II. Public Comment/U.S. EPA Response

U.S. EPA received only one comment during the comment period, which ended October 12, 1993. In a September 24, 1993 letter, the Natural Resources Defense Council (NRDC) strongly supported U.S. EPA's proposal to disapprove the Indiana submittal. It also urged U.S. EPA to make the disapproval finding retroactive to November 15, 1992. In addition, NRDC supported U.S. EPA's decision to propose sanctions, and urged U.S. EPA to impose such sanctions statewide. Finally, NRDC stated its opposition to U.S. EPA's use of conditional approvals.

In response to NRDC's comment on making the disapproval retroactive, U.S. EPA does not believe that such action is appropriate. With regard to NRDC's comment on sanctions, U.S. EPA notes that it will be publishing a notice of proposed rulemaking in the **Federal Register** concerning this matter; NRDC may wish to comment in the context of that rulemaking. Finally, since U.S. EPA is disapproving the Indiana submittal in this action, NRDC's comments pertaining to U.S. EPA's authority with regard to conditional approvals is moot.

III. Rulemaking Action

U.S. EPA is disapproving this revision to the Indiana Ozone State Implementation Plan which fails to meet the requirements necessary to develop the required I/M program in the Indiana required areas.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. U.S. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Motor vehicle pollution control, Nitrogen oxide, Volatile organic compounds.

Dated: October 27, 1993.

David A. Ullrich,

Acting Regional Administrator.

For the reasons set out in the preamble, part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.786 is amended by adding paragraph (h) to read as follows:

§ 52.786 Inspection and maintenance program.

* * * * *

(h) The State's December 2, 1992, commitment to timely adopt and implement enhanced inspection and maintenance (I/M) rules for Lake and Porter Counties is disapproved based on the failure of the State of Indiana to meet important milestones pertaining to the development and adoption of necessary authority for the I/M program. This disapproval initiates the sanction process of section 179(a) of the Act.

[FR Doc. 93–29054 Filed 11–26–93; 8:45 am]

BILLING CODE 6560–50–F

---

40 CFR Part 52

[NM–16–1–5735; FRL–4296–5]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revision to the State Implementation Plan Addressing Carbon Monoxide (CO) for Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This action approves a revision to the New Mexico State Implementation Plan (SIP) addressing CO for Albuquerque/Bernalillo County, outside the boundaries of Indian lands. Certain elements of the complete Albuquerque/Bernalillo County CO SIP were submitted by the Governor of New Mexico to the EPA by cover letter dated November 5, 1992, for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for CO. These elements satisfy certain Federal requirements for an approvable nonattainment area CO SIP for Albuquerque/Bernalillo County. Therefore, this **Federal Register** (FR) action only approves some of the elements of the complete Albuquerque/Bernalillo County CO SIP, specifically the 1990 base year CO emissions inventory, the oxygenated fuels program, and the winter woodburning program. The remaining elements of the complete Albuquerque/Bernalillo County CO SIP, to be submitted to the EPA by November 15, 1993, will be acted upon in separate FR actions.

EFFECTIVE DATE: This action will become effective on January 28, 1994, unless notice is received by December 29, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Region 6 Office listed. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, Suite 700,Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Albuquerque Environmental Health Department, Air Pollution Control Division, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, U.S. EPA Region 6,1445 Ross Avenue, Dallas, Texas 75202–2733, telephone(214) 655–7258.

SUPPLEMENTARY INFORMATION:

Albuquerque/Bernalillo County, New Mexico, was designated nonattainment for CO and classified as moderate with a design value below 12.7 parts per million (ppm.) (specifically 11.1 ppm.), under sections 107(d)(4)(A) and 186(a) of the Clean Air Act (CAA), upon enactment of the Clean Air Act Amendments (CAAA) of 1990.[1] Please

[1] The CAAA of 1990 made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not

Continued

reference 56 FR 56694 (November 6, 1991) and 57 FR 13498 and 57 FR 13529 (April 16, 1992). The air quality planning requirements for moderate CO nonattainment areas with a design value less than or equal to 12.7 ppm. are set out in subparts one and three of part D, Title I of the CAA. Subpart one contains provisions generally applicable to all nonattainment areas and subpart three contains provisions specifically applicable to CO nonattainment areas. Section 104 of the CAAA of 1990 amended part D of Title I of the CAA by adding two additional sections to subpart three (sections 186 and 187), which pertain to the classification of CO nonattainment areas and to the submission requirements of the SIPs for these areas, respectively. At times, subparts one and three overlap or conflict. The EPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in this FR action.

