sub>) RACT rule 431 as revisions to California's State Implementation Plan (SIP) for ozone. In addition, EPA is determining that the

Monterey Bay Area has attained the ozone National Ambient Air Quality Standard (NAAQS) and, therefore, that certain reasonable further progress (RFP) and attainment demonstration requirements, along with certain other related requirements of Part D of Title 1 of the Clean Air Act (CAA or Act), are not applicable to the Monterey Bay Area for as long as the area continues to attain the ozone NAAQS, and that upon final redesignation of the Monterey Bay Area, the area will be entirely relieved of these requirements.

EPA is publishing this document without prior proposal because the Agency views these actions as noncontroversial and anticipates no adverse comments. However, in the proposed rules section of this Federal Register, EPA proposes these actions should adverse or critical comments be filed. If adverse comments are received, EPA will withdraw this final rule and address these comments in a final rule based on the proposed rule published in this Federal Register. The Agency will not issue a second comment period on these actions.

**DATES:** This action is effective on March 18, 1997, unless adverse or critical comments are received by February 18, 1997. If the effective date is delayed, a timely notice will be published in the Federal Register.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Plans Development Section (A-2-2), Air and Toxics Division, U.S.

Environmental Protection Agency,  
Region IX, 75 Hawthorne Street, San Francisco, CA 94105

California Air Resources Board, 2020 L Street, Sacramento, CA 94814

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940

**FOR FURTHER INFORMATION CONTACT:** Julia Barrow, Chief, Plans Development Section (A-2-2), Air & Toxics Division, U.S. Environmental Protection Agency, Region IX, at (415) 744-1207.

**SUPPLEMENTARY INFORMATION:**

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I. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The ozone nonattainment designation for the Monterey Bay Area continued by operation of law according to section 107(d)(1)(C)(i) of the Clean Air Act, as amended in 1990; furthermore, the area was classified by operation of law as moderate for ozone under section 181(a)(1). See 56 FR 56694 (Nov. 6, 1991), codified at 40 CFR 81.305.

The District has collected ambient monitoring data that show no violations of the ozone NAAQS (See discussion in Section IV.1. below). Accordingly, on July 14, 1994, California requested redesignation of the area to attainment with respect to the ozone NAAQS and submitted an ozone maintenance SIP for the Monterey Bay Area. The Monterey Bay Unified Air Pollution Control Agency (MBUAPCD or the District), the Association of Monterey Bay Area Governments (AMBAG), and the Council of San Benito County Governments (CSBCG) prepared and adopted the maintenance plan on May 25, 1994, May 11, 1994 and May 5, 1994, respectively. The plan and redesignation request were subsequently submitted to CARB on June 1, 1994, and CARB submitted the plan and redesignation request to EPA on July 14, 1994. On November 14, 1994, CARB submitted a revision to the maintenance plan, adopted by MBUAPCD, AMBAG, and CSBCG on October 19, 1994, October 12, 1994 and October 6, 1994, respectively.

All SIP submittals to EPA must meet certain minimum administrative and technical criteria as set forth in 40 CFR Part 51, Appendix V (the

“completeness” criteria) in order for the Administrator to review and take action on the submittal. Section 110(k)(1) of the Act describes the mandatory time frame for EPA’s determination of completeness and rulemaking action on plan submissions. In accordance with section 110(k)(1)(B) of the Act, the Monterey Bay Area ozone redesignation request and maintenance plan was deemed complete by operation of law on February 14, 1995.

II. Determination Regarding Reasonable Further Progress, Attainment Demonstration and Related Requirements

The EPA is determining that the Monterey Bay Area ozone nonattainment area has attained the NAAQS for ozone. On the basis of this determination, EPA is also determining that certain RFP and attainment demonstration requirements, along with certain other related requirements of Part D of Title 1 of the CAA are not applicable to the Monterey Bay Area for so long as the area continues to attain the ozone NAAQS.

Subpart 2 of Part D of Title 1 contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, so as to not require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of air quality monitoring data at each monitor). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title 1 (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or related contingency measures. As explained in a memorandum dated May 10, 1995, from John Seitz to the Regional Air Division Directors, entitled “Reasonable Further Progress, Attainment Demonstration and Related Requirements for Ozone Nonattainment Areas Meeting the National Ambient Air Quality Standard,” EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of Part D of Title 1, RFP “means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be

required by the Administrator for the purpose of ensuring attainment of the applicable (NAAQS) by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.<sup>1</sup> If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that the Agency took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title 1 of the Clean Air Act Amendments of 1990 (57 FR 13498, (April 16, 1992)), and that the Agency is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR 13564)<sup>2</sup>

Second, with respect to the attainment demonstration requirements of section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emission \* \* \* as necessary to attain the (NAAQS) by the attainment date applicable under this

<sup>1</sup> EPA notes that paragraph (1) of subsection 182(b) is entitled "PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS" and that subparagraph (B) of paragraph 182(c)(2) is entitled "REASONABLE FURTHER PROGRESS DEMONSTRATION," thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

<sup>2</sup> see also "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress \* \* \* will not apply for redesignations because they only have meaning for areas not attaining the standard") (hereinafter referred to as "September 1992 Calcagni memorandum").

