

interim approval expires February 19, 1997.

(b) Reserved.

[FR Doc. 95-928 Filed 1-18-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 81

[CA-103-1-6722 FRL-5125-2]

Designation of Areas for Air Quality Planning Purposes; State of California; Correction of Design Value for San Diego Ozone Nonattainment Area; Reclassification of San Diego Ozone Nonattainment Area to Serious

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document announces the EPA Region IX decision to reclassify the San Diego, California, ozone nonattainment area (San Diego) from severe to serious. San Diego was classified as a severe ozone nonattainment area by EPA on November 6, 1991 (56 FR 56694). However, EPA has determined that the ozone design value of .190 ppm published by EPA and used in classifying San Diego as a severe ozone nonattainment area was incorrect. The correct monitored ozone design value was .185 ppm. This design value falls within the range of values which would have provided the opportunity for the State to request reclassification of San Diego under section 181(a)(4) of the Clean Air Act, as amended in 1990 (CAA or the Act). Pursuant to section 110(k) of the Act, which allows EPA to correct its actions, EPA is today publishing the correct design value of .185 ppm and is granting the State's request to reclassify the San Diego nonattainment area under section 181(a)(4).

EFFECTIVE DATE: February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Angela Baranco, Plans Development Section (A-2-2), Air Planning Branch, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, (415) 744-1196.

SUPPLEMENTARY INFORMATION:

Background

Prior to the 1990 amendments to the Act, EPA identified and designated nonattainment areas with respect to the National Ambient Air Quality Standards (NAAQS). For such areas, States submitted State Implementation Plans (SIPs) to control emissions and achieve attainment of the NAAQS. The San

Diego ozone nonattainment area (San Diego) was originally designated as nonattainment for ozone on March 3, 1978 (as well as for other pollutants not addressed in this document). The SIP for San Diego was first adopted in the early 1970's. The revised SIP was fully approved by EPA on November 25, 1983 (48 FR 53114) and December 28, 1983 (48 FR 57130).

Under the 1990 amendments to the Act, San Diego retained its designation of nonattainment and was classified as severe by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). This classification was required to be based on the design value for the area. The actual monitored value for San Diego was .185 ppm. This value was reported to the California Air Resources Board (CARB), which rounded the value to .19 ppm and submitted it to EPA. EPA published this number as .190 ppm in its November 6, 1991 Federal Register document.

CAA Provisions

A. Correction of Error Under Section 110(k)(6)

Section 110(k)(6) of the Act provides:

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

EPA interprets this provision to authorize the Agency to make corrections to a promulgation when it is shown to EPA's satisfaction that: (1) EPA erred in failing to consider or inappropriately considered information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate; and (2) other information persuasively supports a change in the promulgation.

EPA's initial action in classifying San Diego was based on an ozone design value of .190 ppm. That information was subsequently demonstrated to have been incorrect, and the true design value was .185 ppm. Accordingly, in today's action, EPA is correcting this error by publishing the correct design value of .185 ppm for San Diego.

B. Classification Adjustment Under Section 181(a)(4)

Section 181(a)(4) of the Act provides a 90-day period following publication of a classification during which any nonattainment area with a design value within 5 percent of the next higher or lower classification may request to be reclassified. When EPA published .190 ppm as the ozone design value, the San Diego planning staff concluded it could not take advantage of the five-percent classification adjustment provision because this value does not fall within 5 percent of the cutoff for classification as serious. However, the correct value of .185 ppm does fall within 5 percent of this number (.179 ppm). When the discrepancy in the ozone design values was discovered, the State requested that EPA reclassify San Diego. After determining that the original classification had been based on an erroneous design value, and that the error may be corrected pursuant to section 110(k)(6), EPA accepted the State's request, made by letter dated July 19, 1993, to reclassify the San Diego ozone nonattainment area from severe to serious under section 181(a)(4).

C. Criteria for Reclassification

Section 181(a)(4) of the CAA provides general guidelines to determine whether an area qualifies for a classification adjustment:

In making such adjustment, the Administrator may consider the number of exceedances of the (NAAQS) for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

EPA interprets this provision to mean that the area must demonstrate that it can attain the ozone NAAQS by the earlier date required by the lower classification. As discussed in more detail in subsection 3 below, San Diego has submitted a preliminary demonstration that "but for transport", it would attain the ozone NAAQS by the 1999 attainment deadline for serious areas. Documentation concerning each of the section 181(a)(4) criteria has been submitted by San Diego as part of this demonstration and is discussed briefly below. For a detailed discussion and analysis of these submissions please refer to EPA's Technical Support Document (TSD).