The EPA has issued a "General Preamble" describing the EPA's preliminary views on how the EPA intends to review SIPs and SIP revisions submitted under Title I of the CAA, including those State submittals containing moderate CO nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale. In this rulemaking action on certain elements of the Albuquerque/Bernalillo County, New Mexico, complete moderate CO SIP, the EPA is applying its interpretations, taking into consideration the specific factual issues presented.

On November 5, 1992, the Governor of New Mexico submitted to the EPA a SIP revision for CO concerning Albuquerque/Bernalillo County that was intended to satisfy CAA requirements due on November 15, 1992. The CAA outlines certain required items to be included in CO SIPs. The required items for the Albuquerque/Bernalillo County CO SIP, due November 15, 1992, unless otherwise noted, include: (1) A comprehensive, accurate, and current inventory of actual emissions from all sources of CO in the nonattainment area (sections 172(c)(3) and 187(a)(1) of the CAA); (2) no later than September 30, 1995, and no later than the end of each three year period thereafter, until the area is redesignated to attainment, a revised inventory meeting the requirements of sections 187(a)(1) and 187(a)(5) of the CAA;(3) a permit program to be submitted by November 15, 1993, which meets the requirements of section 173 for the construction and operation of new and modified major stationary sources of CO (section 172(c)(5)); (4) contingency measures dueNovember 15, 1993, that are to be implemented if the EPA determines that the area has failed to attain the primary standards by the applicable date (section 172(c)(9)); (5) a commitment to upgrade and submit a SIP revision for the Inspection and Maintenance (I/M) program by November 15, 1993 (section 187(a)(4)); and (6) an oxygenated fuels program (section 211(m)). As outlined below, the State of New Mexico's November 5, 1992, SIP revision for CO concerning Albuquerque/Bernalillo County, a moderate CO nonattainment area, was reviewed against the applicable requirements. The reader is referred to the November 5, 1992, Albuquerque/Bernalillo County CO SIP submittal and the EPA's supporting technical information for pertinent details regarding each requirement. These items are available for public review at the EPA Region 6 address indicated above.

Section 110(k) of the CAA sets out provisions governing the EPA's review of SIP submittals (see 57 FR 13565–13566). In this FR action, the EPA is approving only some of the elements of the complete Albuquerque/Bernalillo County CO SIP, specifically the 1990 base year CO emissions inventory, the oxygenated fuels program, and the winter woodburning program. The remaining elements of the complete Albuquerque/Bernalillo County CO SIP, to be submitted to the EPA by November 15, 1993, will be acted upon in separate FR actions.

Analysis of City/County Submission

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2] See also section 110(l) of the CAA. Also, the EPA must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, Albuquerque/Bernalillo County held public hearings on September 9, 1992, and onOctober 7, 1992, to entertain public comment on certain elements of the complete CO implementation plan Following the public hearings, these elements were adopted by the City/County and signed by the Governor on November 5, 1992, and submitted to the EPA as a proposed revision to the SIP.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter datedJanuary 15, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

2. CO Emission Inventory

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Albuquerque/Bernalillo County included the requisite inventory in the CO SIP. The base year for the inventory was 1990, using a three month CO season of November 1990 through January 1991. Stationary point sources, stationary area sources, on-road mobile sources, and nonroad mobile sources of CO were included in the inventory. Stationary sources with emissions of greater than 100 tons per year within a 25-mile buffer of the nonattainment area were also included in the inventory. The following list presents a summary of the CO peak season daily emissions estimates in tons per day by source category: Point Sources, 0.76 tons per day; Area Sources, 66.14 tons per day; Mobile On-Road Sources, 231.69 tons per day; Mobile Nonroad Sources, 41.18 tons per day; Total Sources, 339.77 tons per day. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Section 110(k) of the CAA sets out provisions governing the EPA's review

meet) the CO NAAQS (see Pub. L. No. 101–549, 104 Stat. 2399). References herein are to the CAAA, 42 U.S.C. 7401 *et seq.*

[2] Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

of base year emission inventory submittals in order to determine approval or disapproval under section 187(a)(1). The EPA is granting approval of the Albuquerque/Bernalillo County 1990 base year CO emissions inventory submitted on November 5, 1992, based on the Level I, II, and III review findings. The following paragraphs outline the review procedures performed on the inventory.

