in that capacity until a successor Chair or Vice-Chair has been elected. The election of officers shall be held at the regularly scheduled Board meeting in September of each year.

* * * * *

William H. McCabe,

Chair, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 91-1737 Filed 1-24-91; 8:45 am]

BILLING CODE 8150-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3899-1]

Approval and Promulgation of Implementation Plans; Deletion of Statutory Restriction on New Sources Under Certain Circumstances In Nonattainment Areas; California—Kern and Fresno Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces that EPA is removing from 40 CFR 52.237 the specific language imposing construction moratoriums on major stationary sources, or major modifications of stationary sources, of volatile organic compounds (VOCs) in the Kern and Fresno Counties nonattainment areas. This change is to make the regulations consistent with the recently enacted Clean Air Act Amendments of 1990, Public Law 101-549, which repeal EPA's authority to impose or retain in effect such construction moratoriums.

EFFECTIVE DATE: January 15, 1991. This action is effective without prior proposal since the action merely conforms regulatory language to the statutory changes which became effective immediately upon the date of enactment of the Clean Act Act Amendments of 1990. See Public Law 101-549, section 711(b)(1).

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, Telephone: (415) 556-5152, (FTS) 556-5152.

SUPPLEMENTARY INFORMATION:

A. Background

On March 16, 1990, EPA published notices of final rulemaking disapproving the attainment demonstration portions of the California SIP for ozone in the Kern and Fresno Counties Air Pollution Control Districts (APCDs) and imposing a moratorium on the construction of major stationary sources of VOCs in the Kern and Fresno Counties APCDs. 55 FR 9876, 9878. EPA disapproved the attainment demonstrations because of the 1986 Kern plan and the 1982 Fresno plan did not provide for attainment of the ozone 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 as amended in 1977 (42 U.S.C. 7502(a)). Pursuant to section 110(a)(2)(I) of the 1977 Act, the disapproval of the plans automatically resulted in the imposition of a construction moratorium. See 42 U.S.C. 7410(a)((2)(I) (1989) and 40 CFR 52.24(a) (1990).

For a comprehensive description of EPA's regulatory actions concerning the Kern and Fresno plans, and the relevant requirements of the Act, see the proposed disapprovals of the plan for the Kern and Fresno ozone nonattainment areas (52 FR 26428, 24431, July 14, 1987), the General Preamble accompanying those notices (52 FR 26404), and the notices of final rulemaking disapproving the attainment demonstrations (55 FR 9876, 9878, March 16, 1990). The Western States Petroleum Association (WSPA) challenged EPA's March 16, 1990 actions in the Ninth Circuit Court of Appeals. *WSPA* v. *EPA, et al.*, 9th Cir. No. 90-70238.

B. The Clean Air Act Amendments of 1990

On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990 ("1990 Amendments"), Public Law No. 101-549. Among other things, the 1990 Amendments establish new deadlines, depending on the severity of the problem in a particular area, for the attainment of certain national ambient air quality standards (NAAQS); direct the States to submit revised State Implementation Plans (SIPs) meeting new, specific requirements and demonstrating attainment of the NAAQS by the revised statutory dates; set new deadlines for the submission of the SIPs; mandate EPA review of the revised SIPs for consistency with the requirements of the Amendments; and provide for EPA to impose sanctions if the States fail to submit SIP revisions that meet the new requirements.

The 1990 Amendments repeal the provisions of section 110(a)(2)(I) of the Clean Air Act as amended in 1977 ("the 1977 Act") that required EPA to impose a construction moratorium in nonattainment areas that failed to submit plans meeting all of the requirements of Part D of the 1977 Act. The 1990 Amendments also contain a savings clause, new Clean Air Act section 110(n)(3), that preserves certain existing construction moratoriums:

> Retention of construction moratorium in certain areas—In the case of an area to which immediately before the date of the enactment of the Clean Air Act Amendments of 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) applied by virtue of a finding of the Administrator that the State containing such areas had not submitted an implementation plan meeting the requirements of section 172(b)(6) (relating to establishment of a permit program) (as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1990) or 172(a)(1) (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur dioxides by December 31, 1982) as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section 172(c)(5) (relating to permit programs) or subpart 5 of part D (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.

C. Discussion of Statutory Language

EPA interprets these provisions of the 1990 Amendments as repealing by operation of law, as of the date of enactment of the 1990 Amendments, all construction moratoriums that EPA had imposed under 1977 Act section 110(a)(2)(I) for any reason other than failure to submit an approvable new source review program or failure to demonstrate timely attainment of the sulfur dioxide NAAQS. See Public Law 101-549, section 711(b)(1) ("except as otherwise expressly provided, the amendments made by this Act shall be effective on the date of enactment of this Act").

EPA intends to publish a separate **Federal Register** notice shortly generally amending 40 CFR 52.24 to clarify the limited applicability of the construction moratorium, and deleting regulatory language from all appropriate sections of 40 CFR part 52 containing any individual moratoriums that have been repealed by the 1990 Amendments. However, it will take EPA some time to accurately inventory all areas subject to construction moratoriums and ensure that all relevant sections of the CFR are properly amended. In addition, it will take some time to fully review § 52.24 and make all appropriate conforming changes in the regulatory language. To

effect a settlement of the litigation in *WSPA* v. *EPA, et al.*, and for the reasons described below, EPA is today amending the relevant section of part 52 to specifically remove the language imposing the construction moratorium in Kern and Fresno Counties, as it intends to do shortly in all appropriate areas in the subsequent national notice described above.