Act." As with RFP requirements, if an area has in fact monitored attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title 1, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR 13564; see also September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.<sup>3</sup>

The determination with regard to the applicability of certain RFP and attainment demonstration requirements does not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emissions reductions if necessary and appropriate to deal with transport situations.

### III. Redesignation Evaluation Criteria

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area must have attained the applicable NAAQS; (2) the area has met all relevant requirements under section 110 and Part D of the Act; (3) the area has a fully

<sup>3</sup> The lack of a requirement to submit the SIP revisions exists only for as long as the area designated nonattainment continues to attain the standard. If EPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revision would no longer exist. The EPA would then notify the State of that determination and would also provide notice to the public in the Federal Register. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard. However, if the area continues to attain the standard and submits a request for redesignation to attainment, upon final approval of the redesignation to attainment the area is entirely relieved of these requirements.

approved SIP under section 110(k) of the Act; (4) the air quality improvement must be permanent and enforceable; and, (5) the area must have a fully approved maintenance plan pursuant to section 175A of the Act. Section 107(d)(3)(D) allows a Governor to initiate the redesignation process for an area to apply for attainment status.

### IV. Review of State Submittal

The California redesignation request for the Monterey Bay Area meets the five requirements of section 107(d)(3)(E), noted above. Following is a brief description of how the State has fulfilled each of these requirements.

#### 1. Attainment of the Ozone NAAQS

Attainment of the ozone NAAQS is determined based on the expected number of exceedances in a calendar year. The method for determining attainment of the ozone NAAQS is contained in 40 CFR 50.9 and Appendix H to that Section. The simplest method by which expected exceedances are calculated is by averaging actual exceedances at each monitoring site over a rolling three year period. An area is in attainment of the standard if this average results in expected exceedances for each monitoring site of 1.0 or less per calendar year. Appendix H provides the formula used to estimate the expected number of exceedances for each year.

The State of California's request is based on actual quality-assured ozone air quality data which is relevant to both the maintenance plan and to the redesignation request. This data comes from the District's State and Local Air Monitoring Station (SLAMS) network. The request is based on ambient air ozone monitoring data for calendar years 1988 through 1990. This data clearly shows the expected exceedance rate for the ozone standard of less than 1.0 per year for each of the monitors, including the monitor on which the nonattainment designation was based. Monitoring data also shows that no violations have occurred in the network area through 1995. The District has also committed to continue monitoring in the area in accordance with 40 CFR part 58.

#### 2. Meeting Applicable Requirements: Section 110 and Part D

On December 20, 1983 (48 FR 56215), EPA fully approved California's SIP for the Monterey Bay Area as meeting the requirements of section 110(a)(2) and Part D of the 1977 Act, with the exception of the motor vehicle inspection and maintenance (I/M) program which was signed for final

approval by the Regional Administrator on September 25, 1996. The 1990 amended Act, however, modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the Act, EPA has reviewed the SIP to ensure that it contains all measures that were due under the amended Act prior to or at the time the State submitted its redesignation request, as set forth in EPA policy.<sup>4</sup> As explained in Section II. of this document, the RFP and attainment demonstration requirements are not applicable for areas meeting the ambient air quality standard because these requirements only have meaning for areas not attaining the standard.

All of the SIP requirements must be met by the District and approved into the SIP by EPA by the time the area is redesignated.

#### A. Section 110 Requirements

Although section 110 was amended in 1990, the Monterey Bay Area SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment EPA approved SIP met these requirements. As to those requirements that were amended, (see 57 FR 27936 and 23939 (June 23, 1993)), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2). The SIP contains enforceable emission limitations, requires monitoring, compiling, and analyzing of ambient air quality data, requires preconstruction review of new major stationary sources and major modifications to existing ones, provides for adequate funding, staff, and associated resources necessary

<sup>4</sup> "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

"State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992.

"State Implementation Plan (SIP) Requirements for Areas Submitted Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993.

"Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

to implement its requirements, and requires stationary source emissions monitoring and reporting.

#### B. Part D Requirements

Before the Monterey Bay Area may be redesignated to attainment, it also must have fulfilled the applicable requirements of Part D of the Act. Under Part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of Part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a)(1) or table 3 of section 186(a). The Monterey Bay Area was classified under table 1 of section 181(a)(1) as a moderate ozone nonattainment area (See 56 FR 56694, codified at 40 CFR 81.305). Therefore, in order to be redesignated to attainment, the District must meet the applicable requirements of Subpart 1 of Part D—specifically sections 172(c) and 176, as well as the applicable requirements of Subpart 2 of Part D.

##### B.1. Subpart 1 of Part D—Section 172(c) Provisions

Under section 172(b), the Administrator established that States containing nonattainment areas shall submit a plan or plan revision meeting the applicable requirements of section 172(c) no later than three years after an area is designated as nonattainment, unless EPA establishes an earlier date. As discussed in section II. of this Federal Register document, EPA has determined that the section 172(c)(2) reasonable further progress (RFP) requirement is not applicable for the Monterey Bay Area based on the area's attainment of the ozone NAAQS. Also, the 172(c)(9) contingency measures and additional 172(c)(1) non-RACT reasonable available control measures (RACTM) are not applicable, since those measures are specifically related to RFP.

The 172(c)(3) emissions inventory requirement has been met by the submission and approval of the 1990 base year emissions inventory discussed in section V.1. of this Federal Register document.

As for the 172(c)(5) New Source Review (NSR) requirement, the Monterey Bay Area NSR program was approved on July 11, 1996 (61 FR 36501).

The 172(d) requirements for SIP revisions pursuant to section 110(k)(5) have been met and are discussed below in section 2.B3 and further in sections V.3 and 4. (VOC and NO<sub>x</sub> RACT rules).

Finally, for purposes of redesignation, the Monterey Bay Area SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements were satisfied. The MBUAPCD SIP approved under section 110 of the Act (40 CFR 52.220) and the revisions to the SIP approved in section V. of this Federal Register document satisfy all applicable Part D, Title 1 requirements for moderate area ozone SIPs.

##### B.2. Subpart 1 of Part D—Section 176(c) Conformity Plan Provisions

Section 176(c) of the CAA requires states to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. of the Federal Transit Act ("transportation conformity"). Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the CAA required EPA to promulgate.<sup>5</sup> These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two

<sup>5</sup> Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title 1 informed States that the conformity regulation would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)). EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118), and general conformity regulations on November 30, 1993 (58 FR 63214). Pursuant to 40 CFR 51.851 of the general conformity rule, the State of California was required to submit a SIP revisions containing transportation and general conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994, and December 1, 1994, respectively. The conformity rules for California were submitted to EPA, Region 9 by some of the local districts. Because EPA and Department of Transportation (DOT) have already amended the conformity regulation twice and have proposed a third set of amendments, EPA is allowing areas to incorporate all revisions to their conformity SIPs within one year of the publication of the Federal Register on the new regulation amendments. The anticipated submittal date of the new conformity SIP revisions in response to this amendment to the conformity regulations is early 1998.

factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

**B.3. Subpart 2 of Part D—Section 182(a) and 182(b) Requirements**

As a moderate ozone nonattainment area, the Monterey Bay Area must meet the requirements for marginal areas under Subpart 2 of Part D, section 182(a) as well as the requirements for moderate areas contained in section 182(b). As

discussed in Section II. of this Federal Register document, EPA has determined that the RFP requirement for a moderate ozone nonattainment area under Subpart 2 of Part D is not applicable to the Monterey Bay Area based on the area's attainment of the ozone NAAQS.

For purposes of redesignation, the Monterey Bay Area must meet only those requirements of sections 182 (a) and (b) which were due prior to or at the time of the submittal of a complete redesignation request. Monterey must meet the section 182(a)(1) requirement for an emission inventory, the section 182(a)(2)(a) requirement for Reasonably Available Control Technology (RACT) rules and the section 182(a)(3)(b) requirement for a rule regarding emission statements for stationary sources. In sections V.1., 2., 3. and 4. of this Federal Register document, EPA is approving revisions to the SIP meeting the requirements mentioned above. EPA approval of these revisions completes the District's requirements to meet all applicable requirements of section 110 and Part D of the Act.

**3. Fully Approved SIP Under Section 110(k) of the Act**

In order for EPA to take final action approving the redesignation request, the District must have a fully approved SIP under section 110(k), which also meets

the applicable requirements of section 110 and Part D. As discussed in Section 2.A. above, EPA approved numerous provisions of the Monterey Bay Area SIP under the pre-amended Act and finds that these provisions meet the requirements of section 110(a)(2). Also, EPA approval of the emissions inventory and emission statement rule (Regulation III, Rule 300, parts 4.4–4.4.3) and the District's amended VOC RACT rule 419 and the NO<sub>x</sub> RACT rule 431, as revisions to the SIP as required by sections 182 (a) and (b), fulfills the requirement that the District have a fully approved SIP under section 110(k).

**4. Improvement in Air Quality Due to Permanent and Enforceable Measures**

Under the pre-amended Act, EPA approved California's SIP control strategy for the Monterey Bay Area nonattainment area, which satisfies the requirement that the rules are permanent and enforceable. The Monterey Bay Area attained the ozone NAAQS in 1990, therefore, emission reductions achieved as a result of those rules are permanent. Since enactment of the 1990 Amendments, the State has made additional submittals as identified in the discussion of the section 182(b) requirements above and in Table 1.A below.

TABLE 1.A

Rule number, title	Adoption	EPA approval
416-Organic Solvents .....	04/20/94	02/12/96, 61 FR 5288.
417-Storage of Organic Liquids .....	08/25/93	02/15/95, 60 FR 8565.
418-Transfer of Gasoline into Stationary Storage .....	08/25/93	02/15/95, 60 FR 8565.
420-Effluent Oil Water Separators .....	08/25/93	02/09/96, 61 FR 4890.
425-Use of Cutback Asphalt .....	08/25/93	02/05/96, 61 FR 4215.
426-Architectural Coatings .....	08/25/93	02/09/96, 61 FR 4890.
427-Steam Drive Crude Oil Production Wells .....	08/25/93	02/15/95, 60 FR 8565.
430-Leather Processing Operations .....	05/25/94	10/25/95, 60 FR 54595
433-Organic Solvent Cleaning .....	06/15/95	02/12/96, 61 FR 5288.
434-Coating of Metal Parts & Products .....	06/15/95	02/12/96, 61 FR 5288.
1002-Transfer of Gasoline into Vehicle Fuel Tanks .....	11/23/94	02/09/96, 61 FR 4892.

In addition, EPA finds that a comparison of the Monterey emission inventories by source category (see

Table 1.B below), reasonably attributes the improvement in air quality to emission reductions from controls

which are permanent, and are enforceable as they have been adopted into the SIP and approved by EPA.

TABLE 1.B

Pollutant	Source category	1979	1987	1990
ROG*(TPD) .....	Stationary .....	67	62	50
	Mobile .....	41	44	46
	Total .....	108	106	96
NO <sub>x</sub> .....	Stationary .....	82	34	32
	Mobile .....	46	60	61
	Total .....	128	94	93

\*ROG (Reactive Organic Gases) mainly differs from VOC in that it includes ethane. Ethane is solely a product of combustion; VOC accounts for 98.5 percent of combustion.

The actual reduction in overall emissions from 1979 to 1990 was 12 tons per day (TPD) of VOC and 35 TPD of NO<sub>x</sub>, which reflects growth in emissions from some sources and reductions in overall emissions due to all control measures. EPA finds that the combination of existing EPA-approved SIP and Federal measures contributes to the permanence and enforceability of reductions in ambient ozone levels that have allowed the area to attain the NAAQS.

**5. Fully Approved Maintenance Plan Under Section 175A**

EPA is approving the State's maintenance plan for the Monterey Bay Area because EPA finds that the District's submittal meets the requirements of section 175A. Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. Each of the section 175A plan requirements is discussed below.

**5.A. Attainment Emissions Inventory**

The MBUAPCD adopted comprehensive inventories of VOC, and NO<sub>x</sub> emissions from area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance of the ozone NAAQS. EPA has determined that 1990 is an appropriate year on which to base attainment level emissions because EPA policy allows States to select any one of the three years in the attainment period as the attainment year inventory.<sup>6</sup>

The latest revised annual and peak ozone season 1990 comprehensive inventories of actual emissions were adopted by the Monterey Bay Unified Air Pollution Control District (the District) on October 19, 1994 and submitted by CARB to EPA on November 15, 1994 as a SIP revision. CARB provided a more detailed clarification of the inventories on March 30, 1995. EPA notified the State of the completeness of the emissions inventories in a letter dated April 18, 1995.

The State submittal contains the detailed inventory data and summaries by county and source category. The District provided the stationary source estimates, and area source emissions for each source category based on emission and activity factors for each county in the nonattainment area. These factors are cited or their sources referenced in *Methods for Assessing Area Source Emissions in California*, California Air Resources Board, September 1991. CARB based on-road mobile source emission and activity estimates on

CARB's EMFAC7F and BURDEN7C models, respectively.

The comprehensive base year emissions inventory discussed above has been entered into the Aerometric Information Retrieval System (AIRS). AIRS is EPA's computerized data storage system for air quality and emission source data. EPA, under contract with Radian Corporation, has entered the base year emissions inventory of stationary sources into AIRS and has also prepared computer software to convert the California Emission Data System stationary source data to AIRS/AFS format for entry into AIRS. California is responsible for entering 1990 area and mobile source (AMS) data into AIRS according to a fiscal year 1994 Clean Air Act section 105 air program grant agreement.

**5.B. Demonstration of Maintenance**

The MBUAPCD developed projected VOC and NO<sub>x</sub> emissions inventories based on the 1990 actual inventory for the years 1995, 2000, 2005 and 2010 by applying growth factors in accordance with EPA guidance. The projected inventories, provided in Table 2.A. and 2.B. below, show that the ozone standard will be maintained and that emissions are not expected to exceed the level of the 1990 inventory during the maintenance period.

**5.C. Verification of Continued Attainment**

The plan demonstrates attainment of the NAAQS for at least 10 years after the area is redesignated. The tables below show the forecasts for ozone precursors VOC (Table 2.A.) and NO<sub>x</sub> (Table 2.B.).

TABLE 2.A.—VOC EMISSIONS FOR AVERAGE SUMMER WEEKDAY\*  
[Tons Per Day]

Source categories	1990	1995	2000	2005	2010
<b>Stationary:</b>					
Fuel Combustion .....	00.86	00.80	00.86	00.87	00.88
Waste Burning .....	00.95	01.02	01.09	01.17	01.23
Solvent Use .....	21.45	20.60	22.29	24.13	25.82
Petroleum Processes, Storage & Transfer .....	06.07	01.72	02.21	02.22	02.22
Industrial Processes .....	00.49	00.56	00.58	00.63	00.66
Miscellaneous Processes .....	19.68	19.48	19.61	14.82	15.05
Banked Emissions .....	00.24	00.24	00.24	00.24	00.24
Stationary total .....	49.74	44.42	46.88	44.08	46.10
<b>Mobile:</b>					
On-Road .....	39.09	20.74	17.75	13.340	09.95
Non-Road .....	06.88	06.31	05.71	05.86	05.90
Mobile total .....	45.97	27.05	23.46	19.20	15.85
<b>Total .....</b>	<b>95.71</b>	<b>71.47</b>	<b>70.34</b>	<b>63.28</b>	<b>61.95</b>

\*Anthropogenic sources of ozone precursors.

<sup>6</sup>“Procedures for Processing Requests to Redesignate Areas to Attainment,” John Calcagni,

Director, Air Quality Management Division, September 4, 1992.

TABLE 2.B.—NO<sub>x</sub> EMISSIONS FOR AVERAGE SUMMER WEEKDAY\*  
[Tons Per Day]

Source categories	1990	1995	2000	2005	2010
<b>Stationary:</b>					
Fuel Combustion .....	29.79	26.40	28.18	21.27	27.50
Waste Burning .....	00.15	00.16	00.17	00.18	00.19
Petro. Processes, Storage & Transfer .....	00.02	00.02	00.02	00.02	00.02
Industrial Processes .....	02.33	02.77	02.98	03.25	03.48
Miscellaneous Processes .....	00.01	00.01	00.01	00.01	00.01
Banked Emissions .....	00.14	00.14	00.14	00.14	00.14
Stationary total .....	32.44	29.50	31.50	24.87	26.34
<b>Mobile:</b>					
On-Road .....	43.13	28.99	27.77	25.54	24.86
Non-Road .....	17.34	17.46	18.31	18.90	19.37
Mobile total .....	60.48	46.45	46.08	44.44	44.23
Total .....	92.92	75.95	77.58	69.31	70.57

\*Anthropogenic sources of ozone precursors.

The projections show that the area will continue to demonstrate attainment of the ozone NAAQS with current control measures. The Monterey Bay Area is not subject to additional emission reduction requirements for the CAA (since the area can demonstrate maintenance of the NAAQS for the 10 year maintenance period without additional controls). In addition, the emission inventory projections contained in the maintenance plan show a decrease in VOC emissions and NO<sub>x</sub> emissions.

Continued attainment of the ozone NAAQS in the Monterey Bay Area depends, in part, on the State's efforts to track indicators of continued attainment during the maintenance period. MBUAPCD will analyze annually the three most recent consecutive years of ambient air quality monitoring data to verify continued attainment of the national ozone standard, in accordance with 40 CFR

part 50, appendix H. The District will submit to EPA an annual report of data collected from the previous calendar year. This information, in conjunction with the reports from the previous two years, will provide adequate information for determining continued compliance with the ozone NAAQS.

*5.D. Contingency Plan*

The level of VOC and NO<sub>x</sub> emissions in the Monterey Bay Area will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Despite best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required pursuant to section 175A, the District has developed a contingency plan, including specific measures with a schedule for implementation in the event of a future ozone air quality problem. The District has chosen three

monitored exceedances of the NAAQS at one monitoring site within a consecutive three year period as the trigger for the contingency plan.

At the time of local adoption of the redesignation request and maintenance plan, the District identified several VOC and NO<sub>x</sub> stationary source control measures as the contingency measures which would be implemented should the triggering event occur at a monitoring site during the maintenance period. Tables 3.A. and 3.B., below, summarize the contingency control measures. Rules to implement these controls are scheduled for adoption through 1997. However, should the triggering threshold described above occur before adoption, adoption would be scheduled within six months of the triggering event. When contingency measures are triggered, implementation of the measures will occur within 6 to 24 months of rule adoption.

TABLE 3.A.VOC—CONTINGENCY MEASURES

Title	Action needed	VOC reductions (TPD)
Adhesives .....	Adopt	.39-.4
Architectural Coatings (rule 426) .....	Revise	.35
Automobile Refinishing .....	Adopt	1.04-1.12
Cutback Asphalt Paving (rule 425) .....	Revise	2.15-2.39
Disposal of Organic Wastes/Hazardous Waste Minimization .....	Adopt	N/A
Fiberglass Fabrication/Polyester Resin Use .....	Adopt	.02
Fixed & Floating Roof Petroleum Storage Tanks (rule 417) .....	Revise	.23
Fugitive Emissions from Petroleum Production .....	Adopt	.06
Furniture Staining .....	Adopt	.04
Graphic Arts Printing & Coating Operations .....	Adopt	.06
Landfill Gas Collection Systems .....	Adopt	1.52-1.63
Marine Coatings .....	Adopt	.01
Petroleum Production & Separation .....	Adopt	N/A
Petroleum Sumps, Wastewater Separators & Well Cellars .....	Adopt	.08
Plastic Coatings .....	Adopt	N/A
Semiconductor Manufacturing Operations .....	Adopt	N/A