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the State, and assesses whether the emissions were developed according to current EPA guidance. The data quality is also evaluated.

The Level III review process is outlined here and consists of nine points that the inventory must include. For a base year emission inventory to be acceptable, it must pass all of the following criteria: (1) An approved Inventory Preparation Plan must be provided and the Quality Assurance contained in the Inventory Preparation Plan must be performed and its implementation documented; (2) adequate documentation must be provided that enables the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory, and summary emissions by categories of source type must be provided; (3) the point source inventory must be complete; (4) point source emissions must have been prepared or calculated according to the current EPA guidance; (5) the area source inventory must be complete; (6) the area source emissions must have been prepared or calculated according to the current EPA guidance; (7) the methods used to develop vehicle miles traveled (VMT) estimates (e.g., a network transportation planning model) must follow EPA guidance, and the VMT methods must be adequately described and documented in the inventory report; (8) the MOBILE model must be correctly used to produce emission factors for each of the vehicle classes; and (9) nonroad mobile emissions must be prepared according to current EPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process. Detailed Level I and II review procedures can be found in the following document—"Quality Review Guidelines for 1990 Base Year Emission Inventories," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, July 27, 1992. Level III review procedures are specified in a memorandum from John S. Seitz to the Regional Air Division Directors, entitled "Emission Inventory Issues," June 24, 1993.[3]

The EPA is approving this emission inventory as meeting the requirements of section 187(a)(1) of the CAA. The EPA's review of the Albuquerque 1990 base year CO emission inventory provided positive answers to all of the Level III review criteria.Please reference Appendix Two of the Albuquerque/ Bernalillo County CO SIP for specific details on the inventory, and the EPA's Technical Support Document for details of the EPA's evaluation of the inventory. Finally, it should be noted that no later than September 30, 1995, and no later than the end of each three year period thereafter (until the area is redesignated to attainment), Albuquerque/Bernalillo County will be required to submit to the EPA a revised inventory meeting the requirements of sections 187(a)(1) and 187(a)(5) of the CAA.

3. Nonattainment New Source Review Permit Program

Albuquerque/Bernalillo County has submitted new source review (NSR) regulatory revisions to the EPA. These revisions were proposed for approval by the EPA at 57 FR 43653(September 22, 1992). The revisions were due independently of the November 15, 1992, moderate CO nonattainment area SIP requirements addressed in this FR action. Please reference the above FR notice. In the proposed approval actions, the EPA outlined certain amendments to be made by the City of Albuquerque to their NSR program before the EPA could process the final approval actions. The City has adopted the required amendments and submitted them to the EPA by cover letter from the Governor dated May 17, 1993. The final approval action of the Albuquerque/ Bernalillo County nonattainment NSR permit program will be addressed in detail in a separate FR action.

4. Contingency Measures

As per section 172(c)(9) of the CAA, all nonattainment SIPs must contain contingency measures (due November 15, 1993) that are to be implemented if the area fails to make reasonable further progress (RFP) or to attain the NAAQS by the applicable date. These contingency measures are to be implemented immediately after the EPA determines failure of RFP or attainment of standards. The contingency measures for the Albuquerque/ Bernalillo County CO SIP, due independently of the November 15, 1992, moderate CO nonattainment area SIP requirements addressed in this FR action, will be addressed in a separate FR action after the November 15, 1993, submittal due date.

5. I/M SIP Revision

Section 187(a)(4) of the CAA provides a savings clause for vehicle I/M programs. All moderate CO nonattainment SIPs must include a vehicle I/M program as described in section 182(a)(2)(B). Albuquerque/ Bernalillo County has adopted and is currently implementing an I/M program. Albuquerque/Bernalillo County has also submitted a committal SIP to the EPA, per provisions of the General Preamble (57 FR 13530), stating that a comprehensive SIP revision will be submitted to the EPA by November 15, 1993, which will upgrade the existing Albuquerque/Bernalillo County I/M program to meet the new requirements mandated by the CAAA of 1990. The EPA will act on the committal SIP, and will act upon the final I/M program, in separate FR actions.

6. Oxygenated Fuels Program

Motor vehicles are significant contributors of CO emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen, contained within the oxygenate in the fuel, enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the CAA requires that various States submit revisions to their SIPs and implement oxygenated gasoline programs by no later than November 1, 1992. This requirement applies to all States with CO nonattainment areas with design values of 9.5 ppm. or more, which is based generally on 1988 and 1989 data. Each State's oxygenated gasoline program must require gasoline sold or dispensed in the specified control area to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the area is prone to high ambient concentrations of CO (the control period).

