1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1011 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

**§ 907.1011 Navel Orange Regulation 711.**

The quantity of navel oranges grown in California and Arizona which may be handled during the period from March 16 through March 22, 1990, is established as follows:

(a) District 1: $1,653,000 cartons;
(b) District 2: 247,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: unlimited cartons.

Dated: March 14, 1990.

**Charles R. Brader,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 90–6226 Filed 3–15–90; 8:45 am]

BILLING CODE 3410–02–M

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## Farmers Home Administration

## 7 CFR Parts 1900, 1951, 1955

## Adverse Decisions and Administrative Appeals

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its adverse decisions and administrative appeals regulation. This action is being taken to: (1) Provide for multi-party appeal hearings in appeals regarding leaseback/buyback and homestead protection and the sale of suitable farm property to eligible applicants; (2) clarify several non-appealable decisions; (3) provide a form for use by appellants in requesting appeal hearings; and (4) make other necessary clarifications and editorial changes. The intended effect of this action is to implement and further clarify changes implemented as a result of the "Agricultural Credit Act of 1987" (Pub. L. 100–233).

**DATES:** *Effective Date:* Interim rule effective March 16, 1990.

*Comment Date:* Comments must be submitted on or before May 15, 1990.

**ADDRESSES:** Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agricultural Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0129), Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** John Gleason, Deputy Director, National Appeals Staff, Farmers Home Administration, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, telephone (703) 756–7008.

**SUPPLEMENTARY INFORMATION:**

### Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G "Environmental Program." It is the determination of FmHA that this action, consisting only of changes in functions of Agency personnel, does not constitute a major federal action significantly affecting the quality of human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

### Intergovernmental Consultation

This activity affects all FmHA financial assistance programs. The conducting of administrative appeals is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultations with State and local officials. FmHA financial assistance programs subject to intergovernmental consultation are cited in 7 CFR part 3015, subpart V.

### Programs Affected

These changes affect the following FmHA Programs as listed in the catalog of Federal Domestic Assistance.

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Committees
10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Technical Assistance
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facility Loans
10.427 Rural Rental Assistance Payments
10.428 Economic Emergency Loans
10.433 Housing Preservation Grants
10.434 Nonprofit National Corporation Loan and Grant Program
10.439 Intermediary Relending Progam

### Discussion of Interim Rule

1. FmHA is implementing this interim rule immediately with a 60 day comment period. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules.

The "Agricultural Credit Act of 1987" (Pub. L. 100–233), section 610—Disposition and Leasing of Farmland mandated changes in FmHA regulations regarding the leaseback/buyback and homestead protection rights of the former borrower owner, the spouse or child of the former owner and the immediate previous family size farm operator of FmHA inventory property. Section 610 also required changes to FmHA regulations for the sale of suitable inventory property to eligible family size farm operators after the leaseback/buyback and homestead protection rights of individuals, in the previously mentioned categories, had expired or been exhausted through the appeals process.

Section 610 of the Act also provides that when more than one eligible applicant wishes to purchase the inventory property, the FmHA County Committee will select from the qualified applicants, the applicant who has the greatest need for farm income and best

meets the criteria for eligibility for FmHA loan assistance.

Section 610 further states that denials of applications for or disputes over terms and conditions of a lease or purchase agreement under this section are appealable. In implementing the provisions of the Act, the Agency has realized that more than one eligible individual who has leaseback/buyback or homestead protections rights may wish to purchase the inventory property. Likewise, after leaseback/buyback and homestead protection rights have expired, there are frequently several eligible applicants for the purchase of suitable farm inventory property. The result has been that there are several parties to each appeal and any favorable decision to one appellant becomes adverse to the other appellants. The present Agency appeal regulations contain no provisions for handling those multi-party appeals.

This has resulted in the inability of the Agency to effectively implement the statutory requirements of the Act to place FmHA inventory property back into the hands of family size farmers. Section 624 of the Act required the Agency to promulgate regulations pursuant to the act within 150 days after enactment, which was January 6, 1988.

It is the responsibility of the Agency to provide assistance to farmers as provided for in the Act, and immediate implementation of these regulations is necessary to fulfill that responsibility. Other changes in the regulations are administrative management changes and clarifications necessary to conduct administrative appeals.

Section 534 of the Housing Act of 1949, as amended, requires that a regulation made pursuant to the Housing Act is not effective until publication for public comment for 60 days and published in final form for 30 days, unless the rule is published on an emergency basis. Since the primary intent of this rule is to implement the provisions of the Agricultural Credit Act of 1987 as it relates to farmer program loans, and does not primarily impact housing programs, there will be no waiting period between the date this interim rule is published and the effective date of the regulations. The comment period of this interim rule will be 60 days from the date of publication.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule action are impractical, and good cause is found for making this interim rule effective less than 30 days after publication in the Federal Register.

2. The current regulations contain inconsistencies as to who may appeal an adverse decision and what decisions are covered. Section 1900.55 is revised to state that a State Director's refusal to request an administrative waiver is not appealable. The Administrator's authority to waive applicable regulations is reserved for those cases where applying the regulations as written would not be in the best interest of the Government. The decision as to what is in the best interest of the Government is reserved for the Agency and not the appellant. This section is also revised to state that the denial of a request by a borrower or applicant which is based on the fact that FmHA has no funds or authority to guarantee a loan is not appealable.

3. Exhibits B–3 and B–4 to this subpart are added to cover cases where decisions to deny assistance are based wholly or partially on an FmHA appraisal. These exhibits will not be used for appeals involving Farmer Program primary loan servicing cases. The old Exhibit B–3 is removed and incorporated into a new form, Form FmHA 1900–1, "Request for Appeal of Adverse Action" used by appellants to request an administrative appeal.

4. Exhibit A to this subpart is removed and reserved. The old Exhibit A, "Guide to Conducting a Hearing" set forth the presentation format for conducting a hearing. This involved the internal operation of the National Appeals Staff and does not need to be included in published regulations. Hearing officers are notifying appellants of the presentation format in letters to the appellant scheduling the appeal hearing, and therefore this exhibit is obsolete.

5. Several editorial and clarification changes are also made in other parts of this subpart as necessary to effect the changes already discussed or to provide clarification.

6. Subpart S of part 1951 of this chapter is revised in § 1951.911(a)(2)(ii) to require the County Supervisor to notify the selected applicant for leaseback/buyback that his/her selection is subject to the appeal rights of the unsuccessful applicants. Section 1951.911(b)(5) is also revised to require similar notification to a successful applicant for homestead protection.

7. Subpart C of part 1955 of this chapter is revised in § 1955.107(e)(2) to require notification of the applicant for suitable farm inventory property that his/her selection is subject to the appeal rights of the unsuccessful applicants.

**List of Subjects**

*7 CFR Part 1900*

Appeals, Credit, Loan programs—Housing and community development.