TABLE 3.A.VOC—CONTINGENCY MEASURES—Continued

Title	Action needed	VOC reductions (TPD)
Spray Booths-Misc. Coating & Cleanup Solvents (rule 429) .....	Revise	1.55–1.61
Wood Products Coatings .....	Adopt	.19

TABLE 3.B.—NO<sub>x</sub> CONTINGENCY MEASURES

Title	Action needed	NO <sub>x</sub> reductions (TPD)
Boilers, Steam Generators .....	Adopt	3.36–3.4
Kilns .....	Adopt	3.2–3.32
Stationary Internal Combustion Engines .....	Adopt	.97

**5E. Subsequent Maintenance Plan Revisions**

In accordance with section 175A(b) of the Act, the District has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will

provide for maintenance for an additional ten year period.

**V. Revisions to the SIP**

**1. 1990 Base Year Inventory**

CARB submitted a revised 1990 base year emissions inventory to EPA on

March 30, 1995 as required under section 182(a)(1). Table 4 below summarizes the 1990 peak ozone season weekday inventories submitted on March 30, 1995.

**1990 BASE YEAR INVENTORY SUMMARY\*  
[Tons Per Day]**

1990 peak ozone season (tpd)	Stationary point source	Stationary area source	Onroad mobile source	Offroad mobile source	Anthropogenic total	Biogenic source
VOC .....	4.06	51.23	37.08	6.41	98.80	171.00
NO <sub>x</sub> .....	25.38	6.93	41.21	17.53	91.06	.....
CO .....	34.62	22.62	309.81	68.97	436.01	.....

Section 182(a)(1) of the CAA requires States with ozone nonattainment areas classified marginal and above to submit base year (1990) emission inventories by November 15, 1992, as a revision to the SIP. The inventories are to be comprehensive, accurate, and current inventories of actual emissions from all sources, in accordance with the guidance provided by the EPA Administrator.

The State submitted base year annual and peak season inventories for each of the ozone precursors on November 17, 1992 and subsequently revised those inventories. The latest submittal of revised annual average and peak ozone season average weekday 1990 inventories for VOC, NO<sub>x</sub>, and carbon monoxide (CO) were submitted on March 30, 1995 as clarification of the inventories adopted by the MBUAPCD Board on October 19, 1994 and submitted by the State to EPA on November 15, 1994.

**2. Emission Statement Rule**

The EPA is approving Regulation III, Rule 300, parts 4.4–4.4.3, the Emission Statement (ES) Rule for the Monterey Bay ozone nonattainment area as a revision to the California SIP, in accord

with CAA section 182(a)(3)(B)(i) for all ozone nonattainment areas classified marginal and above. The CAA mandates the adoption of a rule which requires owners or operators of each stationary source of VOC or NO<sub>x</sub> to provide the State with a statement showing actual emissions of those pollutants. The ES must be in a form prescribed by the EPA Administrator, unless the Administrator accepts an equivalent alternative developed by the State. Section 182(a)(3)(B)(ii) allows States to waive the application of the ES rule for any class or category of stationary sources which emit less than 25 tons per year of VOC or NO<sub>x</sub> if the State, in its submissions of base year or periodic inventories, provides an inventory of emissions from such class or category of sources based on the use of emission factors established by the Administrator or other methods acceptable to the Administrator.

On January 7, 1992, EPA approved an equivalent alternate form of ES developed by the State. However, the State failed to submit ES rules for parts of seven ozone nonattainment areas, including the Monterey Bay Area, by the November 15, 1992 CAA deadline. On January 15, 1993, EPA issued a letter to

the State finding that the State had failed to meet the CAA deadline for submittal of the ES rule. This action triggered the start of sanctions and Federal Implementation Plan (FIP) clocks. On June 9, 1993, the District adopted the above-referenced rule. The State subsequently submitted the ES rule for the Monterey Bay Area on November 18, 1993. On June 22, 1994, by letter, EPA notified the State of the completeness of the ES rule, thus stopping the sanction clocks. With today's approval of the ES rule, the FIP clock is also halted for the Monterey Bay Area.

The ES rule requires: (1) Emission data from stationary sources of VOC and NO<sub>x</sub>, (2) the source owner or operator's certification that the emission data/information is accurate to the best of his/her knowledge, and (3) the data to be reported on a specific form or in a specific format. The rule also waives reporting requirements for facilities with the potential to emit less than 25 tons per year of VOC or NO<sub>x</sub>.

**3. VOC RACT Rule Correction**

Section 182(a)(2) requires ozone nonattainment areas to adopt and correct RACT rules pursuant to pre-

amended Act section 172(b) as interpreted in pre-amended Act guidance.<sup>7</sup> EPA developed a series of Control Technology Guideline (CTG) documents based on the underlying requirements of the Act and which specify the presumptive norms for what is RACT for specific source categories. The CTGs applicable to this rule are entitled "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals" (EPA-450/2-77-026) and "Control of Volatile Organic Emissions from Bulk Gasoline Plants" (EPA-450/2-77-035). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

MBUAPCD's revised Rule 419, Bulk Gasoline Plants and Terminals, was adopted on November 23, 1994 and submitted to EPA by CARB on November 30, 1994. EPA found this rule complete on December 7, 1994. The rule includes the following significant changes from the current SIP version:

- Added definitions section
- Strengthened provisions for bulk terminals
- Added provisions for bulk plants
- Added recordkeeping requirements
- Added test methods

EPA has reviewed this rule and has determined the rule to be consistent with the CAA requirements, and EPA regulations as found in section 110 and Part D of the CAA and 40 CFR part 51, and EPA policy. Thus, EPA is approving, as part of this direct final action, the MBUAPCD VOC RACT Rule 419—Bulk Gasoline Plants and Terminals.

#### 4. NO<sub>x</sub> RACT Rule 431

The air quality planning requirements for the reduction of NO<sub>x</sub> emissions through RACT are set out in section 182(f) of the CAA.<sup>8</sup> Section 182(f) of the Clean Air Act requires States to apply the same requirements to major

stationary sources of NO<sub>x</sub> ("major" as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of VOCs, in moderate or above ozone nonattainment areas.

NO<sub>x</sub> emissions contribute to the production of ground level ozone and smog. The MBUAPCD rule 431 controls emissions from utility power boilers. The rule was adopted as part of the District's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, as well as to satisfy the mandates of the California State Clean Air Act requirements. The rule was submitted in response to the CAA requirements cited above.

However, subsequent to the complete submittal of the NO<sub>x</sub> rule pursuant to the CAA, the District applied for an exemption from the NO<sub>x</sub> RACT requirements pursuant to Section 182(f) of the CAA.<sup>9</sup> The basis for the Monterey Bay Area's exemption was that the area had achieved the ozone standard, as demonstrated by three years of monitoring data, without having implemented the NO<sub>x</sub> measures. While the District had adopted and submitted the measure in response to both the state and federal requirements, the emission reductions obtained by the rules would not occur until full implementation in the future. Subsequently, EPA evaluated the exemption request and published approval for the Monterey Bay Area's petition for a NO<sub>x</sub> RACT exemption on April 25, 1995 (60 FR 20233).

The MBUAPCD has identified the reductions obtained from Rule 431 as contributing to future maintenance of the ozone standard.

EPA has evaluated Monterey's rule 431 for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in the NO<sub>x</sub> Supplement and various EPA policy guidance documents.<sup>10</sup> Among these provisions is

the requirement that a NO<sub>x</sub> rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO<sub>x</sub> emissions. However, because the measure is being incorporated into the SIP as a maintenance measure for the area's redesignation plan, and since the District applied for and received a NO<sub>x</sub> RACT exemption, the rule is not being evaluated for meeting the RACT emission limits pursuant to section 182(f) of the CAA. Rather, the rule is being incorporated into the SIP as an attainment maintenance measure for ozone, and is being evaluated for SIP enforceability purposes.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, the rule is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

#### VI. Conclusion

In today's final action, EPA is determining that as a consequence of EPA's determination that the Monterey Bay Area ozone nonattainment area has attained the ozone standard and continues to attain the standard at this time, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard prior to the effective date of this redesignation.

Finally, EPA is approving the Monterey Bay Area ozone maintenance plan as it meets the requirements of section 175A, and the Agency is redesignating the Monterey Bay Area to attainment for ozone because the State of California has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. Additionally, EPA is approving the 1990 emissions inventory, VOC RACT Rule 419 and NO<sub>x</sub> RACT Rule 431 corrections, and the Emissions Statement Rule as revisions to the California SIP for the Monterey Bay Area as they meet the requirements of sections 182(a) and (b) of the Act.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. The ozone SIP is designed to satisfy the requirements

<sup>7</sup> Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

<sup>8</sup> On November 25, 1992, EPA published a NPRM entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement) which describes the requirements of section 182(f). The November 25, 1992, notice should be referred to for further information on the NO<sub>x</sub> requirements and is incorporated into this document by reference.

<sup>9</sup> See "Guidance for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)", issued by EPA's Office of Air Quality Planning and Standards, December 1993 and EPA's NO<sub>x</sub> Supplement to the General Preamble, 57 FR 55628, November 25, 1992.

<sup>10</sup> Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988).

of Part D of the CAA and to provide for attainment and maintenance of the ozone NAAQS. This final redesignation should not be interpreted as authorizing the State of California to delete, alter, or rescind any of the VOC or NO<sub>x</sub> emission limitations and restrictions contained in the approved ozone SIP. Changes to the ozone SIP VOC RACT regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted and approved by EPA. Unauthorized relaxations, deletions, and/or changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

#### Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., 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, 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.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA, and approval of an emissions inventory do not impose any new requirements on small entities. Additionally, the approval of the emission statement rule, which waives reporting requirements for facilities with the potential to emit less than 25 tons per year of VOC or NO<sub>x</sub>, does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve the requirements that the State is already imposing. Therefore, the Administrator certifies that the approval of the SIP revisions and redesignation will not affect a substantial number of small entities. 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 EPA to base Agency actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S.