The EPA announced guidance on the establishment of control periods, by

[3] Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Division Directors, entitled "Emission Inventory Issues," U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, June 24, 1993.

area, in the FR on October 20, 1992.[4] The EPA also announced the availability of oxygenated gasoline credit program guidelines in the October 20, 1992, FR.[5] Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e., an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. As an alternate to the credit program, the State may elect a program in which a minimum of 2.7 percent by weight oxygen must be present in every gallon of gasoline sold.

The EPA also issued labeling regulations under section 211(m)(4) of the CAA. These labeling regulations were published in the **Federal Register** on October 20, 1992.[6]

The City of Albuquerque has adopted an Oxygenated Fuel Program that covers the County of Bernalillo, New Mexico (the control area), which is also the Albuquerque Metropolitan Statistical Area. In this action, the EPA is approving the oxygenated fuel program, based on Albuquerque/Bernalillo County Regulation 35–*Alternative Fuels.* The control period for the program is from November 1 of one year to February 28 or 29 of the following year, and the program is one in which all oxygenated gasoline must contain a minimum oxygen content of 2.7 percent by weight of oxygen. The City/County has adopted labeling regulations, enforcement procedures, and oxygenate test methods in conformity with Federal regulations. For further details of the oxygenated fuels program, the reader is referred to the Technical Support Document.

7. Winter Woodburning Program

The City/County also included its episodic woodburning curtailment program in the November 5, 1992, CO SIP submittal. This program was not required to be submitted as a part of the CO SIP, but was included per an earlier separate request of the EPA regarding particulate control in the Albuquerque area. However, significant reductions of CO have also resulted from the implementation of this program, based on Regulation 34–*Woodburning.* In this action, the EPA is approving the provisions found in Regulation 34, as well as a commitment letter dated March 22, 1993, from Sarah B. Kotchian, Director, Albuquerque Environmental Health Department, to A. Stanley Meiburg, Director, Air, Pesticides and Toxics Division, EPA Region 6, pertaining to the correction of an enforceability deficiency in Regulation 34. Please refer to the Technical Support Document for details regarding Regulation 34 and the commitment letter.

8. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and the EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et. al. (see 57 FR 13541). The criteria include, for example: ensuring that the rules contained in the SIP are explicit in their applicability to the regulated sources; ensuring that compliance dates are clearly specified; ensuring that compliance periods and test methods are clearly noted; ensuring that adequate recordkeeping is required; and ensuring that any exemptions or variances are clear in their applicability and in how they are triggered. In addition to enforceable requirements, nonattainment area plan provisions must contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The City of Albuquerque/Bernalillo County has an enforcement program that will ensure that certain control measures contained in the Albuquerque/Bernalillo County CO SIP (i.e., the oxygenated fuels and winter woodburning programs) are adequately enforced. The City/County has also submitted a commitment letter to the EPA pertaining to the correction of an enforceability deficiency in Regulation 34 regarding the winter woodburning program.

Final Action

The EPA in this action is approving the following elements of the complete Albuquerque/Bernalillo County CO SIP: The 1990 base year CO emissions inventory, the oxygenated fuels program, and the winter woodburning program, which were submitted by the Governor to the EPA by cover letter dated November 5, 1992. The remaining elements of the complete Albuquerque/Bernalillo County CO SIP, to be submitted to the EPA by November 15, 1993, will be acted upon in separate FR actions.

The EPA has reviewed these revisions to the New Mexico SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective January 28, 1994, unless, by December 29, 1993, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 28, 1994.

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

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds

[4] See "Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under section 211(m) of the CAAA—Notice of Availability," 57 FR 47849 (October 20, 1992).

[5] See footnote 4. The EPA was issued guidelines for credit programs under section 211(m)(5) of the CAA.

[6] See "Notice of Final Oxygenated Fuels Labeling Regulations under section 211(m) of the Clean Air Act as Amended—Notice of Final Rulemaking," 57 FR 47769. The labeling regulations may be found at 40 CFR part 80, § 80.35.

(*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

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 January 28, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order 12866

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 25, 1993.