It is worth noting that one of the two types of moratoriums retained under the 1990 Amendments is a moratorium imposed "by virtue of a finding of the Administrator" that the area has not submitted an approvable new source review program. EPA interprets this description to cover only those areas where the Administrator specifically stated in the notice imposing the moratorium that the moratorium was being imposed for failure to submit an approvable new source review program. In many areas, EPA imposed the moratorium for failure of the SIP to demonstrate timely attainment of the NAAQS for ozone or carbon monoxide. In a number of such areas, the SIP also did not contain an approvable new source review program. However, where EPA did not include the lack of a new source review program as a reason for imposing the moratorium, EPA concludes that the language of section 110(n) of the 1990 Amendments does not authorize retention of the moratorium. In this regard, section 110(n) refers only to those moratoriums imposed based upon a finding by the Administrator of failure to submit a new source review program.

D. Rationale for Lifting the Kern and Fresno Moratoriums

EPA based its March 16, 1990 disapproval actions on a specific finding by the Administrator that the Kern and Fresno Counties' plans did not provide for the attainment of the ozone NAAQS by December 31, 1987, or any other fixed date. 55 FR 9876, 9878. Moreover, the Administrator has not imposed a construction moratorium based on a finding that the Kern or Fresno Counties' plans failed to (1) Contain an adequate permit program as required by section 172(b)(6) of the Act, or (2) provide for timely attainment of the primary sulfur dioxide NAAQS. Therefore, the section 110(n)(3) savings clause in the 1990 Amendments does not authorize EPA to retain the construction moratoriums on VOC sources in the Kern and Fresno Counties APCDs.

Consequently, today's notice removes the language concerning the moratoriums in the Kern and Fresno Counties' APCDs from 40 CFR 52.237 in order to make the regulatory provisions consistent with the 1990 Amendments.

The 1990 Amendments also repeal the provisions of section 172 (requiring SIPs to demonstrate attainment no later than 1982 or, if an extension has been approved, by 1987) upon which EPA based its disapproval actions. Amended section 172 establishes new requirements for nonattainment areas in general. The 1990 Amendments also contain a new subpart 2 of part D which establishes additional provisions for ozone nonattainment areas. New section 181 classifies ozone nonattainment areas according to the severity of the problem; new section 182 establishes various planning requirements for the different classifications.

In March 1990, however, EPA's disapproval actions were appropriate under the then existing provisions of the Act, i.e. the Kern and Fresno plans did not demonstrate attainment by 1987 or any other fixed date. Therefore, the regulatory language disapproving the attainment demonstration portions of the Kern and Fresno Counties' ozone plans will be retained as a reflection of historical fact. It should be noted that, as a result of the new attainment provisions and planning periods for demonstrating attainment in the 1990 Amendments, such language has no current or future legal effect.

E. Regulatory Process

EPA is not taking prior public comment on this action because it concludes that the action is merely an interpretive rule that directly interprets the 1990 Amendments, and as such is exempted from requirements for notice and comment under 5 U.S.C. section 553(b)(A). To the extent there is any question that this action may be a legislative rule, EPA finds that there is good cause to dispense with public notice and comment pursuant to 5 U.S.C. section 553(b)(B), for the following reasons. Since the 1990 Amendments repealed the construction bans imposed in Kern and Fresno Counties under section 110(a)(2)(I) of the 1977 Act, and EPA in this action is merely taking the ministerial steps to correct its regulatory language to reflect the statutory changes, public comment would be entirely unnecessary. Further, it would be contrary to the public interest to retain superseded regulatory language in the CFR.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 26, 1991. 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, Volatile organic compounds.

Dated: January 15, 1991.

William K. Reilly,

Administrator.

Title 40 of the Code of Federal Regulations, part 52, is amended to read as follows:

PART 52—[AMENDED]

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 revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 52.237 Part D disapproval.

(a) * * *

(4) The ozone attainment demonstration for the Fresno County APCD.

(5) The ozone attainment demonstration for the Kern County APCD.

[FR Doc. 91–1533 Filed 1–24–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7504]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies one community, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that is suspended on the effective date listed within this rule because of failure to enforce its floodplain management regulations in accordance with NFIP requirements. If FEMA receives documentation that the community has taken action to bring its floodplain management program into compliance with NFIP requirements prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The community listed in this notice no longer meets that statutory requirement for compliance with program regulations (44 CFR part 59, et. seq.). Accordingly, the City of Campton, Kentucky will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, the City of Campton, Kentucky may submit the documentation required to correct the deficiencies and to remedy the violations to the maximum extent possible identified in the suspension notice, prior to the actual suspension date. The City will not be suspended and will continue its eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be pubished in the Federal Register. In the interim, if you wish to determine if the City was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in this community by publishing a Flood Insurance Rate Map. The date of this flood map is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the community listed on the date shown in the last column.

The Administrator finds that notice and public comment procedure under 5. U.S.C. 553(b) are impracticable and unnecessary because the community listed in this final rule have been adequately notified.

The community received a 90-day probationary letter in February 1990, a 30-day show cause letter was sent in November 1990, and the 30-day suspension notice was sent in January 1991. These notifications were addressed to the Mayor of the City of Campton, Kentucky, indicating that the City will be suspended unless the required corrective actions and remedial measures are taken prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to enforce adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of the effective date appears for the listed community.

List of Subjects in 44 CFR Part 64

Flood insurance-floodplains

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region IV				
Kentucky: Campton, city of Wolfe County	210229	July 21, 1975, Emerg.; Sept. 18, 1985, Reg.; Feb. 6, 1991, Susp.	9-18-85	Feb. 6, 1991.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: January 17, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91–1790 Filed 1–24–91; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 7502]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities'