

(ii) Affected sources must comply with the *California Regulatory Requirements Applicable to the Air Toxics Program*, August 1, 1997 (incorporated by reference as specified in § 63.14) as described below.

(A) The material incorporated in Chapter 1 of the *California Regulatory Requirements Applicable to the Air Toxics Program* California Code of Regulations Title 17, section 93109) pertains to the perchloroethylene dry cleaning source category in the State of California, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

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(B) The material incorporated in Chapter 2 of the *California Regulatory Requirements Applicable to the Air Toxics Program* (San Luis Obispo County Air Pollution Control District Rule 432) pertains to the perchloroethylene dry cleaning source category in the San Luis Obispo County Air Pollution Control District, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

(I) Authorities not delegated.

(i) San Luis Obispo County Air Pollution Control District is not delegated the Administrator's authority to implement and enforce those provisions of subpart M which apply to major sources, as defined in § 63.320(g). Dry cleaning facilities which are major sources remain subject to subpart M.

(ii) San Luis Obispo County Air Pollution Control District is not delegated the Administrator's authority of § 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means of emission limitation, under sections B.17, G.3.a.5, G.3.b.2.iii, and I of Rule 432, must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112.

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[FR Doc. 97-32329 Filed 12-9-97; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[CA-002-BU; FRL-5932-6]

#### Clean Air Act Reclassification; California—Santa Barbara Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** EPA is finding that the Santa Barbara nonattainment area has not attained the 1-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date in the Clean Air Act (CAA) for moderate ozone nonattainment areas, which is November 15, 1996. The finding is based on EPA's review of monitored air quality data from 1994 through 1996 for compliance with the 1-hour ozone NAAQS. As a result of the finding, the Santa Barbara ozone nonattainment area will be reclassified by operation of law as a serious ozone nonattainment area on the effective date of this action. The effect of the reclassification will be to continue progress toward attainment of the 1-hour ozone NAAQS through the development of a new State implementation plan (SIP), due 12 months from the effective date of this action, addressing attainment of that standard by November 15, 1999.

**EFFECTIVE DATE:** January 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, Office of Air Planning, AIR-2, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105-3901, (415) 744-1288.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Under sections 107(d)(1)(C) and 181(a) of the Clean Air Act (CAA) as amended in 1990, Santa Barbara County was designated nonattainment for the 1-hour ozone NAAQS and classified as "moderate." See 56 FR 56694 (November 6, 1991). Moderate nonattainment areas were required to show attainment by November 15, 1996. CAA section 181(a)(1).

Pursuant to section 181(b)(2)(A) of the CAA, EPA has the responsibility for determining, within 6 months of an area's applicable attainment date, whether the area has attained the 1-hour ozone NAAQS.<sup>1</sup> Under section

181(b)(2)(A), if EPA finds that an area has not attained the 1-hour ozone NAAQS, it is reclassified by operation of law to the higher of the next higher classification or to the classification applicable to the area's design value at the time of the finding. CAA section 181(b)(2)(B) requires EPA to publish a document in the **Federal Register** identifying areas which failed to attain the standard and therefore must be reclassified by operation of law. A complete discussion of the statutory provisions and EPA policies governing findings of whether an area failed to attain the ozone NAAQS can be found in the proposal for this action at 62 FR 46234 (September 2, 1997).

##### II. Proposed Action

On September 2, 1997, EPA proposed to find that the Santa Barbara ozone nonattainment area failed to attain the 1-hour ozone NAAQS by the applicable attainment date. The proposed finding was based upon ambient air quality data from the years 1994-1996. The data showed that the 1-hour ozone NAAQS of 0.12 parts per million (ppm) had been exceeded on average more than one day per year over this 3-year period. Attainment of the 1-hour NAAQS is demonstrated when an area averages one or less days per year over the standard during a 3-year period. 40 CFR 50.9 and Appendix H. EPA also proposed that the appropriate reclassification of the area was to serious, based on the area's 1994-1996 design value of 0.130 ppm. This design value is well below the range of 0.180 to 0.280 ppm for a severe classification. For a complete discussion of the Santa Barbara ozone data and the method of calculating both the average number of days over the ozone standard and the design value, see 62 FR 46235-6.<sup>2</sup>

Finally, EPA proposed to require submittal of the serious area SIP revisions no later than 12 months from the effective date of the area's reclassification.

however, in order to ensure an effective transition to the new 8-hour standard, EPA also retained the 1-hour NAAQS for an area until such time as it determines that the area meets the 1-hour standard. See revised 40 CFR 50.9 at 62 FR 38894. As a result of retaining the 1-hour standard, CAA part D, subpart 2, *Additional Provisions for Ozone Nonattainment Areas*, including the reclassification provisions of section 181(b), remain applicable to areas that are not attaining the 1-hour standard. Unless otherwise indicated, all references in this notice are to the 1-hour ozone NAAQS.