Myron O. Knudson,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(52) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(52) A revision to the New Mexico SIP addressing CO for Albuquerque/Bernalillo County was submitted by the Governor of New Mexico by letter dated November 5, 1992.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Regulation 34–Woodburning, section 34.00, "Purpose;" section 34.01, "Definitions;" section 34.02, "Sale of New Wood Heaters–Certification Required;" section 34.03, "No-burn Periods;" section 34.04, "Notice Required;" Section 34.05, "Exemptions;" section 34.06, "Visible Emissions;" section 34.07, "Test Procedures;" and section 34.08, "Misfueling of Solid Fuel Heating Devices Prohibited," as filed with the State Records and Archives Center on November 27, 1991.

(B) Albuquerque/Bernalillo County Regulation 35–Alternative Fuels, section 35.00, "Purpose;" section 35.01, "Definitions;" section 35.02, "Oxygenated Fuels;" section 35.03, "Oxygenated Fuels Procedures Manual;" and section 35.07, "Severability Clause," as filed with the State Records and Archives Center on June 25, 1992.

(ii) Additional material.

(A) November 5, 1992, narrative plan addressing the Albuquerque/Bernalillo County CO nonattainment area, including the Albuquerque/Bernalillo County 1990 base year CO emissions inventory.

(B) A letter dated March 22, 1993, from Sarah B. Kotchian, Director, Albuquerque Environmental Health Department (Department), to A. Stanley Meiburg, Director, Air, Pesticides and Toxics Division, EPA Region 6, in which the Department committed to submitting future amendments to Regulation 34 to correct an enforceability deficiency, and in which the Department committed to using only EPA approved test methods until the future amendment correcting the enforceability deficiency is approved by the EPA.

(C) A memorandum dated September 8, 1992, from Kent A. Salazar, Manager, Albuquerque Vehicle Pollution Management Division, to Albert Salas, Quality Assurance Specialist Supervisor, Albuquerque Vehicle Pollution Management Division, addressing the suspension of the oxygenated fuels program due to oxygenate shortage.

[FR Doc. 93–29055 Filed 11–26–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 63

[AS-FRL-4808-2]

National Emission Standards for Hazardous Air Pollutants; Amendments to Compliance Extensions for Early Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to section 112(i)(5) of the Clean Air Act (Act), a rule was promulgated in the **Federal Register** on December 29, 1992 to implement granting extensions to compliance with section 112(d) emission standards to sources that have achieved early reductions of hazardous air pollutants (HAPs). This action makes several amendments to the original Early Reductions Rule including: (1) Revisions to the deadlines for submitting permit applications, reduction demonstrations, and source testing results, (2) a clarification of the status of an enforceable commitment under certain situations, and (3) correction of a typographical error regarding the high-risk weighting factor for hexachlorocyclopentadiene. As EPA began implementation of the Early Reductions Rule it became apparent that certain timing problems existed with respect to demonstrations that early reductions had been achieved and the issuance of permits to sources that qualify for a compliance extension. Additionally, some questions were posed by potential program participants on the nature of enforceable commitments. This action is needed to alleviate the timing problems and clarify EPA's treatment of enforceable commitments. The intended results are to improve EPA's ability to determine that actual reductions are achieved before a compliance extension is granted, to make the permit issuance process more workable, and make the provisions of the Early Reductions Program more clear to potential participants.

EFFECTIVE DATE: November 29, 1993.

Docket. All information used in the development of this final action is contained in the preamble below. However, Docket No. A–90–47, containing the supporting information for the original Early Reductions Rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room M–1500, 1st floor, 401 M Street SW., Washington DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 2771, telephone (919) 541–5421.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background

The Clean Air Act Amendments of 1990 revised section 112 of the Act, which directs EPA to establish national emission standards for sources of HAP. One of the new provisions, section 112(i)(5), offers sources that emit HAPs an incentive for achieving substantial emission reductions earlier than would be required by standards promulgated under section 112(d). Specifically, the early reductions provision allows granting an existing source emitting HAPs a six-year compliance date extension for an applicable section 112(d) standard, upon demonstration by the owner or operator that the source has achieved, prior to certain dates, a HAP reduction of 90 percent or more from established base year HAP emission levels (95 percent reduction is required for sources emitting particulate HAP).