*7 CFR Part 1951*

Account servicing, credit, loan programs—Agriculture loan programs, Housing and community development, Low and moderate income housing loans—Servicing, Debt restructuring.

*7 CFR Part 1955*

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

## PART 1900—[GENERAL]

1. The authority citation for part 1900 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart B—Adverse Decisions and Administrative Appeals

2. Section 1900.51 is amended by revising paragraphs (b), (c) and (e) as follows:

**§ 1900.51 General.**

* * * * *

(b) The provisions of this subpart apply to program administrative decisions concerning all loans, loan guarantees and grants made by FmHA. These include farmer program loans, housing program loans (both single and multi-family), community and business program loans, and all grant programs administered by FmHA. Hearings for single family housing loans sold to the Rural Housing Trust 1987–1 will be conducted by the Trust's Master Servicer acting through its subservicer. The borrower has the rights to a final review by the FmHA National Appeals Staff as defined in § 1900.58 of this subpart except the State Director cannot be the initial review officer. The initial review will be conducted by the Trusts Master Servicer.

(c) The provisions of this subpart do not apply to any decisions made by FmHA other than those referred to in paragraph (b), of this section, nor to decisions made by organizations outside FmHA even when those decisions are used as a basis for decisions falling within paragraph (b), of this section. Examples of the first kind of decisions are Freedom of Information Act

decisions to release or deny the release of information sought by members of the public (appealable under 7 CFR part 1), decision to purchase or not to purchase goods and services from members of the public under the Federal contracting laws and regulations (which decisions are appealable to the Department's Board of Contract Appeals under 7 CFR part 24), FmHA multi-family housing tenant appeals covered by the appeals provisions of 7 CFR part 1944, suspension and debarment disputes falling within the scope of 7 CFR part 1944, and salary and tax refund offsets. Examples of the second kind of decision are decisions of the Federal Crop Insurance Corporation concerning claimed crop losses (which may determine whether the producer of the crop can or cannot qualify for an FmHA Emergency loan), decisions of the Soil Conservation Service on whether particular farmland is or is not "highly erodible" (which may determine whether an applicant is eligible for participation in FmHA loan programs), and decisions by State governmental construction standards-setting agencies (which may determine whether FmHA will finance certain houses).

* * * * *

(e) Assistance will not be discontinued pending the outcome of an administrative appeal of a complete or partial adverse action. For borrowers with farmer program loans, as defined in § 1900.52(e) of this subpart, releases for essential family living and farm operating expenses will not be terminated until the account has been accelerated.

3. Section 1900.52 is amended by redesignating paragraphs (b) through (j) as (c) through (k); by adding new paragraph (b); and by revising paragraphs (a), (c), (d), (g) and (h) to read as follows:

**§ 1900.52 Definitions.**

(a) *Appellant* means an applicant for FmHA assistance or an FmHA borrower, holder (only as to decisions involving the repurchase of the holder's interest), or grantee, either individual or organizational, that is directly and adversely affected by an administrative decision by FmHA. The appellant may also be an applicant for or a recipient of a loan guarantee. As provided in § 1900.57(m) of this subpart there can be multiple appellants in certain cases.

(b) *Appellee* in multi-party appeals only, as provided in § 1900.57(m) of this subpart an appellee is a borrower or applicant who was initially selected for leaseback/buyback or homestead protection under § 1951.911 of subpart S of part 1951 of this chapter or was initially selected to purchase the suitable farm property under § 1955.107 of subpart C of part 1955 of this chapter, when another non-selected applicant appeals the sale.

(c) *Hearing*, as used in this subpart, is an informal proceeding at which an administrative appeal from an adverse decision is heard.

(d) *Decision maker* is the FmHA official who actually makes the specific decision but not the official who serves in an advisory capacity in interpreting instructions, policies, or technical items, or who performs routine supervision. For example, if any FmHA official reviews a preapplication from an organization and directs a subordinate to include specific items in Form AD-622, "Notice of Preapplication Review Action," the official is the decision maker. However, when the official or designee serves only in an advisory capacity and is not significantly involved in the decision, the subordinate will be considered the decision maker. In cases where the County Committee made the specific decision, any designated member of the County Committee or the County Supervisor may represent the County Committee in appeals under this subpart.

* * * * *

(g) *Review officer* is the member of the National Appeals Staff or a State Director acting as review officer who has the authority to uphold, reverse, or modify decisions of the decision maker. See Exhibit D of this subpart for the designations of review officers.

(h) *Record* means the FmHA file, papers filed by an appellant, audio tapes, written version of the transcript (if any) of a hearing, and decisions made by FmHA.

* * * * *

4. Section 1900.53 is amended by revising paragraphs (a)(4), (b) and (c)(1) to read as follows:

**§ 1900.53 Adverse action procedures.**

(a) * * *

(4) When the person or organization officials attend a meeting with the decision maker and the meeting results in a resolution of the matter, the official will send the person or organization a letter within 7 calendar days of the meeting, setting forth the conclusions reached. If the meeting does not result in a resolution of the matter, Exhibit B-2 of this subpart and Form FmFA 1900-1, "Request for Appeal of Adverse Action" will be sent within 7 calendar days of the meeting to notify the person or organization of their rights to an administrative appeal. If an applicant or borrower who requests a meeting fails to agree to a time and place or to attend, the appellant is still entitled to a hearing.

(b) When an applicant or borrower who is also an applicant for FmHA services wishes to contest an appraisal of property value (except for appraisals made in connection with farmer program primary and preservation loan services), the applicant must be advised that he or she must request review of the appraisal by the State Director of FmHA before the appeal. Exhibit B-3 of this subpart will be used to notify the appellant. If an applicant or borrower seeks such a review by the State Director, the time for requesting an appeal will be extended until after the State Director has acted on the review request. The State Director will review each such request and, when in his or her sole discretion it is deemed appropriate, may send a representative to make an on-site review. If this does not result in a resolution of the matter, Exhibit B-4 of this subpart and Form FmHA 1900-1 will be sent to the appellants to notify them of their appeal rights. Appraisals involving farmer program primary and preservation loan servicing may be appealed directly to the Area Supervisor, National Appeals Staff without prior review by the State Director. The appellant bears the burden of showing why the appraisal is in error. The appellant may submit an independent appraisal, at his/her cost, from a qualified appraiser, who is a designated member of a National appraisal society or organization. The appraisal must conform to Agency appraisal regulations applicable to the loan program. If the two appraisal values vary by not more than five percent, the FmHA appraisal will be considered the basis of valuation.

(c) * * *

(1) Letters, as indicated in Exhibits B-1 and B-2 and Form FmHA 1900-1, or Exhibit C of this subpart, as appropriate, will be used to notify the applicant, borrower or grantee. The notice will advise how to request an administrative appeal and to obtain the record.

* * * * *

5. Section 1900.55 is amended by revising the introductory text of paragraph (a), by adding paragraphs (a)(15), (a)(16), and by revising paragraph (b) to read as follows:

**§ 1900.55 Appealable and non-appealable decisions.**

(a) Program administrative decisions of the Farmers Home Administration that directly and adversely affect program applicants, borrowers or grantees are appealable to the National

Appeals Staff under the provisions of this subpart. All matters concerning the application of the law and applicable regulations to the facts of the matter may be considered. The National Appeals Staff and its officers do not, however, have the authority to change or waive applicable laws or regulations. Program administrative decisions based on clear and objective statutory or regulatory requirements are therefore not appealable. However, such decisions are reviewable and Exhibit C of this subpart will be used in these cases. Examples of non appealable decisions include:

* * * * *

(15) State Director's refusal to request an administrative waiver provided for in various FmHA program regulations.

(16) Denials of assistance due to lack of funds or authority to guarantee.

(b) Appraisals of property value including chattels, may be appealed through the hearing and review process provided for in this subpart only after review by the State Director as provided in § 1900.53(b) of this subpart. Appraisals involving farmer program primary and preservation loan servicing may be appealed without prior review by the State Director.

* * * * *

6. Section 1900.56 is amended by revising paragraph (a)(5) to read as follows:

**§ 1900.56 Appeal requests.**

(a) * * *

(5) The hearing will be held at a location convenient to the appellant, decision maker and hearing officer. The hearing must be held in the state of residence of the appellant unless the appellant agrees to another location. If no place can be agreed on, the hearing officer will select the location within the appellant's state of residence. The location of the hearing will normally be within 100 miles of the residence of the appellant.

* * * * *

7. Section 1900.57 is amended by revising paragraphs (a), (e), (g), (j) and (l) and by adding paragraph (m) to read as follows:

**§ 1900.57 Hearing rules.**

(a) The hearing will be an informal proceeding at which the appellant has the responsibility of showing why the initial decision should be modified or reversed. To do so the appellant may provide any information or witnesses the appellant believes should be considered in reaching a proper decision. The appellant may present evidence, witnesses (when appropriate, FmHA witnesses requested by the appellant will be made available at the hearing) and arguments in support of appellant's appeal, controvert evidence relied on by FmHA, and may question all witnesses. Any evidence may be received by the hearing officer without regard to whether that evidence could be employed in judicial proceedings.

* * * * *

(e) For good cause, the hearing officer will, at the request of any party to an appeal, continue the hearing to a future time. The length of the continuance will be in the hearing officer's discretion.

* * * * *

(g) If an appellant waives the opportunity for a hearing and the hearing officer reviews any information the appellant or decision maker has not previously reviewed, the parties to the appeal will be advised by the hearing officer of the additional information and be allowed an opportunity to review it and respond accordingly. Usually, the total time given the appellant or decision maker to review and respond to this additional information will not exceed 15 calendar days.

* * * * *

(j) If the initial decision is upheld or modified but not reversed, the hearing officer will inform the appellant by letter of the decision giving specific reasons, with a copy to the decision maker and any other official servicing the account. Normally the hearing officer's decision letter will be similar to FmHA Guide Letter 1900–B–1. For appeals involving the denial of farmer program primary loan servicing programs, the hearing officer's decision letter will be sent by certified mail to the appellant with a return receipt to the initial decision maker.

* * * * *

(l) For appeals involving farmer program primary and preservation loan servicing, an appeal may include a request by the borrower for an independent appraisal of any property involved in the decision. On such request the hearing officer shall present the borrower with a list of at least three appraisers approved by the county supervisor, from which the borrower shall select an appraiser to conduct the appraisal, the cost of which shall be borne by the borrower. The results of such appraisal shall be considered in any final determination concerning the loan. A copy of any appraisal shall be provided to the borrower. If an independent appraisal is requested, the 45-day decision deadline referred to in paragraph (h) of this section is extended as necessary to allow completion of the appraisal.

(m) *Multi-party hearings.* (1) Appeals arising out of County Committee selection for leaseback/buyback under § 1951.911(a)(2)(ii) of subpart S of part 1951 of this chapter will be conducted in multi-party hearings. All applicants considered by the County Committee, but denied leaseback/buyback, who appeal the selection, will be made appellants in the appeal. The successful applicant will be made an appellee to the appeal. Any applicant electing not to participate in the appeal waives the right to appeal the original decision.

(2) Appeals arising out of selection for homestead protection under § 1951.911(b) of subpart S of part 1951 of this chapter will be conducted in multi-party hearings to the extent that there is more than one applicant for homestead protection in connection with any parcel of property subject to homestead protection. All applicants considered for but denied homestead protection who appeal the selection will be made appellants in the appeal. Any applicant electing not to participate in the appeal waives the right to appeal the original decision.

(3) Appeals arising out of County Committee selection for the purchase of suitable farm property under § 1955.107(e)(2) of subpart C of part 1955 of this chapter will be conducted in multi-party hearings. All applicants considered but not selected by the County Committee, who appeal the selection will be made appellants in the appeal. The successful applicant will be made an appellee to the appeal. Any applicant electing not to participate in the appeal waives the right to appeal the original decision.

(i) An applicant determined ineligible by the County Committee, and therefore not included in the group of eligible applicants considered by the County Committee for selection, may be a party to the multi-party appeal if the ineligible determination is overturned in a separate appeal action. If this occurs, the County Committee must reconvene and include this applicant for consideration amongst all other eligible applicants.

(ii) The inventory property will not be sold until all appeals under paragraph (m) of this section are exhausted.

(4) To comply with the Freedom of Information Act and the Privacy Act rights of the appellants and appellee, multi-party appeal hearings will be conducted as consecutively scheduled individual hearings. At each part of the hearing, only the FmHA decision maker, the hearing officer and appellant or appellee, as appropriate, will be present Requests for transcripts and copies of

the appeal hearing tape will be limited to only the part of the hearing at which the appellants or appellee were present, to protect the Privacy Act rights of all parties to the hearing. The hearing rules of § 1900.57, (a) through (l) not inconsistent with this paragraph will otherwise govern multi-party hearings.

8. In § 1900.58, paragraph (d) is revised to read as follows:

**§ 1900.58 Review rules.**

* * * * *

(d) The appellant will be informed of the final decision by letter. A copy will be sent to the decision maker, the hearing officer and any other official servicing the account. If the State Director is the review officer, the appellant will be given further review rights to the Director of Appeals. The appellant will be notified as set forth in § 1900.57(j) of this subpart. For appeals involving farmer program primary loan servicing the review officer's decision letter will be sent by certified mail to the appellant with a return receipt to the initial decision maker.

9. Exhibit A to subpart B is removed and reserved.

10. Exhibits B–1, B–2, B–3 and C to subpart B are revised and B–4 is added to read as follows:

**Exhibit B–1—Letter for Notifying Applicants, Lender, Holders and Borrowers of Adverse Decisions Where the Decision is Appealable**

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert Address)

---

Date

Dear _____:

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration services] [are cancelling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

(Insert here the adverse decision and all of the specific reasons for the adverse action.)

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call or write the County Office (insert phone number) to request a meeting with (this office) (The County Committee) within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative [or legal counsel] with you. You also have the right to appeal this decision to a hearing officer in lieu of, or in addition to, a meeting with [this office] [the County Committee]. See attachment for your appeal rights. (Attach Form FmHA 1900–1.) (For guaranteed loans, except loss claims, the applicant and lender must jointly request a meeting and/or an appeal.)

If you do not wish a meeting, as outlined above, a request for a hearing must be sent to the Area Supervisor, National Appeals Staff (address) _____, postmarked no later than (month) _____, (date) _____.

(insert date 30 days from date of letter.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

---

(Decision Maker)
(County Supervisor may sign for County Committee)

---

(Title)

**Exhibit B–2—Letter for Notifying Applicants, Lenders and Holders and Borrowers of Unfavorable Decision Reached at the Meeting**

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert Address)

---

Date

Dear _____:

We appreciated the opportunity to review the facts relative to [your application/request for FmHA services] [the assistance you are presently receiving]. We regret that our meeting with you did not result in a satisfactory conclusion.

(Insert here the adverse decision and all the specific reasons for the adverse action).

See attachment for your appeal rights. (Attach Form FmHA 1900–1) (For guaranteed loans, except loss claims, the applicant and lender must jointly request an appeal.)

A request for a hearing must be sent to the Area Supervisor, National Appeals Staff _____, postmarked no later than (month) _____, (date) _____

(insert date 30 days from date of letter.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

---

(Decision Maker)
(County Supervisor may sign for County Committee)

---

(Title)

**Exhibit B–3—Letter for Notifying Applicants, Lender, Holders and Borrowers of Adverse Decisions Where the Decision Involves an Appraisal (Not To Be Used in Cases Involving Farmer Program Primary Loan Servicing Actions)**

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert Address)

---

Date

Dear _____:

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration services] [are cancelling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

(Insert here the adverse decision and all of the specific reasons for the adverse action.)

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call or write the County Office (insert phone number) to request a meeting with (this office) (The County Committee) within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative or legal counsel with you.

If you do not wish to have a meeting as outlined above, you may contest the appraisal of the property value. In order to contest the appraisal you must first request review of the appraisal by the FmHA State Director. Your request for review by the State Director should be made through our office. You will be advised of the results of the State Director's review. If after the State Director's review you still disagree with the appraisal you may request a hearing. When you receive the results of the State Director's review you will be advised on how to ask for a hearing. Your request for review of the appraisal must be postmarked no later than (month)_____, (date)_____ (insert date 15 days from date of letter).

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter

**Exhibit B-4—Letter for Notifying Applicants, Lenders and Holders and Borrowers of Unfavorable Decision Reached After State Director Review of an Appraisal (Not To Be Used in Cases Involving Farmer Program Primary Loan Servicing Actions)**

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert Address)

---

Date

Dear _____:

At your request we have reviewed the appraisal of the property you wish to purchase. We have determined that the value estimate of the property is both supportable and defensible (as required by FmHA regulations and appraisal industry standards) and therefore acceptable.

You have the right to appeal this decision. You must show why the appraisal is in error. You may submit an independent appraisal, at your expense, from a qualified appraiser who is a designated member of [the American Institute of Real Estate Appraisers, Society of Real Estate Appraisers, American Society of Farm Managers and Rural Appraisers, etc.,] or an equivalent organization requiring appraisal education, testing and experience. The appraisal must conform to Agency Appraisal regulations applicable to the loan program.

See attachment for your appeal rights.

A request for a hearing must be sent to the Area Supervisor, National Appeals Staff (address) _____, postmarked no later than (month) _____, (date) _____,

(insert date 30 days from date of letter)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

---

(State Director)

**Exhibit C—Letter for Notifying Applicants, Lenders and Holders and Borrowers of Adverse Decisions When Part or all of the Decision is Not Appealable**

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert Address)

---

(Date)

Dear _____:

After careful consideration we [were unable to take favorable action on your application/request for Farmers Home Administration services] [are cancelling/reducing the assistance you are presently receiving].

(Insert and number all of the *specific* reasons for the adverse action. Examples of nonappealable reasons are listed in § 1900.55(a)).

If you have any questions about this action, we would like the opportunity to explain in detail why your request has not been approved, explain any possible alternative, or provide any other information you would like. You may bring any additional information you may have and you may bring a representative or counsel if you wish. Please call (*telephone number*) for an appointment.

Applicants and borrowers generally have a right to appeal adverse decisions, but FmHA decisions based on certain reasons are not appealable. We have determined that the reason(s) numbered _____ for the decision in this case make(s) the decision not appealable under FmHA regulations. You may, however, write the Area Supervisor, National Appeals Staff (insert address) for a review of the accuracy of our finding that the decision is not appealable, postmarked no later than (month) _____, (date) _____ (insert date 30 days from date of letter).

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

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(Decision Maker)
(County Supervisor may sign for County Committee)

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(Title)

## PART 1951—SERVICING AND COLLECTIONS

11. The authority citation of part 1951 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

### Subpart S—Farmer Program Account Servicing Policies

12. Section 1951.911 is amended by revising paragraph (a)(2)(ii) and paragraph (b)(5) to read as follows:

**§ 1951.911 Preservation loan service programs.**

(a) * * *

(2) * * *

(ii) Within each of the foregoing priorities if there is more than one individual eligible for leaseback/buyback in any category who has indicated an intention, in writing, to the County Supervisor to participate in the leaseback/buyback program (e.g., one individual wants to purchase and the other individual wants to rent) priority within the category will be given to an individual who wants to purchase the security, either for cash or by credit sale. There is no preference for a cash sale over a credit sale; if there are two or more individuals in the same priority category who are eligible for leaseback/buyback who both want to purchase (or to lease if no one wants to purchase), priority will be determined by the County Committee. The County Committee will make their selection as to which individual has the greatest need for farm income and who best meets the criteria for eligibility for a Farmer Programs loan. The County Supervisor will notify individuals not selected by the County Committee of the decision and rights in accordance with subpart B of part 1900 of this chapter. The County Supervisor will notify the individual selected by the County Committee that the selection is subject to being reversed if one or more unsuccessful applicants appeal the decision. The County Supervisor will also notify the selected individual that he or she will be required to participate in any appeal hearings arising out of the County Committee decision or lose the right to seek review of the hearing officer's decision if the hearing officer reverses the original decision selecting the applicant for leaseback/buyback.

* * * * *

(b) * * *

(5) *Appeal Rights.* If the County Supervisor determines that the applicant is not eligible for Homestead Protection or the lease is terminated because the lessee fails to make lease payments as scheduled or to maintain the property in good condition, the County Supervisor will notify the applicant or lessee in writing of the decision and give the opportunity to appeal in accordance with subpart B of part 1900 of this chapter. The property will not be leased or sold until the appeal is concluded. If more than one applicant is found eligible for homestead protection, but the County Supervisor grants homestead protection to only one applicant, the successful applicant will be notified that he or she will be required to participate in any appeal hearing arising out of the County Supervisor's decision or lose the right to seek review if the hearing officer reverses the County Supervisor's

decision selecting the applicant for homestead protection.

* * * * *

## PART 1955—PROPERTY MANAGEMENT

13. The authority citation for part 1955 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

### Subpart C—Disposal of Inventory Property

14. Section 1955.107 is amended by revising paragraph (e)(2) to read as follows:

**§ 1955.107 Sale of suitable property (CONACT)**

* * * * *

(e) * * *

(2) *Farm property.* Suitable farmland may only be sold to operators (as of the time immediately after the contract for sale or lease is entered into) of not larger than family-sized farms, as determined by the County Committee. However, suitable farmland larger than family size, may be sold to the former owner or the spouse or child(ren) of the former owner in accordance with leaseback/buyback provisions of subpart S of part 1951 of this chapter. Any credit sale of a suitable farm larger than a family size farm would be at ineligible rates and terms. In determining if the property is a family size farm, the County Committee should refer to the definitions of family farm and farm as outlined in § 1943.4 of subpart A of part 1943 of this chapter. In selling suitable farm land, priority must be given to persons eligible for FP loans, including individuals approved for, but who, as of January 6, 1988, have not received such loans. If two or more eligible operators of not larger than family-sized farms, as of the time immediately after the contract of sale or lease is entered into, wish to purchase a suitable farm, the County Committee will make the selection. The reasons explaining the County Committee's selection of the applicant will be fully documented on Form FmHA 440–2. The County Committee will give a priority to those eligible individuals who have pending applications filed but have not received the loan assistance, and make a selection from those eligible individuals that have the greatest need for farm income and best meet the criteria of eligibility for farm ownership loan assistance (refer to § 1943.12 of subpart A of part 1943 of this chapter. Applicants who were considered but not selected by the County Committee will be given appeal rights as set forth in subpart B of part 1900 of this chapter. The selected applicant will be notified that his/her selection is subject to the appeals rights of the unsuccessful applicants. If an appeal is filed, the selected applicants will be notified by the National Appeals Staff as provided in § 1900.57(m) of subpart B of part 1900 of this chapter. The property will not be sold until all appeals are concluded.

* * * * *

Dated: January 17, 1990.

**Neal Sox Johnson,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 90–6074 Filed 3–15–90; 8:45 am]

BILLING CODE 3410–07–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL–3732–5]**

### Approval and Promulgation of Implementation Plans; State of California, Kern County Ozone Plan

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

**ACTION:** Final rule.

**SUMMARY:** This notice announces EPA's final disapproval of the California State Implementation Plan (SIP) for ozone in the Kern County Air Pollution Control District (APCD). This final action is being taken because the SIP for the Kern County APCD does not provide for attainment of the ozone national ambient air quality standard (NAAQS) by the statutory deadline of December 31, 1987, or by any other fixed date, as required by section 172(a) of the Clean Air Act ("the Act") (42 U.S.C. 7502(a)). Pursuant to section 110(a)(2)(I) of the Act and EPA's implementing regulations, this disapproval results in the imposition of a moratorium on the construction and modification of major stationary sources of volatile organic compounds (VOC) in the Kern County APCD (See 40 CFR 52.24 and 42 U.S.C. 7410(a)(2)(I)).

**EFFECTIVE DATE:** April 16, 1990.

**FOR FURTHER INFORMATION CONTACT:** Wallace D. Woo, Chief, State Liaison Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, Telephone: (415) 744–1686, (FTS) 744–1686.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

A brief background of the Act and the history of the Kern County SIP is provided here. For a more comprehensive description of the relevant requirements of the Act and EPA's regulatory actions on the Kern County SIP, see the proposed disapproval of the SIP for the Kern County ozone nonattainment area (52 FR 26428, July 14, 1987) and the General Preamble accompanying that notice (52 FR 26404).

The Clean Air Act mandates a system of state implementation plans as the chief mechanism for meeting the NAAQS. Section 110(a)(1) directs the state to submit, within nine months from the promulgation of primary NAAQS, a plan for implementing those NAAQS. Section 110 lays out the requirements that the plan must meet and provides a mechanism for revision of the plan where the Administrator finds that the plan is substantially inadequate to achieve the NAAQS by the relevant deadline.

Recognizing that numerous areas had not been able to attain the NAAQS within the initial timeframe, Congress added part D to the Act in 1977. Part D allowed certain "nonattainment" areas to extend the time for attainment to December 31, 1982, with the exception that certain areas, in which it was "not possible" to meet that deadline for ozone and carbon monoxide (CO) despite the application of all reasonably available control measures, could apply for a further extension to December 31, 1987.

On October 12, 1979, California submitted to EPA an ozone SIP for Kern County which purported to satisfy the part D requirements including a demonstration of attainment of the ozone NAAQS by the end of 1982. On September 15, 1980, EPA published a notice of proposed rulemaking which cited several deficiencies in the plan, but proposed conditional approval of the plan on the condition that the State submit corrections by January 1, 1981. 45 FR 60934.

On August 21, 1981, EPA published a notice of final rulemaking conditionally approving the Kern County ozone SIP. 40 FR 42450. The deadline for fulfillment of the conditions was extended from January 1, 1981 to October 1, 1981, but the State did not meet this deadline for submitting corrections designed to meet the conditions.

Kern County did not attain the ozone standard by December 31, 1982. On February 3, 1983, EPA published a notice of proposed rulemaking that listed areas of the country, including Kern County, California, that had not fulfilled conditions attached to the approval of their part D SIP revisions. 48 FR 4972.

EPA proposed to disapprove the SIPs for these areas and to impose the construction ban of section 110(a)(2)(I). 48 FR 4972. (February 3, 1983).

On November 2, 1983, EPA issued a final rulemaking notice which announced that it would review all unfulfilled conditions on approval of part D plans to determine which conditions were still germane to attainment and maintenance of the NAAQS. 48 FR 50686. On June 29, 1984, EPA published a notice of its proposed rulemaking that announced the results of its review of the outstanding unfulfilled conditions on nonattainment area plans in California. 49 FR 26764. As a result of this review, EPA promulgated a final rule that extended the deadline for fulfillment of the outstanding conditions on approval of the Kern County ozone SIP from October 1, 1981 to February 24, 1985. This rule was published on February 25, 1985. 50 FR 7591. EPA stated in the rulemaking on the extension of the condition that it would accept a control strategy based on a demonstration of attainment of the standard by the end of 1987.

Once it became evident that Kern County had not attained the ozone standard by the statutory date of December 31, 1982, EPA supplemented the conditions of its approval of Kern County's 1979 SIP with a notice of SIP deficiency under section 110(a)(2)(H) and thereby issued a call for a SIP revision for the county to include (1) an updated inventory; and (2) a revised demonstration of attainment of the ozone standard by December 31, 1987.

On March 31, 1986, Kern County adopted a revised SIP, the 1986 ozone plan. Because it concluded that the plan did not meet all the CAA requirements, the California Air Resources Board (CARB) adopted a resolution amending the plan which committed the State to make changes to the SIP if Kern County failed to do so. On November 21, 1986, CARB submitted to EPA the 1986 Kern plan, as amended. On April 2, 1987, CARB submitted to EPA as a SIP revision a resolution which included corrections to the emissions inventory and air quality data and analysis. The resolution and corrected data were submitted to EPA as a SIP revision on April 2, 1987.

While the 1986 Kern County plan strengthened the existing SIP by adding commitments to adopt additional control measures, EPA concluded that the SIP amendments did not contain a demonstration of attainment by December 1987, or by a fixed, near-term date thereafter. Therefore, on July 14, 1987, EPA published a notice of proposed rulemaking in which it proposed, among other things, to disapprove the attainment and reasonable further progress (RFP) demonstration portion of the plan. 52 FR 26428. In so doing, EPA proposed to rescind its prior conditional finding that the plan satisfies Part D of the Act, since the condition on approval of the 1979 Kern County ozone plan regarding the attainment demonstration had not been met. EPA further proposed to impose a construction ban under section 110(a)(2)(I) of the Act on new major sources and major modifications to existing sources of VOC in the Kern County ozone nonattainment area.

**B. Discussion**

In November 1987, the Ninth Circuit Court of Appeals issued its opinion in *Abramowitz* v. *United States Environmental Protection Agency*. 832 F.2d 1071 (9th Cir. 1987). That case involved a petition for review of EPA's final action approving certain CO and ozone control measures in the South Coast SIP and deferring action on the attainment and RFP demonstration portions of the plan. The Court held that EPA lacked authority to defer action on whether the South Coast ozone and carbon monoxide plan meets all of the part D requirements of the Act when the Agency approved the individual control measures. The Court ordered EPA to "disapprove the relevant SIP provisions." 832 F.2d at 1079. EPA took final action on January 22, 1988 disapproving the South Coast SIP. 53 FR 1780.

In the case of the South Coast SIP, the State of California conceded that the plan did not demonstrate attainment of the NAAQS by December 31, 1987, or any near fixed-term date. In contrast, in the 1986 Kern County plan, as amended, the State included provisions arguably purporting to demonstrate attainment of the ozone NAAQS by December 31, 1987. Therefore, today's final action is not directly governed by the Abramowitz decision. However, the Abramowitz decision does establish that EPA has no discretion under the law to postpone final disapproval when the Agency has effectively determined that the plan does not contain a demonstration of attainment by any fixed date. Thus, once EPA finally determines that the Kern County SIP does not contain an attainment demonstration, the Agency's final action is then driven by the reasoning of the Abramowitz decision.

As stated above, on July 14, 1987, EPA proposed to disapprove the attainment and RFP demonstration portion of the 1986 Kern County ozone plan. 52 FR 26429. EPA stated its preliminary conclusion that "the SIP amendments do not, however, contain a demonstration of attainment by December 31, 1987, or by a fixed, near-term date thereafter, despite implementation of the new control measures." 52 FR at 26430, col. 2. In submitting the SIP revision for Kern County, California had admitted that the SIP as prepared by Kern County did not demonstrate attainment. Id., col. 1. The State attempted to compensate for this deficiency by creating a trigger mechanism whereby certain $NO_x$ control rules would go into effect in the western portion of Kern County in the event of NAAQS exceedances. However, EPA found that SIP control measures and the trigger mechanism together did not amount to an attainment demonstration. In addition, EPA recommended that while California was working to create an attainment demonstration for Kern County, the trigger should remain in effect but operate at increased frequency. 52 FR at 26430, col. 3.

In response to the July 14, 1987 proposal, EPA received no comments challenging EPA's proposed determination that the attainment demonstration in the plan is inadequate. EPA did receive numerous comments on whether the trigger mechanism should be altered to operate more frequently, and whether a construction ban should apply in the western portion of the county. However, none of the commentors disputed EPA's preliminary conclusion that the plan with the addition of the trigger mechanism did not provide for attainment.[1]

Having found no basis on which to reverse its proposed determination, EPA now finally concludes that the attainment demonstration in the Kern County ozone SIP does not demonstrate attainment of the ozone NAAQS by December 31, 1987 or by any other fixed date (near-term or otherwise). Therefore, EPA has no discretion under Abramowitz to postpone final disapproval of the SIP. As a result, EPA is not responding directly to public comments on other aspects of EPA's July 14, 1987 proposal. EPA may respond to some of the comments in the future, perhaps in connection with a final policy on how areas like Kern County should correct their SIPs after December 31, 1987. EPA will address other aspect of the Kern County ozone SIP, including

[1] In fact, one of the major commentors recommending no increase in the operation of the trigger and arguing against imposition of the construction ban specifically stated that "we recognized that the plan does not demonstrate attainment by 31 December 1987". September 14, 1987 comment letter from W J. Mulligan, Chevron Corporation, page 2 of attachment.

the RFP demonstration, in connection with a future plan submission containing an attainment demonstration.

The ground for EPA's final disapproval of the Kern County SIP is that it does not demonstrate attainment of the ozone NAAQS by December 31, 1987, or by any other fixed date (near-term or otherwise) thereafter. Under the terms of the Act and EPA's regulations, upon final disapproval, EPA has no discretion to withhold imposition of a construction ban in the Kern County APCD for major new sources and major modifications of existing sources of VOC.[2] Section 110(a)(2)(I); 40 CFR 52.24(a). Under 40 CFR 52.24 (f)(4)(ii) and (f)(5)(i), a major stationary source or major modification that is major for VOC is also major for ozone.

### C. Final Action

EPA is today taking final action to disapprove the 1986 Kern county APCD SIP revision for attainment of the primary NAAQS for ozone. EPA is also rescinding its prior conditional finding that the plan satisfies part D of the Act, since the condition on approval of the 1979 Kern County ozone Plan regarding to the attainment demonstration has not been met. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d), this disapproval is effective April 16, 1990. The effective date for the construction ban is April 16, 1990.

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

### F. Regulatory Process

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget for review.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. EPA does not have sufficient information to determine the impacts that the construction moratorium announced in today's notice may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action were to have a significant impact, however, the Agency could not modify its action. Under the Act, the imposition of a construction moratorium is mandatory whenever the Agency determines that an implementation plan for a nonattainment area fails to meet the requirements of part D of the Act, and that determination, in turn, is effectively required by the Ninth Circuit's decision in Abramowitz.

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 May 15, 1990. 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 52

Air pollution control, Ozone, Intergovernmental relations.

Dated: March 1, 1990.

**William K. Reilly,**
*Administrator.*

40 CFR Part 52, subpart F, is amended as follows:

## PART 52—[AMENDED]

### Subpart F—California

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

**§ 52.232 [Amended]**

2. Section 52.232 is amended by removing paragraph (a)(5)(iii).

3. Section 52.237 is amended by adding new paragraph (a)(5) to read as follows:

**§ 52.237 Part D disapproval.**

(a) * * *

(5) The ozone attainment demonstration for the Kern county APCD. No major stationary source, or major modification of a stationary source, of volatile organic compounds may be constructed in the Kern county nonattainment area unless the construction permit application is complete on or before April 16, 1990.

* * * * *

[FR Doc. 90–5610 Filed 3–15–90; 8:45 am]
BILLING CODE 6560–50–M

[2] The Kern County Air Pollution Control District includes all of the Kern County portion of the San Joaquin Valley air basin. Within this area, any major new source or major modification for which the construction permit application is incomplete on or after [thirty days from the date of publication] will be prohibited from construction. EPA's criteria for determining an application to be complete are explained in 52 FR 26404 and 26409 n.18 (July 14, 1987).

**40 CFR Part 52**

**[FRL–3732–6]**

## Approval and Promulgation of Implementation Plans; State of California, Fresno County Ozone Plan

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

**ACTION:** Final rule.

**SUMMARY:** This notice announces EPA's final disapproval of the California State Implementation Plan (SIP) for ozone in the Fresno County Air Pollution Control District (APCD). This final action is being taken because the SIP for Fresno County does not provide for attainment of the ozone national ambient air quality standard (NAAQS) by the statutory deadline of December 31, 1987, or by any other fixed date, as required by section 172(a) of the Clean Air Act ("the Act") (42 U.S.C. 7502(a)). Pursuant to section 110(a)(2)(I) of the Act and EPA's implementing regulations, this disapproval results in the imposition of a moratorium on the construction and modification of major stationary sources of volatile organic compounds (VOC) in the Fresno County APCD. *See* 40 CFR 52.24 and 42 U.S.C. 7410(a)(2)(I).

**EFFECTIVE DATE:** April 16, 1990.

**FOR FURTHER INFORMATION CONTACT:** Wallace D. Woo, Chief, State Liaison Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, Telephone: (415) 744–1686, (FTS) 744–1686.

**SUPPLEMENTARY INFORMATION:**

### A. Background

A brief background of the Act and the history of the Fresno County SIP is provided here. For a more comprehensive description of the relevant requirements of the Act and EPA's regulatory actions on the Fresno County SIP, see the proposed disapproval of the SIP for the Fresno County ozone nonattainment area and three other areas in California (52 FR 26431, July 14, 1987) and the General Preamble accompanying that notice (52 FR 26404).

The Clean Air Act mandates a system of state implementation plans as the chief mechanism for meeting the NAAQS. Section 110(a)(1) directs the state to submit, within nine months from the promulgation of primary NAAQS, a plan for implementing those NAAQS. Section 110 lays out the requirements that the plan must meet and provides a mechanism for revision of the plan where the Administrator finds that the

plan is substantially inadequate to achieve the NAAQS by the relevant deadline.

Recognizing that numerous areas had not been able to attain the NAAQS within the initial timeframe, Congress added part D to the Act in 1977. Part D allowed certain "nonattainment" areas to extend the time for attainment to December 31, 1982, with the exception that certain areas, in which it was "not possible" to meet that deadline for ozone and carbon monoxide (CO) despite the application of all reasonably available control measures, could apply for a further extension to December 31, 1987.

California requested, and EPA approved, an extension of the statutory attainment date for ozone in Fresno County to December 31, 1987. The State then submitted the 1982 plan updates to the California ozone SIP. In 1983, EPA proposed to disapprove these revisions and impose a construction ban on the grounds that the plan did not provide for attainment of the ozone standard by the end of 1987, or reasonable further progress in the interim (48 FR 5074 (Feb. 3, 1983)). On July 30, 1984, EPA took final action to approve the control measures submitted by the State, but held open the question of whether to approve the attainment demonstration in the SIP submittal for Fresno County and three other areas of California (South Coast, Ventura and Sacramento) similarly lacking approvable SIP attainment demonstrations for ozone and/or carbon monoxide (49 FR 30300, 30305 (July 30, 1984)).

In July 1987, EPA reproposed to disapprove the ozone SIP for Fresno, Sacramento, South Coast, Ventura and several other areas (52 FR 26408–26409, 26431–26435 (July 14, 1987)) In that notice, EPA stated that it lacked authority to continue to defer action on the plans for those areas that had not yet submitted a plan demonstrating attainment by the deadline, and that it had no choice but to disapprove the plans for those areas and impose a construction ban under section 110(a)(2)(I).

In November 1987, the Ninth Circuit Court of Appeals issued its opinion in *Abramowitz* v. *United States Environmental Protection Agency*, 832 F.2d 1071 (9th Cir. 1987). The court held that EPA lacked authority to defer action on whether the South Coast ozone and carbon monoxide plan meets all of the part D requirements of the Act when the Agency approved the individual control measures. The court ordered EPA to "disapprove the relevant SIP provisions." 832 F.2d at 1079. Pursuant to the Ninth Circuit Court's instructions, EPA took final action in January 1988 to disapprove the South Coast SIP. 53 FR 1780 (January 22, 1988).

**B. Discussion**

EPA concludes that the attainment demonstration deficiencies in the 1982 Fresno County ozone SIP are substantively identical to the deficiencies in the South Coast CO and ozone SIP and EPA is therefore now taking final action to disapprove the Fresno County ozone SIP. The ground for EPA's final disapproval of the Fresno County SIP is that it does not demonstrate attainment of the ozone NAAQS by December 31, 1987, or by any other fixed date (near-term or otherwise) thereafter. Under the terms of the Act and EPA's regulations, such final plan disapproval results in the imposition of a construction ban in the Fresno County APCD for major new sources and major modifications of existing sources of VOC.[1] Section 110(a)(2)(I); 40 CFR 52.24(a). Under 40 CFR 52.24(f)(4)(ii) and (f)(5)(i), a major stationary source or major modification that is major for VOC is also major for ozone.

Today's action is driven by the reasoning of the decision in Abramowitz. That decision establishes that EPA has no discretion under the law to postpone the final disapproval when the Agency has effectively determined that the plan does not provide for timely attainment by any fixed date. Thus, EPA is not responding directly to public comments on EPA's July 14, 1987 proposal. EPA may respond to some of the comments in the future, perhaps in connection with EPA's final policy on how areas like Fresno County should correct their SIPs after December 31, 1987.

**Final Action**

EPA is today taking final action to disapprove the 1982 Fresno County APCD SIP revision for attainment of the primary NAAQS for ozone.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d), this disapproval is effective April 16, 1990. The effective date for the construction ban is April 16, 1990.

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

**Regulatory Process**

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget for review.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. EPA does not have sufficient information to determine the impacts that the construction moratorium announced in today's notice may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action were to have a significant impact, however, the Agency could not modify its action. Under the Act, the imposition of a construction moratorium is mandatory whenever the Agency determines that an implementation plan for a nonattainment area fails to meet the requirements of part D of the Act, and that determination, in turn, is effectively required by the Ninth Circuit's decision in Abramowitz.

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 May 15, 1990. 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 52**

Air pollution control, Ozone, Intergovernmental relations.

Dated: March 1, 1990.

**William K. Reilly,**

*Administrator.*

40 CFR part 52, subpart F, is amended to read as follows:

**PART 52—[AMENDED]**

**Subpart F—California**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.237 is amended by adding paragraph (a)(4) to read as follows:

**§ 52.237 Part D disapproval.**

(a) * * *

[1] The Fresno County Air Pollution Control District nonattainment ozone area includes all of Fresno County. Within this area, any major new source or major modification for which the construction permit application is incomplete on or after April 16, 1990, will be prohibited from construction. EPA's criteria for determining an application to be complete are explained in 52 FR 26404 and 26409 n.18 (July 14, 1987).

(4) The ozone attainment demonstration for the Fresno County APCD. No major stationary source, or major modification of a stationary source, of volatile organic compounds may be constructed in the Fresno County nonattainment area unless the construction permit application is complete on or before April 16, 1990.

* * * * *

[FR Doc. 90-5609 Filed 3-15-90; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 271**

**[FRL-3745-1]**

## Ohio: Schedule of Compliance for Modification of Ohio's Hazardous Waste Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Ohio's Compliance Schedule to Adopt Program Modifications.

**SUMMARY:** On September 22, 1986, U.S. EPA promulgated Amendments to the deadlines for State program modifications and published requirements for States to be placed on a compliance schedule to adopt necessary program modifications. U.S. EPA is today publishing a compliance schedule for Ohio to modify its program, in accordance with § 271.21(g) to adopt Federal program modifications.

**EFFECTIVE DATE:** March 16, 1990.

**FOR FURTHER INFORMATION CONTACT:** Brian Barwick, Ohio Regulatory Specialist, Office of RCRA, U.S. EPA, Region V, 230 South Dearborn Street, 5HR-JCK-13, Chicago, Illinois 60604, (312) 886-6085, (FTS: 8-886-6085).

**SUPPLEMENTARY INFORMATION:**

### A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by U.S. EPA, if the Agency finds that the State program: (1) Is "equivalent" to the Federal program; (2) is "consistent" with the Federal program and other State programs; and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6926(b)). U.S. EPA regulations for final authorization appear at 40 CFR 271.1-271.25. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

### B. Ohio

Ohio received final authorization of its hazardous waste program on June 30, 1989 (see 54 FR, June 28, 1989). Today U.S. EPA is publishing a compliance schedule for Ohio to complete program revisions for the Federal corrective action regulations (50 FR 28702, July 15, 1985). The adoption deadline under 40 CFR 271.21 for these Federal regulations was July 1, 1989.

Ohio was prepared to adopt the July 15, 1985, corrective action regulations by the July 1, 1989, deadline. U.S. EPA requested, for administrative reasons, that Ohio concurrently adopt the additional corrective action regulations that were promulgated on December 1, 1987. The December 1, 1987, regulations are not required to be adopted until July 1, 1991. Ohio has agreed to delay adoption of the July 15, 1985, regulations and to accelerate adoption of the December 1, 1987, regulations so that both sets of regulations can be adopted concurrently by July 1, 1990.

On January 29, 1990, Ohio submitted to U.S. EPA draft State rules analogous to the July 15, 1985, and December 1, 1987, corrective action regulations. The State will complete the corrective action revisions to its authorized program according to the following schedule:

(1) File proposed rules with the Ohio Legislative Service Commission, the Ohio Joint Committee on Agency Rule Review, and the Ohio Secretary of State, April 2, 1990.

(2) Hold a public hearing on the proposed rules, (within 30 to 50 days after April 2, 1990).

(3) State rules become effective, July 1, 1990.

Ohio expects to submit an application to U.S. EPA requesting authorization for the Federal corrective action regulations by September 1, 1990.

### Authority

This notice is issued under authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: February 21, 1990.

**Frank M. Covington,**

*Acting Regional Administrator.*

[FR Doc. 90-5840 Filed 3-15-90; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 272**

**[FRL-3745-4]**

## Hazardous Waste Management Program: Codification of Approved State Hazardous Waste Program for Minnesota

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of title 40 of the Code of Federal Regulations (40 CFR part 272) to codify its authorization of State programs and to incorporate by reference those provisions of State statutes and regulations that EPA will enforce under RCRA section 3008. Thus, EPA intends to codify the Minnesota authorized State program in 40 CFR part 272. The purpose of today's **Federal Register** (FR) notice is to codify EPA's approval of recent revisions to Minnesota's program.

**DATES:** Codification of Minnesota's revised authorized hazardous waste program shall be effective May 15, 1990 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Minnesota's codification must be received by 4:30 p.m. April 16, 1990. The incorporation of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 15, 1990.

**ADDRESSES:** Written comments should be sent to Christine Klemme, Minnesota Regulatory Specialist, Office of RCRA, U.S. EPA, Region V, 230 South Dearborn Street, 5HR-JCK-13, Chicago, Illinois 60604, (312) 886-3715, (FTS: 886-3715).

**FOR FURTHER INFORMATION CONTACT:** Christine Klemme, Minnesota Regulatory Specialist, Office of RCRA, U.S. EPA, Region V, 230 South Dearborn Street, 5HR-JCK-13, Chicago, Illinois 60604, (312) 886-3715, (FTS: 886-3715).

**SUPPLEMENTARY INFORMATION:**

### Background

On May 15, 1989, EPA published in the **Federal Register** notice of its decision to codify Minnesota's then authorized hazardous waste program (see 54 FR 20851). Effective June 23, 1989, EPA granted authorization to Minnesota for additional revisions to the State hazardous waste program (see 54 FR