Dated: May 1, 1995.

Approved:

K. P. McMahon,

CDR, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–64–1–6997; FRL–5202–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of California, Approval of the Maintenance Plan for the San Francisco Bay Area and Redesignation of the San Francisco Bay Area to Attainment; Approval of Emissions Inventory; Approval of NO_X Exemption Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a redesignation request and maintenance plan for the San Francisco Bay Area as a revision to California's State Implementation Plan (SIP) for ozone. In addition, EPA is approving the 1990 base year emissions inventory and a petition requesting an exemption from the section 182(f) nitrogen oxides (NO_X) requirements for the area.

On April 13, 1994, EPA notified the State of California that EPA had made a finding of incompleteness for required programs under the Clean Air Act (CAA or the Act). The EPA's redesignation of the San Francisco Bay Area to attainment and approval of the 1990 emissions inventory abrogates those requirements for the area. Therefore, the sanctions and federal implementation plan clocks begun by those findings are stopped at the time of this redesignation.

EFFECTIVE DATE: This final rule will become effective on June 21, 1995.

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.

FOR FURTHER INFORMATION CONTACT: Wallace Woo, Chief, Plans Development Section, Air & Toxics Division, U.S. Environmental Protection Agency, Region IX, at (415) 744–1207.

SUPPLEMENTARY INFORMATION:

Background

A. Ozone Redesignation Request and Maintenance Plan

The San Francisco Bay Area ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone based on three years of quality assured ambient air quality data, for the period 1990–1992. Therefore, in accordance with the CAA, as amended in 1990, and to ensure continued attainment of the standard for at least 10 years, the State of California has submitted an ozone maintenance plan which projects continued attainment of the ozone NAAQS in the San Francisco Bay Area.

The maintenance plan submitted for the San Francisco Bay Area meets all applicable requirements of the CAA. The San Francisco Bay Area submittal complies with section 175A of the Act which sets forth maintenance plan requirements for areas seeking redesignation from nonattainment to attainment. The plan demonstrates attainment of the NAAQS for at least 10 years after the area is redesignated.

Eight years after the redesignation, the state commits to submit a revised maintenance plan which demonstrates attainment for the ten year period following the initial ten year period. In the event of a NAAQS violation, the maintenance plan contains contingency measures adequate to ensure prompt correction of the air quality problem.

The state submittal being approved today contains a redesignation request in which the state demonstrates that the area has fulfilled the redesignation requirements of the CAA pursuant to section 107(d)(3)(E), a NO_X exemption petition pursuant to section 182(f), and a 1990 emissions inventory of ozone precursors pursuant to section 182(a) for the area.

On September 28, 1994 (59 FR 49361–49370), EPA published a notice of proposed rulemaking (NPRM) for the State of California SIP. The NPRM proposed that the San Francisco Bay Area be redesignated from nonattainment to attainment for ozone and that the maintenance plan submitted by the State of California as a revision to the California SIP be approved contingent upon EPA taking final rulemaking action to approve various SIP deficiencies for the San Francisco Bay Area (including volatile organic compound (VOC) reasonable available control technology (RACT) corrections, emission statement rule, NSR corrections) and California's submittal of the ozone maintenance plan amendments to the contingency plan and the 1990 base year emissions inventory. In addition, the NPRM proposed approval of a NO_X waiver petition and 1990 base year emissions inventory.

Since that time, the EPA has taken final rulemaking action to approve both the volatile organic compound (VOC) reasonable available control technology (RACT) rules which resolve the deficiencies and the emission statement rule. Below is the list of rules that the EPA has approved since the time of proposed rulemaking on the redesignation. These approvals remove one of the conditions for redesignation of the San Francisco Bay Area.

Rule No.	Rule title	Notice of final rulemaking
8–1	General Provisions	60 FR 15062, March 22, 1995.
8–2	Miscellaneous Operations	60 FR 15062, March 22, 1995.
8–4	General Solvent and Surface Coating Operations	60 FR 15092, March 22, 1995.
8–7	Gasoline Dispensing Facilities	60 FR 15062, March 22, 1995.
8–8	Wastewater (Oil-Water) Separators	59 FR 43328, August 29, 1994.
8–11	Metal Container Closure and Coil Coating	59 FR 63721, December 9, 1994.
8–12	Paper, Fabric, and Film Coating	60 FR 15062, March 22, 1995.
8–13	Light and Medium Duty Motor Vehicle Assembly Plants	NFRM signed March 29, 1995—publication pending.
8–14	Surface Coating of Large Appliance and Metal Furniture	NFRM signed March 29, 1995—publication pending.
8–15	Emulsified and Liquid Asphalts	60 FR 15062, March 22, 1995.
8–16	Solvent Cleaning Operations	59 FR 63721, December 9, 1994.

Rule No.	Rule title	Notice of final rulemaking
8–19	Surface Coating of Miscellaneous Metal Parts and Products	60 FR 16799, April 3, 1995.
8–20	Graphic Arts Printing and Coating Operations	60 FR 15062, March 22, 1995.
8–22	Valves and Flanges at Chemical Plants	60 FR 8949, February 16, 1995.
8–23	Coating of Flat Wood Paneling and Wood Flat Stock	NFRM signed March 29, 1995—publication pending.
8–24	Pharmaceutical and Cosmetic Manufacturing Operations	60 FR 15062, March 22, 1995.
8–25	Pump and Compressor Seals at Petroleum Refineries, Chemical Plants, Bulk Plants, and Bulk Terminals.	60 FR 12451, March 7, 1995.
8–28	Pressure Relief Valves at Petroleum Refineries and Chemical Plants	59 FR 63721, December 9, 1994.
8–29	Aerospace Assembly and Component Coating Operations	60 FR 16799, April 3, 1995.
8–30	Semiconductor Manufacturing Operations	60 FR 15062, March 22, 1995.
8–31	Surface Coating of Plastic Parts and Products	60 FR 15062, March 22, 1995.
8–32	Wood Product Coatings	60 FR 15062, March 22, 1995.
8–33	Gasoline Bulk Terminals and Gasoline Delivery Vehicles	60 FR 16799, April 3, 1995.
8–34	Solid Waste Disposal Sites	60 FR 15062, March 22, 1995.
8–35	Coating, Ink, and Adhesive Manufacturing	60 FR 15062, March 22, 1995.
8–38	Flexible and Rigid Disk Manufacturing	60 FR 16799, April 3, 1995.
8–39	Gasoline Bulk Plants and Gasoline Delivery Vehicles	60 FR 16799, April 3, 1995.
8–40	Aeration of Contaminated Soil	60 FR 15062, March 22, 1995.
8–41	Vegetable Oil Manufacturing Operations	60 FR 15062, March 22, 1995.
8–42	Large Commercial Bakeries	60 FR 12451, March 7, 1995.
8–43	Surface Coating of Marine Vessel	NFRM signed March 29, 1995—publication pending.
8–45	Motor Vehicle and Mobile Equipment Coating Operations	60 FR 15062, March 22, 1995.
8–47	Air Stripping and Soil Vapor Extraction Operations	NFRM signed March 29, 1995—publication pending.
8–50	Polyester Resin Operations	60 FR 12451, March 7, 1995.
2–1	Emission Statement Rule	60 FR 16799, April 3, 1995.