Generally, participating sources would have to achieve the 90 (95) percent reduction prior to proposal of an applicable section 112(d) standard. However, sources that would be subject to early section 112(d) standards also have the option of participating by submitting to EPA, prior to proposal of an applicable section 112(d) standard, an enforceable commitment to achieve the 90 (95) percent reduction before January 1, 1994. Sources successfully demonstrating qualifying HAP reductions would be granted the compliance extension in a permit issued pursuant to title V of the Act. The permit would establish an alternative emission limitation to be met by the source to ensure that the early reductions are maintained.

On December 29, 1992, EPA promulgated in the **Federal Register** (57 FR 61970) an implementing rule for the early reductions provisions of the Act. As incorporated in the Code of Federal Regulations under title 40, part 63, subpart D, the Early Reductions Rule established procedures and requirements for source owners or operators wishing to obtain the six-year compliance extension. Among other provisions, the rule contains guidelines for demonstrating achievement of qualifying early reductions and established deadlines by which owners or operators must file permit applications to request a compliance extension.

II. Summary of Rule Changes and Rationale

A. Early Reductions Demonstration

According to section 112(i)(5), the early reductions are to be demonstrated with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987. The EPA's interpretation of this language was that total actual HAP emissions from the source over the entire base year (calendar year basis) is the benchmark from which the early reductions will be measured. The Early Reductions Rule implemented this interpretation and required owners or operators to establish base year emissions using "the best available data accounting for actual emissions, during the base year, of all hazardous air pollutants from each emission point listed in the source * * *". As an example, an early reductions source may have actual HAP emissions of 100 tons in the base year selected.

To determine whether a source's reductions qualify for a compliance extension, post-reduction emissions must be established on a similar basis and compared to base year emissions. The Early Reductions Rule specifies post-reduction emissions as "the best available data on an annual basis accounting for actual emissions, after the base year and following employment of emission reduction measures, of all hazardous air pollutants from each emission point in the source * * *". Therefore, the source in the example from the preceding paragraph with base year emissions of 100 tons per year would be required to document actual post-reduction HAP emissions on a tons per year basis as well.

As stated previously, to obtain a compliance extension, a participating source must achieve sufficient reductions before proposal of an applicable section 112(d) standard or, for sources making enforceable commitments, before January 1, 1994. Emission reduction projects completed on the day before the applicable deadline would count toward the early reduction target of an overall 90 (95) percent reduction. However, after the deadline passes, the source would be expected to emit HAP at the 90 (95) percent reduced level on an annual basis. Therefore, a source having actual HAP emissions of 100 tons in the base year would be expected to emit 10 tons or less of actual HAP emissions during the year following the proposal date of an applicable 112(d) standard to qualify for a compliance extension. (And, of course, would have to maintain that level until the compliance extension expires). For sources making enforceable commitments, actual HAP emissions would have to be 10 tons or less during calendar year 1994 to qualify.

The Early Reductions Rule also required participants to request compliance extensions in the context of title V permit applications. The applications were to consist of two main parts: (1) The demonstration that early reductions had been achieved and (2) permit terms and conditions, including emission limits, monitoring methods, and recordkeeping and reporting requirements proposed by the owner or operator for the early reductions source. Applications had to be filed before proposal of an applicable standard or, for sources making enforceable commitments, by December 1, 1993. The combined requirements, to file permit applications on or before the date emission reductions have to be achieved and to include the reduction demonstration in the permit application, essentially precludes the source owner or operator from demonstrating post-reduction "actual" HAP emissions as envisioned by the early reductions provision of the Act. To provide a reduction demonstration under this scenario, the participant has to project what emissions will be for the post-reduction year. In most cases, this would mean that short-term emission rates for the emitting units in the early reductions source would have to be extrapolated using expected production conditions for the post-reduction year.

Such a situation is not satisfactory to ensure that sufficient early reductions actually are achieved before a compliance extension is granted. The HAP emission rate from a source can be expected to vary during a year due to seasonal factors, shifting production schedules, changing product mixes, or other factors. Therefore, it is possible that a source that can show a low emission rate the day before proposal of an applicable section 112(d) standard may have a much higher HAP emission rate days, weeks, or months later. With the language in the Early Reductions Rule promulgated on December 29, 1992, it would be possible to grant a compliance extension to a source that never emits 90 (95) percent less than base year emissions, solely based on a "future-actual" extrapolation of a low, short-term, emission rate. Following through on the example of the source having base year emissions of 100 tons per year, suppose the source has made an enforceable commitment and on December 1, 1993 submits a permit application and a reduction demonstration showing that on November 20, 1993 emissions were 50 pounds per day. Based on that rate, the source projects 1994 emissions to be 18,250 lbs. or 9.1 tons per year (50 lbs. per day multiplied by 365 days) and would be eligible to obtain a compliance extension. However, since no permit would be in place for the source and wouldn't be until the title V permit is issued late in 1994, no monitoring and reporting requirements apply and EPA may never be sure that 1994 actual emissions would achieve the predicted level.