<sup>2</sup> EPA wishes to correct one number in the table in the proposal entitled "Average Number of Ozone Exceedance Days Per Year in the Santa Barbara Area" (62 FR 46236). SBCAPCD pointed out that the correct site design value for the El Capitan station for 1994-1996 is 0.118 ppm, rather than 0.119 ppm.

<sup>1</sup> On July 18, 1997 (62 FR 38856), EPA revised the ozone NAAQS to establish a 8-hour standard;

### III. Response To Comments

In response to its September 2, 1997 proposal, EPA received comments from the Environmental Defense Center, Congressman Walter Capps, the Santa Barbara County Air Pollution Control District (SBCAPCD), the Chair of the SBCAPCD Board, the California Air Resources Control Board (CARB), the Santa Barbara Association of Realtors, and one private citizen. EPA is grateful for the comments, suggestions, and helpful information, and the Agency responds below.

#### A. Comments Related to Splitting the Nonattainment Area and Reclassifying Only the South Portion of the County

The entire Santa Barbara County has been designated nonattainment and classified moderate since November 15, 1990, the date of enactment of the 1990 amendments to the Clean Air Act. 56 FR 56694 and 56 FR 56729. In the proposal, EPA noted that SBCAPCD had asked the Agency to consider dividing the County along a specific boundary line (for the most part, along the ridge of the Santa Ynez Mountain Range), and then applying the reclassification to only the south portion of the County. EPA proposed to determine, pursuant to section 181(a)(2), that the existing nonattainment area did not meet the 1-hour ozone NAAQS. However, in response to SBCAPCD's request, the Agency sought comment on the technical rationale for applying the resulting reclassification to only the south portion, including information on the north portion's impact on air quality in the south, and information on current and expected air quality in the north portion in relation to the new 8-hour ozone standard. 62 FR 46236.

Although a number of commenters urged splitting the nonattainment area, EPA is not currently inclined to do so, based on the available information, as discussed further below. Moreover, the Agency believes that in order to accomplish such a result, it would have to initiate additional rulemaking in order to comply with the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* However, because most of the comments in response to the proposed reclassification were directed to this issue, EPA is preliminarily addressing them here.

1. *Comments on the impacts of reclassifying only the south portion:* The late Congressman Walter Capps encouraged EPA to change the size of the affected nonattainment area and focus control efforts on those areas that are causing the pollution problems. SBCAPCD and CARB expressed a desire

to minimize the impacts of the reclassification to serious, particularly within the north portion of the county, where no site has violated the 1-hour ozone NAAQS since the 1989–1991 period.

EDC, on the other hand, noted specific adverse impacts if the north portion of the County were not to be bumped up: (1) The potential loss of revenues to the County from several Federal funding sources, including Congestion Management and Air Quality (CMAQ) monies; (2) the dislocating impacts on the County's fee structures and rule implementation and enforcement efforts, and other logistical and financial ramifications; (3) the loss of increased agricultural productivity in the north portion if the air quality benefits associated with the bump-up of the entire County are foregone; (4) the need to undertake a wholesale revision to the SIP, and to require additional emissions reductions only from sources in the south portion; (5) the disruption of air quality planning, if the north county (where the margin of attainment is very slim) slips back into nonattainment for the 1-hour standard, triggering the need for additional reductions, but too late to avoid a 1999 nonattainment finding; and (6) the complication for air quality planning if the north portion continues to exceed the 8-hour ozone NAAQS and the State and District must therefore prepare separate plans for the north and south portions.

*Response:* EPA fully supports streamlining and targeting plan requirements, and will work with SBCAPCD and CARB to maximize flexibility and cost effectiveness in the preparation of the SIP revision. So long as the few minimum CAA mandates are met, SBCAPCD and CARB are entitled to impose new controls of different stringency in different portions of the County. This is true regardless of whether or not the reclassification is restricted only to the south portion. Whether the reclassification may be limited to only the southern portion depends on the technical basis. The technical basis is discussed below. In any event, EPA believes that EDC raises important, potentially unfavorable consequences of splitting the County and reclassifying only the south portion. EPA urges CARB and SBCAPCD to consider such possible detrimental aspects of significantly changing the focus of air pollution control efforts in the County.