In addition, the State of California has submitted the amendments to the maintenance plan necessary for final approval, including the revised 1990 base year emissions inventory and amendments to the contingency plan. The ozone maintenance plan amendments include a commitment by the Governor to implement the improvements to the basic inspection and maintenance (I/M) program by the end of 1995 as an early contingency measure and a revised contingency process. The reductions from these I/M improvements were not included in the maintenance plan emission inventory projections. In the event of a violation during the maintenance period, the Bay Area Air Quality Management District (BAAQMD) will meet with the EPA within 30 days of the violation to discuss which of the adopted NO_X RACT rules are appropriate to submit into the SIP as fully adopted and implemented contingency provisions. The list of NO_X controls include six rules which are scheduled for implementation through 2001. The improvements to the basic I/M program and the NO_X RACT controls supersede the original contingency plan submitted in November 1993. The original submittal included a commitment to implement an enhanced I/M program in the event of a violation during the maintenance period. However, the final enabling legislation for enhanced I/M in California prohibited areas not explicitly required to implement enhanced I/M by the CAA from opting into the centralized portion of the program. Therefore, the BAAQMD revised the contingency plan as described above.

Below is the list of NO_X RACT contingency measures submitted by CARB as part of the contingency plan.

BAAQMD NO_X RULES AS CONTINGENCY MEASURES

Title regulation 9	Adopted	Implementation year(s)	NO_X reductions (TPD)
NO_X and CO from Industrial, Institutional and Commercial Boilers, Steam Generators (rule 7).	9/16/92	1/1/96	14.9
NO_2 and CO_2 Emissions from Stationary Internal Combustion Engines (rule 8)	1/20/93	1/1/97	8.3
NO_X from Stationary Gas Turbines (rule 9)	5/5/93	1/1/97	7.0
Refinery Boilers, Steam Generators and Process Heaters (rule 10)	1/5/94	5/31/95 (sources already meet RACT standards).	N/A
NO_X and CO from Utility Electric Power Generating Boilers (rule 11)	2/16/94	5/31/95	1–2.6
NO_X from Glass Melting Furnaces (rule 12)	1/19/94	1/1/97–1/1/2001	1.2

In early 1994, new State laws (SB 198, AB 2018, SB 521, SB 629) were passed to improve the current decentralized I/M program. The improvements will begin implementation in 1995 and include: increased cost waiver limits for all models to $450; addition of functional tests for the evaporative control system; remote sensing or other roadside testing to discover gross polluters; centralized computer system reporting; improved quality assurance and enforcement; and improved technician training and certification. In addition, loaded-mode testing will either be a required program element (to be determined by the California Bureau of Automotive Repair), or will be implemented on request in the San Francisco Bay Area within one year of successful demonstration in areas of the State implementing enhanced I/M programs. Below is a chart which

estimates the emission reductions from these improvements by the year 2000.

EMISSION REDUCTION ESTIMATES FROM I/M PROGRAM IMPROVEMENTS BY 2000

	HC (percent)	CO (percent)	NO_X (percent)
Current Program	16.6	25.3	10.4
Improved Decentralized	22.1	30.0–34.6	15.0–22.2

Regarding the new source review (NSR) requirement, an EPA policy memo dated October 14, 1994 from Mary Nichols, Assistant Administrator for Air and Radiation, to the Division Directors entitled, ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' amended earlier guidance [1] which required areas requesting redesignation to attainment after November 15, 1992 to have a fully approved NSR rule prior to final redesignation. In light of the new policy set forth in the October 14, 1994 Memorandum, the EPA is no longer obligated to approve the San Francisco Bay Area's NSR rule as a condition for final approval of the redesignation request. However, the State of California submitted an amended NSR rule for the San Francisco Bay Area on January 4, 1995, and the emission projections contained in BAAQMD's maintenance plan are predicated on continuation of NSR permitting. The BAAQMD must continue NSR permitting until such time as it receives delegation of the PSD program for VOC. Upon delegation of the PSD program for VOC, the NSR permitting program can be moved to the contingency portion of the maintenance plan, provided that BAAQMD's ability to show maintenance of the standard is not affected.

B. Section 182(f) NO_X RACT Waiver Petition

The EPA is finalizing the approval of a petition submitted by the Bay Area AQMD requesting that EPA grant an exemption from the section 182(f) requirements to control major stationary sources of oxides of nitrogen (NO_X) emissions. The exemption petition is based on ambient monitoring data and demonstrates that additional NO_X reductions in the Bay Area would not contribute to attainment of the NAAQS for ozone.

EPA has evaluated the exemption petition for consistency with the requirements of the CAA, EPA regulations, and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents.[2] EPA believes that the petition satisfies the applicable EPA requirements and, in accordance with the requirements of the CAA, has determined that additional NO_X reductions from major stationary sources in the San Francisco Bay Area would not contribute to attainment of the national ambient air quality standard (NAAQS) for ozone. EPA is finalizing this action to exempt the San Francisco Bay Area from implementing the NO_X requirements for RACT, NSR, and the applicable general conformity and I/M requirements [3] of the CAA. Because the San Francisco Bay Area is being redesignated to attainment of the ozone standard through this action, the transportation conformity requirements will consist of meeting the NO_X budget established in the maintenance plan.[4]

The EPA believes that all section 182(f) exemptions that are approved should be approved only on a contingent basis. As described in the EPA's NO_X Supplement to the General Preamble (57 FR 55628, November 25, 1992) and further guidance issued by EPA,[5] section 182(f) exemptions are granted on a contingent basis and last for only as long as the area's monitoring data continue to demonstrate attainment. The San Francisco Bay Area is required to continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

If a violation of the ozone standard occurs after the San Francisco Bay Area is redesignated to attainment of the ozone NAAQS, the NO_X requirements are to be implemented as contingency measures as provided in the maintenance plan.

C. 1990 Base Year Emissions Inventory

In the NPRM, the EPA proposed approval of a revised 1990 base year emissions inventory as requested by the state in a letter dated July 21, 1994. In this letter, the state requested that EPA approve a revised 1990 emissions inventory and projections as part of the maintenance plan. As discussed in the NPRM, below is a summary of the 1990 VOC and NO_X emission inventory and projections through the year 2005. The projections show that the area will continue to demonstrate attainment of the ozone NAAQS with current control measures (adopted through December 31, 1992).

VOC EMISSION INVENTORY SUMMARY*

[Tons Per Day]

	1990	1995	2000	2005
Point	78	73	75	77
Area	173	154	141	141
Mobile On-Road	300	204	142	104
Mobile Non-Road	81	85	82	84
Anthropogenic. Total	631	515	440	406
Biogenics	300	300	300	300
Total	931	815	740	706

NO_X EMISSION INVENTORY SUMMARY*

[Tons Per Day]

	1990	1995	2000	2005
Point	131	130	141	146
Area	15	16	17	18
Mobile On-Road	251	194	166	158
Mobile Non-Road	159	164	176	186
Total	557	504	499	508

*Entries are rounded to the nearest whole number, totals may not equal to sum of column entries.

[1] Memorandum entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors.

Memorandum entitled, ''SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and CO NAAQS On or After November 15, 1992,'' from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, to Regional Air Division Directors.

[2] 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_X Supplement to the General Preamble, 57 FR 55628, November 25, 1992.

