469(k) provides that section 469 applies separately with respect to items attributable to each publicly traded partnership. Section 469(k)(2) defines a publicly traded partnership in the same manner as section 7704(b). The legislative history of section 469(k) indicates that the term publicly traded partnership has the same meaning for purposes of section 469(k) as it does for purposes of section 7704. See H.R. Rep. No. 495, 100th Cong., 1st Sess. 952–53 (1987) (Conference Report). In addition, Notice 88–75 (1988–2 C.B. 386) provided the same guidance on the definition of a publicly traded partnership for purposes of both sections 469(k) and 7704.

The recently issued regulations under § 1.7704–1, however, define a publicly traded partnership only for purposes of section 7704. The proposed regulations implement the legislative history of section 469(k) by providing that the definition of a publicly traded partnership for purposes of section 469(k) is the same as the definition of publicly traded partnership under section 7704.

Proposed Effective Date

These regulations are proposed to apply for taxable years of a partnership beginning on or after the date the final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, April 28, 1998, at 10 a.m., in Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit timely written comments (preferably a signed original and eight (8) copies) by March 19, 1998 and submit an outline of the topics to be discussed and the time to be devoted to each topic by April 7, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Christopher Kelley, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.469–10 is revised to read as follows:

§ 1.469–10 Application of section 469 to publicly traded partnerships.

(a) [Reserved].

(b) *Publicly traded partnership*—(1) *In general.* For purposes of section 469(k), a partnership is a publicly traded partnership only if the partnership is a publicly traded partnership as defined in § 1.7704–1.

(2) *Effective date.* This section applies for taxable years of a partnership beginning on or after the date final regulations are published in the **Federal Register**.

Par. 3. Section 1.7704–3 is added to read as follows:

§ 1.7704–3 Qualifying income.

(a) *Certain investment income*—(1) *In general.* For purposes of section 7704(d)(1), qualifying income includes capital gain from the sale of stock, income from holding annuities, income from notional principal contracts (as defined in § 1.446–3), and other substantially similar income from ordinary and routine investments to the extent determined by the Commissioner. Income from a notional principal contract is included in qualifying income only if the property, income, or cash flow that measures the amounts to which the partnership is entitled under the contract would give rise to qualifying income if held or received directly by the partnership.

(2) *Limitations.* Qualifying income as defined in paragraph (a)(1) of this section does not include income derived in the ordinary course of a trade or business. For purposes of the preceding sentence, income derived from an asset with respect to which the partnership is a broker, market maker, or dealer is treated as income derived in the ordinary course of a trade or business; income derived from an asset with respect to which the taxpayer is a trader or investor is not treated as income derived in the ordinary course of a trade or business.

(b) *Effective date.* This section applies for taxable years of a partnership beginning on or after the date final regulations are published in the **Federal Register**.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–33105 Filed 12–18–97; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX 61–1–7270: FRL–5937–4]

Approval and Promulgation of State Implementation Plans (SIP) for Texas: Accelerated Vehicle Retirement (AVR) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove the SIP revision submitted by the State of Texas for the Accelerated Vehicle Retirement (AVR) program which allows stationary sources to purchase Emission Reduction Credits (ERCs) through a vehicle scrappage program. For areas which face relatively high stationary source control costs, Mobile Emission Reduction Credits

(MERCs) offer stationary sources another option to achieve required emission reductions through early retirement and scrappage of motor vehicles which fail mandated emissions testing. The EPA is proposing disapproval because the State's AVR SIP revision uses a vehicle emission testing method from a vehicle Inspection and Maintenance (I/M) program that has changed since the ARV SIP was submitted. This action is being taken under sections 110 and 182 of the Clean Air Act, as amended in 1990 (the Act).

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed. Copies of the documents relevant to this action area available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Rennie, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION:

I. Background

The Act broadly encourages, and in Title I of the Act, mandates, States to develop and facilitate market-based approaches for achieving the environmental goals of the Act for attainment and maintenance of the National Ambient Air Quality Standards, and to meet associated emission reduction milestones. The Agency has developed comprehensive guidance and rules (as required by the Act) for States and individual sources to follow in designing and adopting such programs for inclusion in SIPs. The Economic Incentive Program (EIP) Rules (April 7, 1994, 59 FR 16690–16717) provide a broad framework for the development and use of a wide variety of incentive strategies for stationary, area, and/or mobile sources. One such approach is the generation and trading of ERCs, which historically have been allowed under guidance provided in the 1986 Emission Trading Policy Statement. In certain areas where emission control costs for stationary sources may be high relative to mobile source control costs, creating EIPs which allow for the trading of emission reduction credits from mobile sources to stationary sources can be beneficial.

On October 31, 1994, the State of Texas submitted revisions to the SIP making changes to the Texas Administrative Code (30 TAC), Chapter 114: Control of Air Pollution from Motor Vehicles. In this revision, section 114.29, Accelerated Vehicle Retirement Program, was added to the Code. The new section provides specific requirements for the purchase, screening, and processing of scrappage vehicles, so that all emission reductions generated through AVR are creditable, enforceable, surplus, quantifiable, and permanent. The scrappage program requires all potential vehicles to get an ''IM240'' emission test at an I/M testing facility.

The AVR program was planned when the State was intending to implement an I/M program which utilized the IM240 emission test in a centralized, test-only setting. The I/M program was designed, developed, and began operation in January 1995, before being halted by the Governor and the Texas Legislature.

However, various states, including Texas, desired greater flexibility in implementing their I/M programs. On September 18, 1995, EPA revised and finalized I/M rules that gave states much greater flexibility in implementing I/M programs. One element of the I/M flexibility amendments included a provision for a new low enhanced performance standard that would allow for less stringent I/M programs if overall air quality goals were met. In addition, on November 28, 1995, President Clinton signed the National Highway System Designation Act of 1995 (NHSDA) which allowed even greater flexibility in I/M programs for states, especially in the area of emission reduction estimates.

In response to this additional flexibility, the State of Texas, in a letter dated March 12, 1996, submitted its revised I/M program to the Region 6 office within the submission deadlines contained in the NHSDA. The EPA granted conditional interim approval (July 11, 1997, 62 FR 37138) of the revised Texas I/M plan. As a result, the State has implemented a decentralized testing network which allows for both test-and-repair and test-only stations, and includes remote sensing. Testing stations administer a two-speed idle test. This program is referred to as the Texas Motorist Choice Program. With the IM240 test no longer available, the tailpipe emission measurements needed for AVR calculations as outlined in section 114.29 of 30 TAC 114 cannot be obtained. The EPA believes this is a significant deficiency which prohibits approval of the SIP under section 110 of the Act.

II. Evaluation of Accelerated Vehicle Retriement (AVR) SIP

Several key program elements in EIP rules must generally be included in any MERC program to ensure that the EIP principles and requirements are met. One of the elements calls for credible, workable, replicable procedures for quantifying emissions and/or emission-related parameters.

In the State's submittal, emission reductions in grams/vehicle/year for each vehicle are calculated using tailpipe emissions, evaporative emissions, vehicle replacement emissions, and vehicle miles traveled. Tailpipe emissions are measured by using the IM240 test. The MERCs are calculated in tons/year from the emission reductions from all vehicles in a scrappage program.

The owner of a scrappage vehicle must obtain an IM240 vehicle emission certificate at a testing facility showing that the vehicle has failed the mandated emissions test prior to the sale of the vehicle to a scrappage program. A motorist must submit the vehicle to an emissions test according to specific procedures outlined in the SIP. In the Texas Motorist Choice I/M program, which is in operation, the test stations offer only the idle test. The IM240 test is not an option. Consequently, tailpipe emissions can no longer be quantified according to the procedure outlined in the SIP. This prevents the State from satisfying the program element for obtaining credible emissions data.

In summary, the Texas AVR SIP submittal does not reflect current programs which are necessary to implement the scrappage program as designed. Based on the analysis, EPA cannot approve the Texas AVR SIP.

III. Proposed Action

The EPA proposes to disapprove the Texas AVR SIP under sections 110 and 182 since the State failed to update elements of the AVR SIP submitted October 31, 1994. The AVR SIP submittal represents vehicle emission testing for vehicle scrappage using an I/M loaded mode transient emission test (IM240). The Texas Legislature halted the operation of that particular program, and has since chosen to implement a different I/M program, the Texas Motorist Choice Program, which requires a two-speed idle test. This test has not been shown to be equivalent to

the IM240 test. Consequently, the AVR SIP is not applicable to current programs as submitted.

This revision is not required by the Act. Therefore, this proposed disapproval action does not impose sanctions for failure to meet Act requirements.

The EPA is soliciting public comment on the proposed action discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rule making procedure by submitting written comments to the EPA Regional office listed in the **Addresses** section of this document.

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

The Regional Administrator's decision to approve or disapprove the AVR SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Act, as amended, and EPA regulations in 40 CFR part 51.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

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. See 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.

The EPA's proposed disapproval of the State request under sections 110 and 301, and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this proposed disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, the EPA certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements, nor does it impose any new Federal requirements.

C. Unfunded Mandates Act

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

The EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action does not impose new requirements. Accordingly, no additional costs to State, local, or tribal governments, or private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Volatile organic compounds.

Dated: December 10, 1997.

Lynda F. Carroll,

Acting Deputy Regional Administrator, Region VI.

[FR Doc. 97–33222 Filed 12–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–004–BU; FRL–5937–5]

Designation of Areas for Air Quality Planning Purposes; State of California; Redesignation of the San Francisco Bay Area to Nonattainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 22, 1995, EPA redesignated the San Francisco Bay Area (Bay Area) from moderate nonattainment for the federal 1-hour ozone standard to attainment (60 FR 27028). The redesignation became effective on June 21, 1995. Two days later, the Bay Area experienced its first violation of the federal 1-hour ozone standard as an attainment area. There have been a total of 43 exceedances and 17 violations of the standard since redesignation. The Clean Air Act (CAA or Act) provides that EPA may at any time notify the Governor that available air quality information indicates that the designation of an area within the State should be revised. EPA must consider the response from the Governor as well as public comment on the proposed redesignation before finalizing its action.

On August 21, 1997, EPA sent a letter to the Governor of California notifying him of the Agency's intent to redesignate the Bay Area from attainment to nonattainment of the federal 1-hour ozone standard. In today's action, EPA is proposing to redesignate the Bay Area as a nonattainment area for ozone.

DATES: Comments on this proposed action must be received in writing by February 17, 1998. Comments should be addressed to the contact listed below.

ADDRESSES: EPA's technical support document and other supporting documentation for the proposal are contained in the docket for this rulemaking. A copy of this document and the technical support document are also available in the air programs section of EPA Region IX's website, http://www.epa.gov/region09. The docket is available for inspection during normal business hours at EPA Region IX, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. (415) 744-1288.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1288.

SUPPLEMENTARY INFORMATION:

I. Background

A. Original Designation

The Bay Area was originally designated under section 107 of the 1977 CAA as nonattainment for ozone on March 3, 1978 (40 CFR 81.305). The Bay Area consists of the following counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano (part), and Sonoma (part). Following the 1990 amendments to the Act, the area was classified by operation