1. Exceedances

San Diego submitted data concerning the number of exceedances per year from 1980 to 1992. This data shows a clear downward trend projecting zero exceedances in 1999.

2. Pollution Sources

San Diego provided information regarding the mix of sources and air pollutants which shows that on-road motor vehicle emissions are projected to decline through 1999 and beyond, and that other anthropogenic emissions will remain more or less constant. Based on these projections, motor vehicle emissions should not undermine San Diego's overall downward trends for both short and long term emissions.

3. Attainment Demonstration and Transport

In initial responses to requests for reclassification under section 181(a)(4), EPA required that an area under consideration for a classification downwards show that it would attain the NAAQS by the earlier attainment deadline, including transported emissions from upwind areas. However, EPA has recently issued guidance that allows attainment date extensions for downwind nonattainment areas which are overwhelmingly affected by transported pollutants from nonattainment areas of higher classifications, and which would otherwise attain the NAAQS for ozone ("Ozone Attainment Dates for Areas Affected by Overwhelming Transport", Mary D. Nichols, Assistant Administrator for Air and Radiation, September 1, 1994). Under the new policy, a downwind area must demonstrate attainment of the NAAQS for locally generated ozone episodes by the attainment date specified by its new classification and demonstrate attainment under transport conditions except for transported pollutants.

San Diego has provided a credible preliminary showing that it meets the requirements for demonstrating attainment by 1999 or locally generated ozone episodes and under transport conditions except for transported pollutants. This showing contained data showing overwhelming transport from the South Coast Air Basin, including a detailed discussion of San Diego's transport assessment methodology. San Diego also submitted preliminary documentation of modeling being prepared for its November 15, 1994

attainment demonstration. San Diego has modeled both a local and a transport ozone episode using the Urban Airshed Model (UAM). This preliminary showing demonstrates that San Diego will attain the ozone NAAQS "but for" transported emissions by 1999. For an in-depth discussion and analysis of San Diego's preliminary showing, refer to EPA's technical support document.

4. Other Factors

Discontinuity: A 5-percent classification downwards must not result in an illogical or excessive discontinuity relative to surrounding areas. In particular, in light of the area-wide nature of ozone formation, a classification downwards should not create a "donut hole" where an area of one classification is surrounded by areas of higher classification. The San Diego nonattainment area is bordered by the South Coast air district, an "extreme" ozone nonattainment area which transports emissions to San Diego from the north and west, and by the Imperial County air district, which is a "transitional" ozone nonattainment area. A serious classification falls between the classifications of the surrounding areas, and thus does not constitute discontinuity.

5. Affect on November 15, 1994 Attainment Demonstration

The State must submit a full attainment demonstration (including transport) for San Diego on November 15, 1994, as required by the Clean Air Act. This demonstration must be in accord with all generally applicable requirements of section 110 of the Act, the requirements of section 182(c)(2)(A), and the EPA policy memo "Ozone Attainment Dates for Areas Affected by Overwhelming Transport" issued by Mary Nichols on September 1, 1994. This SIP submission will be reviewed in its entirety when submitted.

EPA's action today reclassifying San Diego does not constitute approval of the attainment demonstration which is due on November 15, 1994, and EPA does not by this action take a position concerning the approvability of the emission inventory, modelling, or

control measures relied upon in the preliminary attainment demonstration.

Today's Action

A. Final Action

In the Federal Register of November 6, 1991 (56 FR 56694), EPA issued a final rule promulgating the designations, boundaries, and classifications of ozone nonattainment areas (and for nonattainment areas for other pollutants not addressed in this action). In today's action, EPA is correcting its action, with respect to the publication of the .190 ppm ozone design value for San Diego and publishing the actual monitored value of .185 ppm in accordance with section 110(k)(6). In addition, EPA is reclassifying San Diego as a serious ozone nonattainment area pursuant to section 181(a)(4).