[3] See ''Scope of Nitrogen Oxides (NO_X) Exemptions,'' from G.T. Helms, Group Leader, Ozone/Carbon Monoxide Programs Branch (MD–15), to the Air Branch Chiefs, January 12, 1995. ''I/M Requirements in NO_X RACT Exempt Areas'', from Mary T. Smith, Acting Director, Office of Mobile Sources, to the Air Division Directors, October 14, 1994.

[4] EPA's approval of the Bay Area's maintenance plan begins the maintenance period as defined in the transportation conformity regulation at 40 CFR Part 51.392. During the maintenance period, the Bay Area must meet the requirements of parts 51.428 and 51.430 of the transportation conformity regulation. These sections specify that the transportation plan and transportation improvement program (TIP) must be consistent with the motor vehicle emissions budgets in the applicable implementation plan, which in this case, is the maintenance plan. The requirement of parts 51.436 and 51.438 that plans and TIPs satisfy the ''build/no build'' test, or demonstrate that the plan and TIPs contribute to emissions reductions, no longer apply during the maintenance period.

[5] See ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'', issued by John S. Seitz, Director, Office of Air Quality Planning and Standards (MD–10), May 27, 1994.

II. Public Comment/EPA Response

The EPA received 17 letters commenting on the proposal. Four letters expressed strong support for the redesignation based on the tremendous progress the San Francisco Bay Area has made over the past 30 years by attaining the ozone NAAQS. Nine letters expressed concern and/or opposition to the redesignation because of the transport of pollution from the San Francisco Bay Area to neighboring areas, and three letters voiced opposition to the redesignation for reasons other than transport. Finally, one letter addressed the section 182(f) NO_X RACT waiver petition only. Below is a summary of the comments received and the EPA's response.

A. EPA Response to Comments: Redesignation Request and Maintenance Plan

Comment 1

Several commenters stated that Congress intended EPA to deal with interstate transport only, as noted in section 176A of the Clean Air Act (CAA), and that the regulation of intrastate transport is outside of EPA jurisdiction and not a criteria for redesignation. Other comments stated that the California Clean Air Act (CCAA) adequately addresses interbasin transport. Furthermore, transport is a complicated issue, and the existing data is not sufficiently accurate to provide better solutions at this time. Finally, in some cases, the San Francisco Bay Area is the recipient of pollution from other air basins during certain meteorological conditions when air flow tends to be from inland areas and the San Joaquin Valley can model attainment without additional measures from the San Francisco Bay Area. The San Francisco Bay Area should not be unfairly singled out for scrutiny of intrastate transport, especially when the CCAA provides a workable process.

EPA Response

As outlined in the General Preamble to Title I of the CAA (57 FR 13528, April 16, 1992), the CAA assigns responsibility to the states for developing and submitting attainment demonstrations which show that the standard will be attained by the applicable attainment dates for areas where the demonstration of attainment is complicated by transport between two areas of different classifications. However, EPA needs to be assured that the attainment plans adequately address transport so as to ensure attainment for all areas within a state by the applicable attainment deadlines.

CARB has submitted attainment demonstration plans for all areas in California, including the Sacramento and San Joaquin Valley nonattainment areas.[6] This submittal included modeling of a large part of California, including Sacramento and the San Francisco Bay Area, as well as the San Joaquin Valley. EPA will review those plans and address the adequacy of the submittals through the federal rulemaking process.

While the State has the initial responsibility for dealing with intrastate transport issues, such issues are the subject of the Clean Air Act and within EPA's jurisdiction. For example, section 110(a)(2)(A) imposes the same obligation on areas to ensure that emissions will not interfere with attainment in downwind intrastate areas that section 110(a)(2)(D) imposes with respect to downwind interstate areas. At the present time, however, the information available to EPA concerning potential transport effects due to emissions from the San Francisco Bay Area is not sufficient to warrant action on the part of EPA or otherwise affect EPA's action regarding the San Francisco Bay Area's redesignation. While the preliminary studies conducted to date indicate that there is transport of emissions from the San Francisco Bay Area to nearby areas,[7] EPA believes that the state and local agencies can adequately address the issue initially. If, however, EPA determines that there are transport problems that warrant action on its part, EPA has the authority to issue a SIP call under sections 110(k)(5) and 110(a)(2)(A) to require the State to deal with those problems.

Comment 2

Several commenters expressed concern or opposition to the redesignation due to the issue of transported emissions from the San Francisco Bay Area to surrounding areas. Several commenters felt that the proposed action to redesignate the San Francisco Bay Area was made despite an accurate assessment of the impact of its emissions on attainment in neighboring areas, including the San Joaquin Valley and Sacramento Area, and requested that EPA delay final action to redesignate the San Francisco Bay Area until an accurate assessment and mitigation of transported pollution to neighboring areas can be made. Several commenters suggested that EPA coordinate a meeting with the state, the affected downwind air pollution control agencies, and the BAAQMD to resolve the transport issue.

EPA Response

As noted in the response to Comment 1, the information available concerning transport from the San Francisco Bay Area is preliminary in nature and EPA does not believe that it should affect EPA's action on this redesignation. Moreover, should EPA consider it necessary and appropriate to take action in the future, EPA has the authority under sections 110(a)(2)(A) and 110(k)(5) to deal with any such transport issues.

However, to respond to the transport concerns and several suggestions that EPA coordinate a meeting with the state and local air pollution control agencies affected by transport from the San Francisco Bay Area, EPA met with the California Air Resources Board (CARB), the BAAQMD and the affected downwind air pollution control agencies on February 2, 1995 to discuss transport from the San Francisco Bay Area to neighboring areas. The affected downwind air pollution control agencies include the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), the Sacramento Metropolitan Air Quality Management District (SMAQMD), the Yolo-Solano Air Pollution Control District (YSAPCD), the Placer County Air Pollution Control District (PCAPCD), the El Dorado County Air Pollution Control District (ECAPCD), and the Feather River Air Quality Management District (FRAQMD).

This group, the newly formed Interbasin Transport Group (ITG), discussed strategies for dealing with transport from the San Francisco Bay Area to downwind areas. The ITG consists of a main policy body of Air Directors from EPA, CARB, BAAQMD, and affected downwind air pollution control agencies, and a technical subcommittee, consisting of modeling experts, which will discuss the ongoing transport studies in California. The technical subcommittee will develop a needs assessment for gathering additional information on transport and report ongoing modeling results to the policy body at regularly scheduled meetings. Decisions on how to deal with transport will be made collectively by the policy body of the ITG.

At the first ITG meeting on February 2, 1995, the BAAQMD presented an

[6] With respect to the Sacramento attainment plan, CARB submitted a voluntary ''bump-up'' request from a serious to a severe classification pursuant to section 181. The request for ''bump-up'' for the Sacramento nonattainment area will be dealt with in a separate **Federal Register** notice.

[7] As one commenter pointed out, the statewide modeling effort to date indicates that pollutant transport from Sacramento to the San Francisco Bay Area also occurs.

overview of the maintenance plan controls which include aggressive stationary source and mobile source controls adopted at the local, state and federal level as of December 31, 1992. With these control measures in place, the VOC emission trend declines through the year 2005, and the NO_X emissions do not exceed the 1990 attainment year emissions inventory (the emissions ''cap'').

At the end of the first ITG meeting, after consultation with the group, EPA indicated its belief that any issues regarding transport from the San Francisco Bay Area to neighboring areas should be dealt with separately from the redesignation as new technical information becomes available. The group committed to investigate additional short and long term measures for the San Francisco Bay Area to be implemented to further mitigate any downwind transport effects. The establishment of the ITG provides an avenue to deal effectively with the transport issue after the redesignation as new information becomes available.