246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

#### Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A and 182(a)(1) of the Clean Air Act. Also, EPA's final action approving the emission inventory does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. The rules and commitments approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Courts of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section

307(b)(2) of the Act, 42 U.S.C. 7607(b)(2)).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

These actions have been classified as Table 2 and Table 3 actions for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by an October 14, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation and by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from the requirements of section 6 of Executive Order 12866.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### 40 CFR Part 81

Environmental Protection Air pollution control, National Parks, Wilderness Areas.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 15, 1996.

Felicia Marcus,  
Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:  
Authority: 42 U.S.C. 7401-7671q.

#### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(F)(5), (c)(207)(i)(E)(1), (c)(209), (c)(213), and (c)(225)(i)(E)(1) to read as follows:

**§ 52.220 Identification of plan.**

(c) \* \* \*  
 (194) \* \* \*  
 (i) \* \* \*  
 (F) \* \* \*  
 (5) Rule 300—Regulation 3, Part 4, Paragraph 4.4 adopted on June 9, 1993.  
 (207) \* \* \*  
 (i) \* \* \*  
 (E) \* \* \*  
 (I) Rule 419, adopted on November 23, 1994.  
 (209) Redesignation Request and Ozone Maintenance Plan for the redesignation of the Monterey Bay Unified Air Pollution Control District submitted on July 14, 1994 and November 14, 1994, respectively, by the Governor's designee.  
 (i) Incorporation by reference.

(A) Maintenance Plan for the redesignation of the Monterey Bay Area adopted on October 19, 1994 by the Monterey Bay Unified Air Pollution Control District, October 12, 1994 by the Association of Monterey Bay Area Governments, and October 6, 1994 by the Council of San Benito County Governments.  
 (213) Statewide 1990 Base-year Ozone Precursor Emission Inventory for Ozone Nonattainment Areas submitted on March 30, 1995, by the Governor's designee.  
 (i) Incorporation by reference.  
 (A) Monterey Bay Area Unified Air Pollution Control District.  
 (I) 1990 Base-year ozone emissions inventory, adopted on October 19, 1994.  
 (225) \* \* \*

(i) \* \* \*  
 (E) \* \* \*  
 (J) Rule 431, adopted on August 16, 1995.  
 \* \* \* \* \*

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:  
 Authority: 42 U.S.C. 7407, 7501, 7515, 7601.

**Subpart B—Designation of Air Quality Control Regions**

2. In § 81.305, the table for "California—Ozone" is amended by revising the entry "Monterey Bay Area" to read as follows:

**§ 81.305 California.**  
 \* \* \* \* \*

**CALIFORNIA—OZONE**

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Monterey Bay Area Monterey County San Benito County Santa Cruz County	February 18, 1997	Attainment.		

<sup>1</sup>This date is November 15, 1990, unless otherwise noted.

[FR Doc. 97-876 Filed 1-16-97; 8:45 am]  
 BILLING CODE 6560-50-W

**40 CFR Part 799**  
**[OPPTS-42150B; FRL-5570-2]**  
**RIN 2070-AB94**  
**Testing Consent Order For Phenol**  
**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final consent agreement and order; direct final rule.

**SUMMARY:** Pursuant to section 4 of the Toxic Substances Control Act (TSCA), EPA has issued a testing consent order (Order) that incorporates an enforceable consent agreement (ECA) with AlliedSignal Inc., Aristech Chemical Corporation, The Dow Chemical Company, Dakota Gasification Company, Georgia Gulf Corporation, General Electric Company, GIRSA, Inc., JLM Chemicals, Inc., Kalama Chemical, Inc., Merichem Company, Mitsubishi International Corporation, Mitsui Co.

(U.S.A.), Inc., Shell Chemical Company, and Texaco Refining Marketing Inc. (collectively the Companies). The Companies have agreed to perform certain health effects tests on phenol (CAS No. 108-95-2). This notice summarizes the ECA and adds phenol to the list of chemicals subject to testing consent orders and hence subject to export notification requirements.  
**EFFECTIVE DATE:** The effective date of the ECA and Order (including the export notification requirements) is January 17, 1997. The effective date for the addition of phenol to the list of chemicals in 40 CFR 799.5000 subject to testing consent orders, and thus, the effective date of the export notification requirements contained in this notice for those entities not party to the ECA is March 18, 1997.  
 If EPA receives any adverse comments on the addition of phenol to the list of chemicals contained in 40 CFR 799.5000, which makes the export notification requirements in this notice applicable to all exporters of phenol, EPA will withdraw this rule. Instead, EPA will issue a proposed rule

addressing this issue and will provide a 30-day period for public comment. If no adverse comments are received, the rule will become effective as a final rule on the date specified.  
**ADDRESSES:** Each comment must bear the docket control number OPPTS-42150B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G-099, East Tower, Washington, DC 20460.  
 Persons submitting information any portion of which they believe is entitled to treatment as confidential business information (CBI) by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will treat the information as non-confidential and may make it available to the public without further notice to the submitter. Three sanitized copies of any comments