2. *Comments on the technical basis for reclassifying only the south portion:* SBCAPCD provided technical information on the air quality and

meteorological basis for limiting the bump-up to the south portion, including an assessment of the contribution the north portion of the County has on days when the south portion exceeded the 1-hour ozone NAAQS in the period 1994 through 1996. SBCAPCD concluded from this analysis that on most of the exceedance days contributions from the north portion do not appear to be significant, but that on other exceedance days contributions from the north portion of the County could not be ruled out with the available data. The District noted that one monitor in the north portion recorded violations of the new 8-hour NAAQS for the 1994–1996 period, but SBCAPCD expressed the belief that anticipated reductions in regional and local emissions should cause the site to be in compliance with the 8-hour standard by 2000.

CARB pointed to the absence of violations of the 1-hour ozone standard in the north portion since 1991, referenced a downward emissions trend, and stated that the north and south portions of the County are geographically distinct. CARB concluded that EPA should reconsider the proposal to reclassify the entire County.

EDC, on the other hand, strongly opposed bifurcating the nonattainment area and presented: (1) technical information relating to rapid development now occurring in, or planned for, the north portion of the County, making an increase in mobile source emissions highly probable; (2) air quality data showing that several monitoring locations in the north portion experience exceedances or near-exceedances of the new Federal 8-hour NAAQS and routinely exceed the State 1-hour ozone standard (0.09 ppm); (3) arguments that the existing monitoring network is inadequate to record peak concentrations and that high elevation stations should be located near urbanized north County areas; and (4) arguments that modeling shows that the entire southern California region shares at least portions of airsheds at times, and that the north portion is both a downwind/recipient region and an upwind/contributor region, and that therefore the failure to bump up the north portion of the County could impair the efforts of Ventura and the South Coast areas to attain.

*Response:* EPA agrees with SBCAPCD that, for the period 1994–1996, most exceedances appear to have been influenced by areas to the southeast, rather than from the north portion of the County. EPA is not convinced at this time that the available data and analyses (which do not include photochemical

modeling information) provide conclusive evidence that sources in the north portion would not significantly impact air quality in the south portion under meteorological conditions that have occurred in the area, and may occur in the future. While the existing modeling domain does not cover the bulk of the north portion, it is possible that useful urban airshed modeling (UAM) for the entire County will be available from the Southern California Ozone Study (SCOS), a broad scale regional air quality assessment undertaken this year. EPA hopes that this information will allow for a more informed decision regarding the impacts of emissions in the north portion on ozone concentrations in the south portion, both with respect to the 1-hour and the 8-hour ozone standards.

EPA continues to review the submitted data and conclusions, and has requested additional information from SBCAPCD relating to the amount of manmade and biogenic emissions in the north portion compared to the south portion of the County. SBCAPCD has provided this data, which is part of the rulemaking docket. The SBCAPCD data on point source emissions indicate that south county sources emit approximately 26% of reactive organic gases (ROG) and 8.5% of nitrogen oxides (NOx), north county sources emit roughly 53% of ROG and 65% of NOx, and the remaining emissions occur in the Outer Continental Shelf (OCS). EPA has not yet received data on the north-south split of mobile source emissions, including VMT, but the high proportion of industrial emissions in the north portion by itself suggests the potential for significant impacts from these sources on ozone concentrations in the south portion.

Moreover, as discussed in response to the comment below on procedural issues, EPA does not believe that the Agency could revise, in this final action, the nonattainment boundaries or establish separate nonattainment areas with different classifications, since the public involvement requirements of the Administrative Procedure Act, including notice and comment, have not yet been satisfied for this issue. EPA offers to work closely with the SBCAPCD, CARB, and other interested parties if they wish to assemble and analyze all of the necessary information to determine whether reclassification or redesignation is appropriate.

**3. Comments on procedural issues associated with reclassifying only the south portion or redesignating the north portion to attainment:** SBCAPCD noted that while certain procedural requirements of section 107 of the CAA

may still need to be addressed, EPA may at this time determine that available information indicates that the north portion should not be classified as a serious nonattainment area. SBCAPCD stated that EPA can use its authority under section 110(k)(6) of the Act to correct the boundaries of nonattainment areas where information reveals that the previous boundaries were in error.