Since the first meeting of the ITG, the Greater Sacramento Area Air Pollution Control Districts (APCDs) revised their original comments submitted during the public comment period on the proposed redesignation. Specifically, the Sacramento Area APCDs' letter of December 15, 1994 urged EPA to delay final action on the redesignation until transport was addressed. In a more recent letter[8] to EPA, the Sacramento area now agrees that the transport issue can be dealt with separately from the federal redesignation process and concurs with EPA's proposal to redesignate the San Francisco Bay Area from nonattainment to attainment.

Many of the comments were based on a recently released CARB study, ''Preliminary Assessment of Transport on San Joaquin Valley Ozone,'' which discusses recent simulations to assess the impact of transported emissions in the San Joaquin Valley. The results discussed in the report are based on an extreme scenario in which anthropogenic emissions for the San Francisco Bay Area and the Sacramento area are set to zero. (In other words, the modeling simulation assumes that there are no VOC or NO_X anthropogenic emissions in the San Francisco Bay Area or the Sacramento Area. This exercise enables one to estimate the proportion of locally generated ozone versus transported pollution into the Valley.) The report indicates that there would be a decrease in ozone measurements of 27% in the Northern San Joaquin Valley, 10% in the Central San Joaquin Valley and 7% in the Southern San Joaquin Valley. The modeling study indicates that the Northern San Joaquin Valley is most affected by transported emissions. However, the attainment plan submitted for the San Joaquin Valley which relies on this modeling study purports to show that the San Joaquin Valley models attainment by the applicable deadline. In addition, monitoring data for the northern portion of the San Joaquin Valley shows that this site has collected air quality data which demonstrates attainment of the ozone NAAQS.

The report indicates that the Central and Southern San Joaquin Valley ozone concentrations would be reduced by 10% and 7%, respectively, if anthropogenic (generated by man) emissions were set to zero for the San Francisco Bay Area and Sacramento. Given that the Sacramento Area and the San Joaquin Valley will continue to adopt and implement aggressive new controls in response to the Federal and California Clean Air Acts and the San Francisco Bay Area will continue to adopt and implement new controls in response to the California Clean Air Act, the amount of emissions transported and locally generated emissions will continue to decrease to the Central and Southern San Joaquin Valley in the near future.

The formation of the ITG and the commitment from all affected agencies to work together to resolve potential transport issues, in conjunction with the California ozone plans submitted on November 15, 1994 which purport to demonstrate attainment of the ozone NAAQS for the Sacramento Area and the San Joaquin Valley by the applicable attainment deadlines, indicates that any intrastate transport issues should be effectively handled at the state level initially. EPA is committed to the goals of the ITG and will continue to participate in the group to offer support and review the adequacy of any new state or local agency strategy for dealing with transport.

With respect to the handling of transport issues at the state level, EPA notes that the California Clean Air Act (CCAA), adopted by the State of California in 1988, contains provisions which are designed to reduce the amount of pollution transport between nonattainment areas within the state. Specifically, areas which are the origin of transported pollutants, such as the San Francisco Bay Area, must include sufficient emission control measures in the state attainment plan (the ''clean air plan'') to mitigate the impact of pollution sources within their jurisdictions on ozone concentrations downwind. In the San Francisco Bay Area, these requirements include VOC and NO_X best available retrofit control technology (BARCT) for source categories that collectively amount to 75% of the 1987 actual hydrocarbon (HC) emissions inventory for stationary sources and 75% of 1987 actual NO_X emission inventory for permitted stationary sources no later than January 1, 1994. The BARCT controls, in most cases, exceed the federal RACT requirements. If these recently adopted controls were calculated into the projections in the maintenance plan, the NO_X emission trend would decrease through the year 2005. In addition, the San Francisco Bay Area is required to continue to implement a stringent NSR permitting program for new stationary sources. The CCAA requires that areas design attainment plans that include these controls and ensure attainment of the more stringent California Ambient Air Quality Standard (CAAQS) for ozone (0.09 ppm) by the earliest practicable date. According to CARB, the BAAQMD has fully complied with the CCAA's transport mitigation requirements and is continuing to adopt and implement all feasible control measures in its effort to attain the more stringent CAAQS of 0.09 ppm.

Although the BAAQMD has requested to be exempt from the NO_X RACT requirements of the Federal Clean Air Act, the BAAQMD had proceeded to adopt NO_X best available retrofit control technology (BARCT) and stringent New Source Review (NSR) regulations to comply with the transport mitigation requirements of the CCAA. Therefore, the maintenance plan controls and additional controls adopted in response to the CCAA ensure that any transport of pollutants from the San Francisco Bay Area to neighboring areas, whatever its current magnitude, will continue to decrease throughout the maintenance period.

In addition, the CCAA requires CARB to compile a report which assesses transport within the State every three

[8] In a letter dated February 27, 1995, Kenneth Selover, Air Pollution Control Officer from the Yolo-Solano APCD representing the Greater Sacramento Area APCD, states that the concerns expressed in the comment letter dated December 15, 1994 in response to EPA's proposal to redesignate the San Francisco Bay Area from nonattainment to attainment, were based on a lack of understanding of the BAAQMD's proposed program to further mitigate NO_X and other emissions in response to the CCAA. In the December 15, 1994 letter, the Sacramento APCDs requested an extension of the public comment period until the issue of transport was addressed. The Sacramento area now agrees that the transport issue can be dealt with separately from the federal redesignation process, and the redesignation should proceed.

years. Using several data analysis techniques, CARB determines the level of pollutant transport between various California air basins. These assessments are used in the process of requiring BARCT as described above, and also in the ozone planning process to assign responsibility for pollution reductions. CARB leads this effort and meets with the local air pollution control agencies on a regular basis to discuss the ongoing analysis.

Comment 3

Since the San Francisco Bay Area will not be subject to additional emission reduction requirements, the public health of the citizens of San Joaquin Valley will continue to be at risk when EPA redesignates the San Francisco Bay Area.

EPA Response

As discussed above, although the San Francisco Bay Area is not subject to additional emission reduction requirements for the federal CAA (since the area can demonstrate maintenance of the NAAQS for the 10 year maintenance period without additional controls), the area will continue to adopt and implement aggressive VOC and NO_X controls to further reduce ozone and meet the more stringent CAAQS for ozone. In addition, the emission inventory projections contained in the maintenance plan, which include controls adopted through December 1992, show a decrease in VOC emissions and show that NO_X emissions are not expected to increase over the 1990 attainment levels through 2005 (the 10 year maintenance plan horizon). Therefore, any transported pollution to the San Joaquin Valley from the San Francisco Bay Area will continue to decrease in the future. Finally, CARB submitted an ozone plan which purports to demonstrate attainment of the ozone standard in the San Joaquin Valley by 1999, the statutory deadline for attainment under the CAA.

Comment 4

Several commenters note that San Joaquin Valley and Sacramento industries, businesses, and citizens are subject to more onerous control requirements, such as more stringent NSR requirements and enhanced I/M, in order to compensate for transported pollution. This creates an economic disparity between the regions and penalizes the citizens in the downwind areas. Arbitrary air pollution control boundaries should not be used to create economic disparity among regions in the state.