In accordance with CAA sections 107(d)(2)(B), 110(k)(6), 172(a)(1)(B), and 181(a)(3) and (a)(4), this document is a final publication of the ozone design value for San Diego and of the reclassification of San Diego to a serious ozone nonattainment area, and is not subject to the notice and comment provisions of sections 553 through 557 of Title 5.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 13, 1994.

Carol Browner,
Administrator.

Therefore, 40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

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

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * *				
San Diego Area				
San Diego County		Nonattainment		Serious.
* * * * *				

¹ This date is November 15, 1990, unless otherwise noted.

* * * * *
 [FR Doc. 95-1317 Filed 1-18-95; 8:45 am]
 BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[GN Docket No. 93-252, PR Docket No. 89-553; FCC 94-331]

Implementation of Sections 3(n) and 332 of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Final Rule; Order on reconsideration.

SUMMARY: This Order on Reconsideration in GN Docket No. 93-252 and PR Docket No. 89-553 is a partial reconsideration of the Third Report and Order in GN Docket No. 93-252, ("CMRS Order"). In this reconsideration, the Commission decides not to suspend granting of secondary site authorizations for incumbent 900 MHz Specialized Mobile Radio ("SMR") systems, as originally determined in the CMRS Order. In the CMRS Order, the Commission decided not to grant any further secondary site authorizations, which would have allowed existing 900 MHz SMR operators to construct facilities outside of their Designated Filing Areas ("DFAs"), enabling them to expand their systems or link facilities in different markets. The Commission had reasoned that, even though these secondary sites would not be entitled to protection from co-channel interference and may have to discontinue operation eventually, it would contaminate the 900 MHz band to continue to license secondary sites in advance of Major Trading Area ("MTA") licensing. On reconsideration, however, the Commission concludes that such an outright prohibition on further secondary site licensing imposes a significant burden on existing 900 MHz SMR licensees that are building out

their systems and intend to become MTA licensees, which would also delay the availability of service to customers. Also, the Commission emphasizes that secondary site operators assume the risk of having to discontinue operations in the event of interference to an MTA-licensed system. Thus, the Commission will continue to process and grant secondary site authorizations to qualified applicants.

FOR FURTHER INFORMATION CONTACT:

Amy J. Zoslov at (202) 418-0620, Wireless Telecommunications Bureau, Commercial Radio Division.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission Order on Reconsideration in GN Docket No. 93-252 and PR Docket No. 89-553, adopted December 21, 1994, and released December 22, 1994. The full text of this Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of Order on Reconsideration

1. The Order, taken on the Commission's own motion, reverses the Commission's decision in the CMRS Order, 59 FR 59945 (11/21/94), to suspend further granting of secondary site authorizations for 900 MHz SMR systems pending the implementation of new service and licensing rules for those SMR systems.

2. By way of background, the Commission adopted new licensing rules for this service in the CMRS Order, dividing 200 channels into 20 blocks of 10 channels each, using MTAs as the service area for each license, and using competitive bidding selection for mutually exclusive applications. The incumbent systems already licensed in the DFAs (which correspond to the top 50 major markets) were grandfathered, i.e., given co-channel interference protection for existing facilities, but

were not allowed to expand beyond existing service areas unless they obtained MTA licenses. Some incumbents had been granted authorizations to construct facilities outside their DFAs to expand their systems or link facilities in different markets, which became "secondary sites," i.e., not entitled to co-channel interference protection, when the Commission discontinued primary site licensing in 1986. The CMRS Order established that any 900 MHz SMR secondary sites licensed before August 10, 1994, would be entitled to primary site protection, so as to avoid discontinuation of operations for such sites that had become integral to the existing systems. In this connection, the Commission decided not to license any further secondary sites to avoid contamination of the 900 MHz band in advance of MTA licensing.

3. In this Order, the Commission concludes that an outright prohibition on further licensing of secondary sites imposes a significant burden on 900 MHz incumbents who are building out systems and who intend to become MTA licensees. A suspension of licensing would delay service to consumers until the new 900 MHz rules are adopted and selection of licensees takes place. Also, as secondary sites are not entitled to interference protection, and secondary site-holders assume the risk of discontinuation, the Commission concludes that this policy will not contribute to spectrum contamination. Thus, the Commission will continue to grant secondary site authorizations to qualified SMR applicants in the 900 MHz band, subject to strict enforcement of the no-interference policy regarding secondary operation, defined in 47 CFR 90.7.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Radio.