EDC stated that EPA's notice of proposed rulemaking cannot serve as a vehicle for redesignation of the nonattainment boundaries, since the notice did not propose partial reclassification and lacked the specificity to alert interested parties to the relevant facts. EDC concluded that a final EPA action reclassifying only the south portion would fail to meet the requirements of the Administrative Procedures Act regarding full disclosure of the legal basis, supporting facts, and logical rationale for a partial reclassification action, and therefore would fail to provide a fair opportunity for the public to consider and review the action. EDC also referenced section 107(d)(3)(E) of the CAA, which requires a series of determinations and approvals before redesignation to attainment, if the north portion were not to retain a moderate nonattainment classification but be redesignated to attainment. EDC noted that prerequisite to redesignation must be full approval of applicable attainment and maintenance plans, findings of the permanence and enforceability of emission reductions, and other factual conclusions which are not appropriate for the north portion of the County at this time.

**Response:** EPA agrees with EDC that the proposal published on September 2, 1997, does not meet applicable procedural requirements for public notice and involvement on issues relating to a bump up of only the south portion. For this reason, EPA is not taking final action at this time to divide the County into two nonattainment areas.

Moreover, as discussed above, EPA does not believe that currently available information supports a determination that the county-wide boundary for Santa Barbara is in error.

Finally, if the State and SBAPCD intend the north portion of the County to be redesignated to attainment, the CAA specifies both procedural and substantive steps that the Governor and EPA must take before a redesignation or boundary change is proposed.<sup>3</sup> If the

<sup>3</sup> In the 1990 amendments to the Clean Air Act, Congress established by operation of law boundaries for ozone and carbon monoxide nonattainment areas classified as serious, severe, or

State wishes the north portion to be designated as a separate nonattainment area, EPA would also need to identify appropriate SIP requirements for the area. EPA will protect the public's rights to be involved in, and to provide constructive input to, any future decisionmaking on reclassification and redesignation.

#### *B. Comments Related to Pollutant Transport*

**Comment:** SBCAPCD and the late Congressman Capps urged EPA to recognize the contribution of transport of air pollution into Santa Barbara County from upwind areas, and asked EPA to help ensure that these areas meet their responsibilities in mitigating their transport. SBCAPCD also requested EPA assistance in quantifying these impacts.

**Response:** As noted above, the SCOS was undertaken this year. The domain of the SCOS extends from Santa Barbara to northern Mexico. This study was designed to provide, for the first time, scientific information on the extent to which ozone and ozone precursors travel within this area. EPA has provided funding for the SCOS, and expects to continue to provide technical support to the cooperative project. EPA hopes that the SCOS will lead to the development of new analytical tools, including updated and enhanced UAM

extreme. Congress set the default boundary for these areas as the metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA). CAA Section 107(d)(4)(iv). This expansive boundary was selected in order to ensure that nonattainment areas would not be reduced to a size that would frustrate regional planning or jeopardize long-term attainment prospects because of pollution transported into the nonattainment area from rapidly growing suburban areas.

In section 107(d)(4)(A)(v) of the Act, Congress identified some of the criteria to be used in determining whether any portion of an MSA or CMSA could be excluded from an ozone or carbon monoxide nonattainment area. "Whenever a Governor finds and demonstrates to the satisfaction of the Administrator, and the Administrator concurs in such finding, that with respect to a portion of a metropolitan statistical area or consolidated metropolitan statistical area, sources in the portion do not contribute significantly to violation of the national ambient air quality standard, the Administrator shall approve the Governor's request to exclude such portion from the nonattainment area. In making such finding, the Governor and the Administrator shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport."

The State of California formally concurred in the county-wide boundaries for the Santa Barbara ozone nonattainment area, which were confirmed by EPA in the initial promulgation of designations and classifications under the 1990 amendments to the CAA. See letter from James D. Boyd, CARB Executive Officer, to Daniel W. McGovern, Regional Administrator, USEPA Region 9, dated March 15, 1991; and 56 FR 56729, November 6, 1991 (codified at 40 CFR 81.305).

modeling, to predict with much greater precision the air quality impacts of locally generated emissions and pollution transported from upwind areas. Based on this information, the State and local air pollution control districts should be able to develop more effective air quality plans that can speed progress toward meeting the health-based NAAQS and achieving other environmental benefits. In the meantime, EPA has advised all Southern California air pollution control agencies that they must responsibly implement their air quality plans to ensure that air quality progress in downwind areas is not jeopardized.