To rectify the apparent discrepancy between the promulgated Early Reductions Rule and the intent of the early reductions provisions of the Act regarding the demonstration of early reductions, EPA is making several changes to the rule. The demonstration of early reductions no longer will accompany the permit application. Rather, the reduction demonstration will be required after the end of the post-reduction year, which is the year following proposal of an applicable section 112(d) standard or calendar year 1994, for sources making enforceable commitments. Specifically, participants will have to submit reduction demonstrations after the end of the post-reduction year but within 13 months of the proposal date of an applicable emission standard or, for sources subject to enforceable commitments, by January 31, 1995. The description of post-reduction emissions from the promulgated Early Reductions Rule [§ 63.74(d)(2)] has been revised to state specifically that actual emissions for the post-reduction year must be demonstrated.

These changes ensure that EPA will receive an accounting of post-reduction emissions for the year immediately after the reduction deadline and ensure that no compliance extensions will be granted until actual post-reduction emissions are demonstrated and approved for the year after the reduction deadline. Early Reductions participants will have to track post-reduction emissions to make the year end demonstration, and EPA recommends that sources institute the monitoring procedures that the source will propose in the permit application to help in documenting post-reduction emissions.

Related to the revised requirement for demonstrating early reductions, two paragraphs from the original rule have been deleted. The first is § 63.74(d)(4) which required the owner or operator to submit evidence that emission reductions used to qualify for a compliance extension were achieved prior to the applicable reduction deadline. This provision was rendered superfluous by the change to require the post-reduction emission demonstration to represent actual emissions during the year after the applicable reduction deadline, instead of a projection of what actual post-reduction emissions likely would be. In other words, the criterion to determine whether the reduction deadline was met will be the showing that actual emissions in the post-reduction year were low enough to qualify the source for a compliance extension.

The second paragraph deleted is § 63.74(i), which instructed owners or operators to extrapolate post-reduction emission rates to an annual basis. Similar to the provision discussed in the above paragraph, this provision is now unnecessary because the post-reduction emissions demonstration no longer will be a prediction of emission levels for the post-reduction year.

B. Permit Application Deadlines

Two other date changes are being made to the Early Reductions Rule, primarily as a result of the change to the reduction demonstration submittal date. First, the permit application deadlines for sources participating in the Early Reductions Program have been revised. Originally, sources that had not made enforceable commitments were to submit applications by the date of proposal of the applicable section 112(d) standard or, if later, within 120 days of approval of the involved State's title V permit program. The revised deadline is 120 days after proposal of the applicable section 112(d) standard or, if later, within 120 days of establishment of a title V permit program (either a State or federal program). For sources that have made enforceable commitments, the application date is revised from December 1, 1993 to April 30, 1994.

Permits for early reductions sources are to be issued within 12 months of receipt of a complete application, and under the previously promulgated application dates, EPA technically could be required to issue permits before the post-reduction demonstration could be evaluated and a decision made on whether to grant a compliance extension. Moving the application submittal date to 120 days after proposal of an applicable section 112(d) standard, or April 30, 1994 for sources making enforceable commitments, would more closely match the date EPA must issue a permit with the date EPA would be ready to do so.

Another reason for delaying the December 1, 1993 application deadline for sources subject to enforceable commitments is that no title V permitting mechanism will be in place at that time. The December 1, 1993 deadline presumed that a title V permitting mechanism, either approved State title V programs or a promulgated federal title V program, would be operational by that time to process applications, and that such a program would be operational sufficiently ahead of the deadline to allow sources time to compose permit applications based on the permit program requirements. However, this is not the case. States likely will not obtain approval of their title V permit programs until late in 1994, or later, and a federal program for issuing title V permits probably will not be promulgated until 1995. Therefore, there will be no title V permitting mechanism in place before December 1, 1993.

