Responsibility, Rule 6060—Administration of Emergency Program, Rule 6070—Advisory of High Air Pollution Potential, Rule 6080—Declaration of Episode, Rule 6081—Episode Action—Health Advisory, Rule 6090—Episode Action Stage 1: (Health Advisory-Alert), Rule 6100—Episode Action Stage 2: (Warning), Rule 6110—Episode Action Stage 3: (Emergency), Rule 6120—Episode Termination, Rule 6130—Stationary Source Curtailment Plans and Traffic Abatement Plans, Rule 6140—Episode Abatement Plan, and Rule 6150—Enforcement, submitted to EPA on March 3, 1997; Ventura County APCD—Regulation VIII—Emergency Action with Rule 150—General, Rule 151—Episode Criteria, Rule 152—Episode Notification Procedures, Rule 153—Health Advisory Episode Actions, Rule 154—Stage 1 Episode Actions, Rule 155—Stage 2 Episode Actions, Rule 156—Stage 3 Episode Actions, Rule 157—Air Pollution Disaster, Rule 158—Source Abatement Plans, and Rule 159—Traffic Abatement Procedures were submitted to EPA on January 28, 1992, by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: February 4, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–6178 Filed 3–17–99; 8:45am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–010–0001, FRL–6309–8]

Classification of the San Francisco Bay Area Ozone Nonattainment Area for Congestion Mitigation and Air Quality (CMAQ) Improvement Program Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 10, 1998 (63 FR 37258), EPA redesignated the San Francisco Bay Area from maintenance to nonattainment for the federal one-hour ozone standard. The redesignation was based on subpart 1 of the Clean Air Act (CAA), which does not require EPA to assign a nonattainment classification. Inadvertently, EPA's action under the CAA affected how the Bay Area would be treated under a separate, transportation-related statute, the Transportation Equity Act for the 21st Century (TEA 21). Specifically, the Congestion Mitigation and Air Quality Improvement Program (CMAQ) in TEA 21 appropriates funding according to an area's CAA nonattainment classification. The purpose of this proposed rule is to assign the Bay Area a nonattainment classification for the federal one-hour ozone standard for CMAQ purposes only so that the Bay Area can receive CMAQ funding commensurate with the severity of its air pollution problem.

DATES: Comments on this proposed action must be received in writing by April 19, 1999.

ADDRESSES: Comments should be addressed to the contact listed below: Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

A copy of this proposed rule is available in the air programs section of EPA Region 9's website, http://www.epa.gov/region09/air. The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 744–1249 for assistance.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (415) 744–1249, Planning Office (AIR–2), Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background

The San Francisco Bay Area is the only area in the country that was initially designated nonattainment for the federal one-hour ozone standard, redesignated to attainment, and then redesignated back to nonattainment (40 CFR 81.305, March 3, 1978; 60 FR 27028, May 22, 1995; 63 FR 3725, July 10, 1998). In redesignating the Bay Area back to nonattainment, EPA looked at the longstanding general nonattainment provisions of subpart 1 of the CAA as well as the subpart 2 provisions that were added as part of the 1990 Amendments. EPA concluded, based on a number of legal and policy reasons described at length in the proposed and final redesignation actions, that the Act is best interpreted as placing the Bay Area under subpart 1.[1] Because the Bay Area was redesignated under subpart 1, EPA did not assign it a subpart 2 classification. As a result, the Bay Area became the only ozone nonattainment area in the country without a classification for the federal one-hour ozone standard.

At approximately the same time as the redesignation action, the subpart 2 classifications were incorporated into the apportionment formula for CMAQ funding under TEA 21 (section 104(b)(2) of Title 23, United States Code). Areas with nonattainment classifications received a weighting factor based on the severity of air pollution, while areas without a classification did not. The Federal Highway Administration (FHWA) initially stated that ''Since San Francisco will no longer have an ozone classification, under the law, this population can no longer be the basis for the apportionment formula.''[2] However, after additional review, FHWA determined that ''Because the EPA classified the Bay Area as nonattainment for ozone but chose not to assign a severity classification, we have decided to give the Bay Area a weighting factor equivalent to a submarginal ozone nonattainment classification.''[3]

Despite FHWA's willingness to treat the Bay Area as submarginal for CMAQ purposes, state, local, and federal authorities in the area remained concerned that CMAQ funding would be inadequate in relation to the Bay Area's air quality situation. According to the CMAQ apportionment formula, submarginal areas, those where ozone concentration levels are under .121 parts per million measured over three years, receive an apportionment formula weighting factor of 0.8. Weighting factors are higher for areas with more severe air pollution problems. Since ozone levels in the Bay Area registered .138 parts per million for the three-year period 1995–97, the more appropriate weighting factor for the Bay Area is the one used for moderate nonattainment areas, a weighting factor of 1.1.

II. EPA Action

EPA is today proposing to classify the Bay Area pursuant to section 172(a) as moderate for CMAQ purposes only, and the classification is intended only in relation to the area's treatment under CMAQ. This classification is authorized by section 172(a)(1)(A) of subpart 1 of the Act, which states that ''the Administrator may classify the area for

[1] For a complete analysis of why EPA was redesignated under subpart 1 and not subpart 2, please refer to the proposed and final rulemakings on the redesignation (62 FR 66578, December 19, 1997; 63 FR 3725, July 10, 1998)

[2] Memo from Jim Shrouds, FHWA, to Nancy Sutley, EPA, dated June 25, 1998.

[3] Letter from Kenneth R. Wykle, Administrator, FHWA, to the Honorable George Miller, House of Representatives, dated August 7, 1998.

the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes.'' EPA is assigning a classification of moderate because it reflects the severity of the Bay Area's nonattainment problem. Specifically, the Bay Area has a design value [4] of .138 parts per billion for the three-year period 1994–1997. This design value is equivalent to the design value for moderate areas classified according to the severity table in subpart 2, section 181(a)(1).

The EPA believes that this classification is appropriate because it will allow the Bay Area to receive CMAQ funding commensurate with its air quality problem. As the only ozone nonattainment area in the country redesignated under subpart 1 for the one-hour standard, it is the only such area to have no classification. At the same time, the Bay Area's air quality, as reflected by its design value, is similar to that of the other ozone nonattainment areas that are classified as moderate. Today's proposed action would allow the Bay Area, with its unique status among ozone nonattainment areas, to be treated for CMAQ purposes the same as other nonattainment areas with similar air quality problems.

III. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. 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. 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.

This classification action under subpart 1, section 172(a)(1)(A) of the Clean Air Act does not create any new requirements. Therefore, the Administrator certifies that it does not have a significant impact on any small entities affected.

E. Unfunded Mandates

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

EPA has determined that the action proposed 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 imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 5, 1999.

David Howekamp,

Acting Regional Administrator, Region X.

[FR Doc. 99–6511 Filed 3–17–99; 8:45 am]

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[4] The design value is derived from peak ozone concentrations and is a measure of the severity of an area's air quality problem. It is calculated according to an EPA Memorandum from William G. Laxton, Director, Technical Support Division, Office of Air Quality Planning and Standards, to the Regional Air Directors, ''Ozone and Carbon Monoxide Design Value Calculations,'' June 18, 1990.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MO 061–1061; IL187–1; FRL–6311–8]

Clean Air Reclassification and Notice of Potential Eligibility for Attainment Date Extension, Missouri and Illinois; St. Louis Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to find that the St. Louis nonattainment area