### C. Miscellaneous Comments

*Comment:* The Santa Barbara Association of Realtors (SBAR) noted that only 7 percent of the total emissions in the County can be regulated by the SBCAPCD, that the District has gone just about as far as they can go to reduce emissions, and that the imposition of harsher air quality standards on the local business community will revert the County into another recession. SBAR urged flexibility, and recommended that EPA grant a waiver of one to three years for the County to meet the 1996 ozone standard, rather than punish the area "for failure to meet a questionable standard in a minuscule manner in an exact time period. \* \* \*"

*Response:* EPA agrees with SBAR that the SBCAPCD and local industry working in concert have an excellent record of environmental commitment and innovation in identifying and implementing available controls. This extraordinary cooperative local effort was honored last year when the SBCAPCD received both the Presidential Award for Sustainable Development and the Governor's Environmental and Economic Leadership Award.

While EPA may desire more flexibility in this situation to reward Santa Barbara County for its demonstrated leadership, the Agency has not been granted that flexibility under the Clean Air Act. The CAA does not allow for reviewing an area's efforts to adopt controls or the comparative availability of new control opportunities within an area. Determining whether an area met its attainment deadline is based solely on available ambient air quality data.

The classification structure of the Act is a clear statement of Congress's belief that the later attainment deadlines afforded higher-classified and reclassified areas as due to the greater stringency of controls. The

reclassification provisions of the Clean Air Act are not punitive, but rather are a reasonable mechanism to assure continued progress toward attainment of the health-based ambient air quality standards when areas miss their attainment deadlines.

Neither the provisions of 40 CFR 50.9, as revised (62 FR 38856 and 62 FR 38894), nor any other statutory or regulatory provisions, provide EPA with the authority to suspend enforcement of the 1-hour NAAQS in Santa Barbara. Moreover, the Santa Barbara area has not complied with some of the most significant serious area requirements (e.g., the 9 percent rate of progress requirement). Finally EPA believes that complying with those requirements will have a positive, not detrimental, effect on the ability of Santa Barbara to comply with the 8-hour standard.

*Comment:* SBAR commented that EPA should complete a "cost versus benefit" analysis and should attempt to mitigate economic burdens associated with reclassification through incentive and inducement rather than punitive measures with a "command and control" mentality.

*Response:* Congress established in the CAA certain SIP requirements for serious ozone areas. EPA does not mandate any specific controls or control approach beyond these statutory requirements, and encourages State and local agencies to pursue pollution prevention and other techniques for achieving the CAA public health goals while minimizing costs and dislocations. The Agency encourages SBAR to suggest specific ways in which the Federal government could provide incentives and inducements.

*Comment:* EDC noted that EPA and SBCAPCD had delayed in responding to 1996 violations. EDC stated that setting a one year period after the effective date of EPA's action would allow too long a period for SIP submittal. EDC suggested February 1998 as the SIP submittal deadline, unless SBCAPCD begins adopting and implementing additional control measures immediately to assure progress towards attainment by November 1999.

*Response:* EPA believes that the SIP schedule—submission of a SIP meeting all applicable CAA requirements for a serious ozone nonattainment area by one year from the effective date of this final action—is ambitious but grants sufficient time for completing necessary technical analyses, interactions with involved agencies and the public, and rule development activities. In addition, this schedule should allow for implementation of the plan during the full ozone season in 1999, the

attainment year. EPA believes that it would be unrealistic to require plan submission at an earlier date or to mandate prior rule adoption by the SBCAPCD.

### IV. Final Action

EPA is finding that the Santa Barbara ozone nonattainment area did not attain the ozone NAAQS by November 15, 1996, the CAA attainment date for moderate ozone nonattainment areas. As a result of this finding, the Santa Barbara ozone nonattainment area is reclassified by operation of law as a serious ozone nonattainment area on the effective date of today's action and the submittal of the serious area SIP revisions will be due no later than 12 months from this effective date. The requirements for this SIP submittal are established in CAA section 182(c) and applicable EPA guidance.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future action. Each finding of failure to attain, request for an extension of an attainment date, and establishment of a SIP submittal date shall be considered separately and shall be based on the factual situation of the area under consideration and in relation to relevant statutory and regulatory requirements.

### V. Administrative Requirements

#### A. Executive Order (E.O.) 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today's action is a "significant regulatory action" within the meaning of the E.O., and therefore should be subject to OMB review, economic analysis, and the requirements of the E.O. See E.O. 12866, sec. 6(a)(3). The E.O. defines, in sec. 3(f), a "significant regulatory action" as a regulatory action that is likely to result in a rule that may meet at least 1 of 4 criteria identified in section 3(f), including,

(1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that neither the finding of failure to attain it is making

today, nor the establishment of SIP submittal schedule would result in any of the effects identified in E.O. 12866 sec. 3(f). As discussed above, findings of failure to attain under section 181(b)(2) of the Act are based upon air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. These findings do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. Similarly, the establishment of new SIP submittal schedules merely establishes the dates by which SIPs must be submitted, and does not adversely affect entities.

#### B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 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 economic 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.

As discussed above, a finding of failure to attain (and the consequent reclassification by operation of law of the nonattainment area) under section 181(b)(2) of the Act, and the establishment of a SIP submittal schedule for a reclassified area, do not, in-and-of-themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply makes a factual determination and establishes a schedule to require States to submit SIP revisions, and does not directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA reaffirms its certification made in the proposal (62 FR 46233) that today's final action will not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

#### C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates "any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more" in any 1 year. A "Federal mandate" is defined, under section 101 of UMRA, as a provision that "would impose an enforceable duty" upon the private sector or State, local, or tribal governments", with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA "establish[es] any regulatory requirements that might significantly or uniquely affect small governments." Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's "regulatory proposals" that contain significant Federal intergovernmental mandates. Under section 205 of UMRA, before EPA promulgates "any rule for which a written statement is required under [UMRA sec.] 202," EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

Generally, EPA has determined that the provisions of sections 202 and 205 of UMRA do not apply to this decision. Under section 202, EPA is to prepare a written statement that is to contain assessments and estimates of the costs and benefits of a rule containing a Federal Mandate "unless otherwise prohibited by law." Congress clarified that "unless otherwise prohibited by law" referred to whether an agency was prohibited from considering the information in the rulemaking process, not to whether an agency was prohibited from collecting the information. The Conference Report on UMRA states, "This section [202] does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the

estimate or analysis in adopting the rule." 141 Cong. Rec. H3063 (Daily ed. March 13, 1995). Because the Clean Air Act prohibits, when determining whether an area attained the ozone standard or met the criteria for an extension, from considering the types of estimates and assessments described in section 202, UMRA does not require EPA to prepare a written statement under section 202. Although the establishment of a SIP submission schedule may impose a Federal mandate, this mandate would not create costs of \$100 million or more, and therefore, no analysis is required under section 202. The requirements in section 205 do not apply because those requirements for rules "for which a written statement is required under section 202. \* \* \*"

With regard to the outreach described in UMRA section 204, EPA discussed its proposed action in advance of the proposal with State officials.

Finally, section 203 of UMRA does not apply to today's action because the regulatory requirements finalized today—the SIP submittal schedule— affect only the State of California, which is not a small government under UMRA.

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

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

#### E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, ozone.

Dated: November 26, 1997.  
**Felicia Marcus,**  
*Regional Administrator.*

Part 81, chapter I, title 40 of the Code of Federal Regulations 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

CALIFORNIA-OZONE

revising the entry for “Santa Barbara-Santa Maria-Lompoc Area Santa Barbara County” to read as follows:

**§ 81.305 California.**

\* \* \* \* \*

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Santa Barbara-Santa Maria-Lompoc Area Santa Barbara County .....	11/15/90	Nonattainment ....	1-9-98	Serious.
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<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

[FR Doc. 97-32332 Filed 12-9-97; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-300588; FRL-5758-2]

RIN 2070-AB78

**Cyromazine; Pesticide Tolerances for Emergency Exemptions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for the combined residues of cyromazine and its metabolite melamine in or on lima beans and blackeye peas. This action is in response to EPA’s granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on lima beans and blackeye peas. This regulation establishes a maximum permissible level for residues of cyromazine in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1998.

**DATES:** This regulation is effective December 10, 1997. Objections and requests for hearings must be received by EPA on or before February 9, 1998.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP-300588], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees

accompanying objections and hearing requests shall be labeled “Tolerance Petition Fees” and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300588], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM 2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300588]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Andrew Ertman, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal

Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9367, e-mail: ertman.andrew@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues of the insecticide cyromazine and its metabolite melamine in or on lima beans at 5.0 part per million (ppm) and blackeye peas at 5.0 ppm. This tolerance will expire and is revoked on December 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

**I. Background and Statutory Authority**

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL-5572-9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) defines “safe” to mean that “there is a