EPA Response

The classification system under the CAA is based on actual monitored air pollution values during 1987 through 1989 for each nonattainment area. The CAA requires specific controls for each classification, with increasingly stringent control requirements for more seriously polluted areas. The air quality data recorded in the San Joaquin Valley and the Sacramento Area was more serious than the air quality monitored in the San Francisco Bay Area during the same time period. The Sacramento Area and the San Joaquin Valley air quality monitoring data collected during 1987–1989 warranted a ''serious'' classification,[9] whereas the monitoring in the San Francisco Bay Area warranted a ''moderate'' classification. Based on the statewide modeling effort to date, it appears that both the Sacramento Area and the San Joaquin Valley are responsible for the vast majority of the ozone pollution monitored in their areas. Therefore, EPA cannot concur that there is evidence indicating that the higher classifications warranted by the air quality monitoring in the Sacramento area and the San Joaquin Valley are due solely to transport.

The ozone episode (a single, short period of high ozone readings) that was modeled for the Sacramento ozone plan submittal occurred in August 1990 and had a small amount of transport from outside the area, but was essentially a locally-generated episode. This is important because it means that there are days when, with little or no transported emissions, Sacramento generates enough ozone pollution to exceed the standard. Because this episode was used as the basis for determining emission control levels, sources in the Sacramento area will be controlled to levels which will address their own effect on ozone, rather than transport from the San Francisco Bay Area. An episode from July 1990 which included more transported emissions did not perform well when the model was applied to it and was therefore not included in the Sacramento Area's attainment demonstration. However, this episode did indicate that the emission reductions from Sacramento sources needed for attainment are no greater than those indicated by the August 1990 episode, which was predominately local emissions. Therefore, Sacramento and San Joaquin Valley businesses and citizens are not subject to more onerous controls to compensate for transported pollutants from the San Francisco Bay Area.

As noted above, the BAAQMD will continue to adopt and implement aggressive VOC and NO_X controls to comply with the CCAA which go beyond the control measures included in the maintenance plan and its emission reduction projections (controls adopted through December 1992). With respect to the NSR requirement, although the San Francisco Bay Area will no longer be required to continue federal NSR permitting after redesignation (as soon as a federally delegated PSD program is in place), the BAAQMD has fully complied with the transport mitigation requirements of the CCAA which include NSR requirements.

The air pollution control boundaries were not drawn arbitrarily or to create economic disparities within the state, but rather reflect the natural geographic air basins that exist in Northern California. In response to the CAA adopted in November 1990, EPA consulted with, and deferred to the State of California on the air pollution control boundaries within the State. Section 107(d)(1)(4)(iv) of the CAA requires that the entire metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA) be used for ozone or carbon monoxide nonattainment areas classified as serious or above. The boundaries of the Sacramento Area and the San Joaquin Valley reflect the MSA/CMSA designations. Since promulgation of the current air pollution boundaries in November 1991, EPA has not received any petitions to re-draw the boundaries in California.

According to the CAA, areas are required to attain the NAAQS as expeditiously as practicable but no later than the applicable attainment deadline. Since CARB submitted an ozone attainment plan to EPA on November 15, 1994 which purports to demonstrate attainment of the NAAQS for the San Joaquin Valley and Sacramento area by the applicable deadline, the state expects the ozone NAAQS in the San Joaquin Valley and Sacramento Area to be attained by the timelines required by the CAA.

Comment 5

Several commenters noted that the proposed action to redesignate the San Francisco Bay Area was made despite an adequate assessment of the impact of its emissions on attainment in neighboring areas (Sacramento and San Joaquin Valley). One commenter specifically noted that for the

[9] Since that time, CARB has submitted a ''bump-up'' request for the Sacramento area from serious to severe. EPA will act on this request in a separate **Federal Register** notice.

Sacramento Federal Implementation Plan (FIP) modeling, only one episode has been modeled. More specifically, they noted that NO_X emissions transported into Sacramento from the San Francisco Bay Area increase the severity and likelihood of ozone episodes and add to the attainment burden for the area. (See discussion in EPA Response to Comment 4)

EPA Response

As discussed above, EPA and the ITG will deal with transport issues separately from the redesignation. EPA is aware of the ongoing statewide modeling effort, the SARMAP study, and will continue to participate in those meetings to evaluate the latest modeling information. EPA is committed to addressing the latest transport studies and being involved in the ITG to work with state and local governments to resolve any transport issues.

It should be noted that the SARMAP modeling study, portions of which were submitted to EPA in the San Joaquin Valley ozone plan, looked at an August 1990 episode for Sacramento which includes transport from neighboring areas. The results of this episode show that the emission reductions required for attainment in the Sacramento area are no greater than those indicated by the July 1990 episode, which includes mostly local emissions.

Comment 6

One commenter made several suggestions of items that EPA should require prior to redesignation. These include: 1. the completion of the technical studies on Sacramento modeling case, including the August ozone episode, using SARMAP. The outcome should be assignment of emission reductions to the San Francisco Bay Area; 2. the BAAQMD should install and maintain monitors to measure ozone and NO_X aloft to transport corridors to Sacramento and the San Joaquin Valley; 3. the BAAQMD should implement the voluntary ''Spare the Air'' program on days when ozone forecast predicts a violation, or near violation, in Sacramento; 4. the BAAQMD should contribute to any program efforts that are developed for the Sacramento air basins to slow travel on highway I–80 during periods when Sacramento is at risk of violating federal ozone standards; 5. EPA should coordinate a joint federal/state/local effort to assess equity issues in control of transported pollution, and consider requiring stationary source, fleet rule and off-road NO_X control equivalent to Sacramento rules within portions of the San Francisco Bay Area likely to transport to the Sacramento area.

EPA Response

As discussed above, EPA will continue to meet with the affected downwind air pollution control districts at regularly scheduled ITG meetings and any transport issues will be dealt with separately from the redesignation process. Specifically, CARB is continuing to look at episodes in August 1990, and additional monitors are being installed to look at pollution transport between the areas. All of the suggestions listed above will be examined by the group at upcoming meetings, and the technical subcommittee of the ITG will look into the modeling suggestions and new technical data on an ongoing basis.

Comment 7

One commenter opposed the redesignation unless transport is assessed because the San Joaquin Valley, which is affected by pollution transported from the San Francisco Bay Area and Sacramento, may be unable to make a conformity determination for the area. It is difficult to explain this situation to the public and elected officials when modeling results show that Stanislaus County would be in attainment if transport was addressed.

EPA Response

As discussed above, the issue of transport will be addressed separately from the redesignation process. However, it should be noted that the emission trend for the San Francisco Bay Area for VOC continually decreases over the 10 year maintenance period and NO_X emissions do not exceed the 1990 attainment year level (the emissions ''cap''). If the NO_X BARCT controls adopted by the BAAQMD were included in the maintenance plan, the NO_X emissions would also show a continual decrease over the 10 year maintenance period. Therefore, any transport impacts from the San Francisco Bay Area on other areas will continue to diminish in the future. It should be noted that CARB submitted an ozone attainment demonstration plan for the San Joaquin Valley which purports to reach attainment by the serious area deadline, 1999.

Comment 8

One commenter asserted that there are no monitoring stations for air emissions in the West Oakland area which is comprised of a community of predominately low income and color and is near one of the busiest highway intersections in the country. Census track analysis shows a high incidence of cancer in this area. American Lung Association studies show that the acceptable levels for particulates in the Clean Air Act are not protective of human health. In addition, benzene levels may be above the EPA acceptable 10^{-4} cancer risk level. The redesignation sends the wrong message to the community and policy makers and will not encourage public transit use. The redesignation is based on insufficient data since the monitoring network does not address ''hotspots''.

EPA Response

The proposal which EPA is finalizing today redesignates the area to attainment only for ozone. This action does not relate to emissions of particulate matter or benzene. This decision is based on clean air quality data for ozone recorded at the monitoring network since 1990. The BAAQMD currently monitors for ozone in the Oakland MSA.

With regard to particulate matter, the San Francisco Bay Area is currently designated as ''unclassifiable'' for PM–10 (particulate matter with an aerodynamic diameter of ten microns or less). However, EPA will continue to evaluate the PM–10 monitoring data in the air basin and redesignate the area to nonattainment if warranted. EPA is also working with the BAAQMD to locate an additional PM–10 monitor in the San Francisco Bay Area. In addition, at the national level, EPA is currently reassessing the existing particulate matter NAAQS,[10] and the Agency may be promulgating a new particulate matter NAAQS in the near future.

With regard to benzene, there is no NAAQS for this pollutant. Rather, benzene is one of 189 hazardous air pollutants listed in Section 112 of the CAA. Emissions of benzene are regulated at the source where they are emitted, rather than through an ambient air quality standard, such as that for ozone. The National Emission Standard for Hazardous Air Pollutants (NESHAP) for benzene, 40 CFR Part 61, Subpart FF, is an example of such a regulation.

With respect to public transit use, the federally approved SIP contains transportation control measures which encourage public transit use. In addition, all of the relevant local agencies continue to have a strong commitment to promoting the use of public transit.

The term ''hotspots'' usually is used to refer to hazardous air pollutants or

[10] Under court order, EPA must complete its review of the particulate matter NAAQS by January 31, 1997. *American Lung Association* v. *Browner,* U.S. District Court for the District of Arizona, October 6, 1994 (CIV–93–643–TUC–ACM).

other air pollutants with localized effects. While there can be areas of high concentrations of ozone, generally ozone is formed over the course of several hours over a large area when NO_X and VOCs react in the presence of sunlight. With regard to ozone, the BAAQMD's monitoring network meets the federal requirements and the data collected from this network is sufficient for redesignation.

Comment 9

With respect to NO_X emissions, one commenter asserts that the maintenance plan shows that the area can continue to meet the ozone standard even with increasing NO_X emissions after 2000. Furthermore, BAAQMD projects that NO_X emissions under their jurisdiction will increase 18 tons per day (TPD) between 1990 and 2005. Even though non-jurisdictional sources make up for this increase, BAAQMD should adopt control measures to reduce jurisdictional NO_X emissions by 18 TPD by 2005. This is particularly important since the San Joaquin Valley ozone formation is predominately affected by the level of NO_X emissions.

EPA Response

The maintenance plan does not show an overall increase in NO_X emissions during the maintenance period. Through the year 2005, the level of NO_X emissions remains at or below the 1990 attainment level NO_X carrying capacity. In addition, it should be noted that the NO_X projections in the maintenance plan do not include the NO_X BARCT controls adopted by BAAQMD in response to the transport mitigation requirements of the CCAA. If those controls were included, the NO_X projections would show a continuous decrease through the year 2005. Specifically, the BAAQMD adopted NO_X BARCT controls by 1995 which will be fully implemented by 2002. With these control measures in place, the NO_X emission projections decrease the emission trend by an additional 74 TPD in 2005 beyond the current trend line contained in the maintenance plan.

Comment 10

One commenter stated that the area evaluated for attainment and maintenance of the federal ozone standard for the San Francisco Bay Area, as required in 40 CFR 50.9, should include data from the monitoring locations in the portion of adjacent air basins immediately downwind of the San Francisco Bay Area air basin. These adjacent areas have experienced ozone concentrations above the federal standard as a direct consequence of emissions from the San Francisco Bay Area with little or no contribution from local emissions and may experience similar events in the future. In addition, the September 1, 1993 Memorandum from Mary Nichols states that EPA intends to apply to intrastate transport the provision of section 110(a)(2)(D)(i)(1), which requires each state's SIP prohibit emissions which will contribute significantly to nonattainment. There are little or no local emissions between these monitoring sites and the upwind San Francisco Bay Area. It appears EPA has expressed a policy which could prohibit the approval of the San Francisco Bay Area SIP unless violations caused in adjacent air basins are addressed.

EPA Response

To qualify for redesignation in accordance with section 107(d)(3)(E), an area must demonstrate, among other things, that the ambient air quality monitoring data in the area meets the NAAQS. The San Francisco Bay Area has satisfied this requirement by submitting five consecutive years of monitoring data which show no violations of the ozone NAAQS. As discussed above, EPA is fully aware of the potential transport issues and is committed to working with the State and local air pollution control agencies to resolve any issues through the ITG. EPA has the authority to deal with intrastate transport issues under the Clean Air Act, but the information presently available does not warrant action by EPA at this time.

Comment 11

One commenter stated that the 1990 VOC and NO_X ''carrying capacity'' levels in the maintenance plan should be made federally enforceable. The measures identified as contingencies should be incorporated into the SIP to mitigate any possible emission reduction shortfall.

EPA Response

The 1990 VOC and NO_X emission inventory and emission projections through 2005 are based on control measures adopted through December 31, 1992 at the federal, state, and local level and approved into the SIP. Those emissions levels are already supported by federally enforceable requirements. The NO_X measures and improvements to the I/M program identified in the contingency plan are not included in the maintenance plan projections.

As expressed previously in an EPA policy [11] pursuant to section 182(f) of the CAA, EPA may allow areas which have demonstrated attainment of the ozone NAAQS without having implemented NO_X controls to be exempt from the federal NO_X RACT requirements. However, the maintenance plan includes NO_X controls as contingency measures which will be submitted for incorporation into the SIP in the event of a violation during the maintenance period.

Comment 12

One commenter stated that EPA should consider whether the urban area for maintenance planning should be extended beyond the air basin boundaries to the full extent of the urbanized area since related growth of the adjacent urban areas growth is directly controlled by policies implemented within the San Francisco Bay Area. EPA should ensure that redesignation does not cause ozone levels above the federal standard in the San Francisco Bay Area or adjacent air basins. This requires that all emission increases caused by urban growth and industrialization must be matched by equivalent deceases. EPA should ensure that the approval includes provisions which protect the adjacent air basins and federally protected forests and national parks. Protection should include requirements to maintain an extensive system of air monitors to detect high ozone levels, and maintaining emission levels for all ozone precursors at or below the level which does not cause ozone levels above the federal standard in the San Francisco Bay Area and adjacent air basins.

EPA Response

After the passage of the CAA in 1990, EPA consulted with the State of California regarding the appropriate boundaries for nonattainment areas within the State. The current boundary of the San Francisco Bay Area reflects the State's recommended boundary for the area. Section 107(d)(4)(A)(iv) of the CAA requires that the boundaries for areas classified as serious and above include entire metropolitan statistical areas (MSAs) or consolidated metropolitan statistical areas (CMSAs). Transport will be addressed as discussed previously.

As discussed previously, with respect to the comment concerning emissions

[11] ''Section 182(f) Nitrogen Oxides (NO_X) Exemption—Revised Process and Criteria,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Division Directors, May 27, 1994.

increases during the maintenance period, the maintenance plan for the San Francisco Bay Area projects that future emissions for VOC decrease throughout the maintenance period and NO_X emissions do not increase over the attainment levels. The San Francisco Bay Area must maintain its current ozone monitoring network as part of the maintenance plan. The suggestion that the San Francisco Bay Area install monitors to detect high ozone levels (or precursor pollutants at high elevations) will be considered by the ITG.

With regard to protection of air quality in national parks and forests, the prevention of significant deterioration (PSD) provisions contained in Part C of the CAA are specifically designed to protect air quality in ''clean air'' areas, and particularly in pristine areas such as national parks. These requirements provide sufficient protection for such areas and it is not necessary to include additional requirements as a condition of redesignation.

Comment 13

One commenter opposes the redesignation because it suggests that the air quality no longer poses a threat to public health. In addition, EPA research has shown that there is no safe level for ozone. In addition, a federal declaration of attainment conflicts with California's goal of a stricter ozone standard.

EPA Response

EPA's action to redesignate the San Francisco Bay Area means that the air quality in the region meets the federal NAAQS (health-based standard) for ozone, and does not address other air pollutants. The EPA is currently in the process of re-evaluating the ozone NAAQS and expects to make a final decision in mid-1997. Until any change is made, EPA is bound to implement the provisions of the Act as they relate to the current standard, including those relating to designations and redesignations.

With respect to the California ozone standard and California Clean Air Act, EPA's action to redesignate the San Francisco Bay Area to attainment for the federal ozone standard does not impede California or the BAAQMD from striving for a stricter ozone standard. EPA's action to redesignate the area to attainment for the federal ozone standard recognizes the tremendous progress made so far and does not prohibit the area from adopting additional control measures to control ozone. Nor does it preclude EPA from requiring emission reductions from sources in the San Francisco Bay Area should EPA ultimately determine that such reductions are needed.

Comment 14

One commenter asserted that attainment levels had been recorded only because of particular meteorological conditions which lead to the transport of pollutants to nearby air basins. In addition, any current air quality benefit will be wiped out by the BAAQMD's own calculation of increased motor vehicle traffic in the future.

EPA Response

According to section 107(d)(3)(E)(iii), the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the implementation of measures in the applicable plan and applicable federal regulations. Between 1987 and 1990, the SIP control measures account for an approximate 69 TPD decrease in VOC emissions. In addition, the maintenance plan analyzed trend data for summer temperatures and vehicle miles traveled and employment during the 1990–1992 timeframe to determine if the improvement in air quality was due to meteorological circumstances or a downturn in the economy. The analysis showed that neither exceptionally cool temperatures nor a downturn in the economy were responsible for the area meeting the federal ozone standard, but rather the emission reductions and improved air quality were the result of permanent measures in the SIP. EPA has accepted this analysis. It should be noted that the San Francisco Bay Area has actually measured ''clean'' air quality data for ozone for five consecutive years.

With respect to transport, CARB released preliminary results from a modeling study which show that emissions from the San Francisco Bay Area and the Sacramento Area do impact ozone concentrations in the San Joaquin Valley (see discussion above). However, for the reasons described above, EPA cannot concur that the San Francisco Bay Area has met the ozone NAAQS because of transport of emissions to nearby air basins. In addition, as discussed above, future control regulations that are being adopted by the BAAQMD will further reduce any transported emissions to nearby air basins in the future.

The projections in the maintenance plan do show that vehicle miles travelled (VMT) will continue to increase in the future. However, emission projections through 2000 show an overall reduction in ozone precursor emissions from mobile sources due to the retirement of older vehicles and the increase in proportion of new, cleaner vehicles.

Comment 15

One commenter asserted that the BAAQMD's transportation control measure plan in the Clean Air Plan will increase vehicle miles traveled.

EPA Response

The transportation control measure (TCM) plan in the Bay Area Clean Air Plan has not been submitted to become part of the SIP, but rather fulfills the requirements under the California Clean Air Act. EPA has not reviewed this plan since it is not part of the control strategy used to demonstrate attainment or maintenance of the federal ozone standard.

B. EPA Response to Comments: Section 182(f) NO_X Waiver Petition

In August 1994, three environmental groups submitted joint comments on the proposed approvals of NO_X exemptions for the Ohio and Michigan ozone nonattainment areas. The comments address EPA's general policy regarding NO_X exemptions and apply to all actions EPA takes regarding section 182(f) NO_X exemptions. These comments as well as those received specifically addressing the BAAQMD proposed NO_X RACT exemption are addressed below.

NO_X Waiver Comment 1

The commenters argued that NO_X exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place ''when [EPA] approves a plan or plan revision,'' these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the CAA's conformity provisions.

EPA Response

Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that ''person[s]'' (which section 302(e) of the CAA defines to include States) may petition for NO_X exemptions ''at any time,'' and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires States to adopt NO_X NSR and RACT rules, unless exempted. These rules were generally due to be submitted to EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO_X exemption would have needed to submit their exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations are not due until November 1993 or 1994 (and EPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstration is called for in the CAA. For maintenance plans, the CAA does not specify a deadline for submittal of maintenance demonstrations. Clearly, the CAA envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The CAA requires conformity to the applicable SIP with regard to federally-supported NO_X generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_X requirements would not apply if EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the Administrative Procedures Act. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

NO_X Waiver Comment 2

The commenters stated that the modeling required by EPA guidance is insufficient to establish that NO_X reductions would not contribute to attainment since only one level of NO_X control, i.e., ''substantial'' reductions, is required to be analyzed. They further explained that an area must submit an approvable attainment plan before EPA can know whether NO_X reductions will aid or undermine attainment.

EPA Response

The EPA does not believe that this comment is applicable to the San Francisco Bay Area exemption because the demonstration is based on three years of ambient monitoring data and not modeling.

NO_X Waiver Comment 3

The commenters provided a comment that three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment, and that EPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment''.

EPA Response

The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the CAA. The section 107 criteria are more comprehensive than the CAA requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of [NO_X] would not contribute to attainment'' of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, it is clear that the section 182(f) test is met since ''additional reductions of [NO_X] would not contribute to attainment'' of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

NO_X Waiver Comment 4

Some commenters provided a comment on all section 182(f) actions that a waiver of NO_X controls is unlawful if such a waiver will impede attainment and maintenance of the ozone standard in separate downwind areas.

Some stated specifically that NO_X emissions from the Bay Area are likely to exacerbate ozone nonattainment downwind in the Sacramento Basin and the San Joaquin Valley, and that until transport of ozone precursors from the San Francisco Bay Area to the Sacramento Basin and the San Joaquin Valley are addressed, granting an exemption from the NO_X requirements is not consistent with the requirements of the Clean Air Act.

The commenters further added that transport of NO_X emissions from the San Francisco Bay Area adds to the attainment burden of the Sacramento Basin, and results in substantially different air quality rules in the two regions which translates into economic inequities and unfair economic

penalties to the Sacramento area community. Also, insufficient technical studies have been conducted to assess multi-basin transport regarding the San Francisco Bay Area and the Sacramento Basin, without which, redesignation and the NO_X exemption should not be granted.

The commenters contend that EPA's policy could prohibit approval of the SIP for the BAAQMD unless violations in adjacent air basins are addressed. Therefore, because of previous ozone concentrations monitored above the Federal standard in the San Joaquin Valley which were a consequence of San Francisco Bay Area emissions, areas evaluated for attainment, maintenance, and exemptions should include data from monitoring locations in adjacent air basins downwind of the San Francisco Bay Area. In addition, until all data, including recent data showing the Northern portion of the San Joaquin Valley would be in attainment of the Federal ozone standard in the absence of transported pollutants from the San Francisco Bay Area, which identifies the San Francisco Bay Area as a transport couple with the San Joaquin Valley is adequately assessed to define the effects of San Francisco Bay Area emissions on the ozone attainment status of the San Joaquin Valley, a NO_X RACT exemption should not be approved.

EPA Response

As a result of these comments and comments received regarding ozone transport in NO_X exemption requests for other areas in the United States, EPA has reevaluated its position on this issue and decided to revise the previously issued guidance.[12] As described below, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by EPA on a NO_X exemption request for stationary sources under section 182(f). That is, EPA action to grant or deny a NO_X exemption request under section 182(f) would not shield that area from EPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of demonstrating attainment in the 1994 SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_X emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO_X emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, certain nonattainment areas in the modeling domain have requested exemptions from NO_X requirements under section 182(f). Some areas requesting an exemption may be upwind of and impact upon downwind nonattainment areas. EPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of [NO_X] would not contribute to attainment of the national ambient air quality standard for ozone in the area.''[13] As described in section 4.3 of the December 16, 1993 guidance document, EPA believes that the term ''area'' means the ''nonattainment area'' and that EPA's determination is limited to consideration of the effects in a single nonattainment area due to NO_X emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the guidance encourages States to ''consider imposition of the NO_X requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State [see section 110(a)(2)(D)(i)(I)].''

In contrast, section 4.4 of the guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO_X exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) [not section 182(f)] prohibits such impacts.

Consistent with the guidance in section 4.3, EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently, and hence is withdrawing the guidance presently contained in section 4.4. Thus, if there is evidence that NO_X emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by EPA. In some cases, then, EPA may grant an exemption from across-the-board NO_X RACT controls under section 182(f) and, in a separate action, require NO_X controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances.

NO_X Waiver Comment 5

Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. The commenters argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior

[12] See ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'', issued February 8, 1995 by John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards.

[13] There are 3 NO_X exemption tests specified in section 182(f). Of these, 2 are applicable for areas outside an ozone transport region; the ''contribute to attainment'' test described above, and the ''net air quality benefits'' test. EPA must determine, under the latter test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Consequently, as stated in section 1.4 of the December 16, 1993 EPA guidance, ''[w]here any one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.''

guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want EPA in actions on NO_X exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

EPA Response

With respect to conformity, EPA's conformity rules[14,15] provide a NO_X waiver if an area receives a section 182(f) exemption. In its ''Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions'', 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and transportation improvement plan (TIP) are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, EPA is not granting an exemption from the transportation conformity requirements under section 182(f) in this action for the Bay Area. Rather, EPA's approval of the Bay Area's redesignation and maintenance plan begins the maintenance period, and an area's transportation plans and TIPs must be consistent with the motor vehicle emissions budget in the maintenance plan. The requirements of the transportation conformity regulation that plans and TIPs satisfy the ''build/no build'' test and achieve emissions reductions, does not apply to areas redesignated and operating under a maintenance status.

[14] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act,'' November 24, 1993 (58 FR 62188).

[15] ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule,'' November 30, 1993 (58 FR 63214).

NO_X Waiver Comment 6

Some commenters argue that the CAA does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response

The EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with Congress' intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f) but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f)), the House Conference Committee Report states in pertinent part: ''[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area.'' H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA ''shall consider'' the 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await ''conclusive evidence'', as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the CAA provides that the new NO_X requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that any one of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are ''counter-productive.'' If one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

III. EPA Final Action

In this final action, EPA is approving the San Francisco Bay Area ozone maintenance plan because it meets the requirements of section 175A. In addition, the Agency is redesignating the San Francisco 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. Finally, EPA is approving the NO_X waiver petition and 1990 emissions inventory for the San Francisco Bay Area.

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 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_X 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 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.

This action has been classified as a Table 2 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 an October 14, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from the requirements of section 6 of Executive Order 128866.

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, approval of a section 182(f) exemption, and approval of an emissions inventory do 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. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

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 section 182(f) NO_X waiver petition relieves requirements otherwise imposed under the CAA and, hence 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 July 21, 1995. 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).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National Parks, Wilderness Areas.

Dated: April 24, 1995.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

1. The authority citation for Parts 52 and 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(205)(i)(B) and (212) to read as follows:

§ 52.220 Identification of Plan.

* * * * *

(c) * * *

(205) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

(*1*) Amendments to the San Francisco Bay Area Redesignation Request and Maintenance Plan for the National Ozone Standard and 1990 Emissions Inventory adopted on September 7, 1994 by the Bay Area Air Quality Management District, October 5, 1994 by the Metropolitan Transportation Commission, and August 24, 1994 by the Association of Bay Area Governments.

* * * * *

(212) Ozone redesignation request for the Bay Area Air Quality Management District submitted on November 5, 1993, by the Governor's designee.

(i) Incorporation by reference.

(A) Redesignation request for the San Francisco Bay Area and the Ozone Maintenance Plan for the National Ozone Standard adopted on September 1, 1993 by the Bay Area Air Quality Management District, September 22, 1993 by the Metropolitan Transportation Commission, and September 16, 1993 by the Association of Bay Area Governments.

* * * * *

PART 81—[AMENDED]

Subpart B—Designation of Air Quality Control Regions

3. In section 81.305, the table for ''California—Ozone'' is amended by revising the entry ''San Francisco Bay Area'' to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date	Type
San Francisco–Bay Area:				
Alameda County	June 21, 1995	Attainment.		
Contra Costa County	.....	.....do.		
Marin County	.....	.....do.		
Napa County	.....	.....do.		
San Francisco County	.....	.....do.		
San Clara County	.....	.....do.		
San Mateo County	.....	.....do.		
Solano County (part)	.....	.....do.		
That portion of the county that lies south and west of the line described that follows: Description of boundary in Solano County between San Francisco and Sacramento: Beginning at the intersection at the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; T.6 N., R. 2 W., M.D.B.&M., thence east along said ½ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W, thence east along a line common to T. 5 N., and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10 T. 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8 T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties.	.....	.....do.		
Sonoma County (part)	.....	.....do.		

[1] The date is November 15, 1990 unless otherwise noted.

[FR Doc. 95–12407 Filed 5–19–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR PART 300

[FRL–5209–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Final Rule: Notice of Deletion of United States Army Fort Lewis Landfill No. 5 from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of United States Army Fort Lewis Landfill No. 5, located in Pierce County, Washington from the National Priorities List (NPL). The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Washington Department of Ecology have determined the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Jane Nearman, Site Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, HW–124, Seattle, WA 98101, (206) 553–6642.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: United States Army Fort Lewis Landfill No. 5, Pierce County, Washington.

A Notice of Intent to Delete for this site was published March 27, 1995. (60 FR 15737). The closing date for comments on the Notice of Intent to Delete was April 26, 1995. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. NCP Section 300.425(e)(3). Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Superfund, Water pollution control, and Water supply.

Dated: May 12, 1995.

Gerald A. Emison,

Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.