To fill the permitting mechanism void, EPA intends to promulgate a specialty title V program solely for the purpose of processing and issuing permits for sources participating in the early reductions program. However, that program has not yet been promulgated, and probably won't be until mid-1994. At best, a specialty title V permit program will have just been proposed by the December 1, 1993 deadline, leaving little to no time for Early Reductions Program participants to see the proposed permit program requirements and prepare applications for submission. Revising the deadline to April 30, 1994 alleviates this problem.

Since the specialty permit program likely will not have been promulgated by the new April 30, 1994 deadline, participants will have to compose permit applications based on the proposed specialty program. In the event that there are significant changes between the proposed and promulgated versions of the specialty permit program, participants would be have to amend their permit applications to accommodate the changes.

The second change revises the deadline for submittal of source test results for sources subject to enforceable commitments. The promulgated Early Reductions Rule, although requiring the post-reduction emission demonstration to accompany the permit application, allowed owners or operators to submit source test results in support of post-reduction emissions as late as 120 days after the deadline for submitting permit applications, or for sources subject to enforceable commitments, March 31, 1994. The later submittal of test results allowed sources that had implemented reduction measures just before the early reduction deadline time to perform source tests and analzye and compile the results. The test result submittal date for sources subject to enforceable commitments is being revised to April 30, 1994, coinciding with the revised permit application date for such sources. The date is not revised for other sources since it already coincides with the revised permit application date.

It may seem incongruent that the post-reduction emission demonstration does not have to be submitted until after the post-reduction year has ended, yet the results from any source testing done to support post-reduction emissions must be submitted well ahead of that time. However, the point of asking for test results earlier is to see that any planned source tests are performed early in the post-reduction year, thereby giving a timely indication of the performance of emission reduction measures. Allowing tests to be performed late in the post-reduction year would not ensure detection of initial emissions levels during the post-reduction year. It is emphasized that submittal of test results does not constitute the post-reduction emissions demonstration. Test results or other indications of short-term emission levels would have to be coupled with relevant monitoring information over the year to demonstrate actual, annual, post-reduction HAP emissions for the early reductions source. Relevant monitoring information could include monitoring emissions directly or monitoring process parameters or control device parameters that are related to emissions performance.

C. Enforceable Commitments

A new paragraph § 63.75(f) is added to clarify the status of enforceable commitments that have not been approved and are still undergoing the approval process. An enforceable commitment includes a description of the early reductions source, associated HAP emission estimates for the base year selected, and a commitment to reduce HAP emissions by 90 (95) percent before January 1, 1994. The EPA will review and approve/disapprove base year emissions contained in an enforceable commitment according to the procedures in § 63.76 of the Early Reductions Rule. This process was instituted to help verify the technical adequacy and representativeness of base year emission estimates and, in turn, assure that the resulting target post-reduction emission levels are appropriate to qualify sources for compliance extensions.

If EPA finds base year emissions to be deficient in some way, the source must revise the enforceable commitment to take into account EPA's comments. If the source owner or operator cannot or chooses not to respond to EPA comments on the base year emission estimates, the source will be considered withdrawn from the program. Without EPA approval of base year emissions, an enforceable commitment is not in effect and is not enforceable. The new language under § 63.75(f) clarifies this point and the fact that when an unapproved enforceable commitment is still undergoing the approval process after the date commitments can be withdrawn without penalty (December 1, 1993), the source does not have to continue to seek approval of the commitment and will not be subject to enforcement action. Once again, the enforceable commitment must be approved to be in effect and enforceable.

A related concern raised to EPA is whether a source that has made an enforceable commitment and that has demonstrated achieving the required reductions must actually receive the compliance extension and be issued the title V permit, or could the source give up the extension and simply meet the applicable section 112(d) standard on schedule and without penalty? This question arose from a concern expressed by potential participants that some of the terms and conditions imposed in a permit issued to an early reductions source may be rigorous to the point that the source owner or operator would prefer compliance with the applicable standard under section 112(d) of the Act. While EPA considers the possibility of such a scenario remote, it is acknowledged that the terms and conditions of permits issued to early reductions sources may be more individualized and subject to judgements made by the permitting authority than permits issued to similar sources complying with section 112(d) standards. For example, section 112(d) standards likely will specify monitoring requirements for subject sources, which will then be implemented in title V permits, whereas the monitoring requirements for emission reduction measures employed by an early reductions source must be generated through reasoned application of existing information on monitoring similar sources in similar situations.

Should the scenario in the above paragraph arise, the source owner or operator could withdraw from the Early Reductions Program without penalty provided that the terms of the enforceable commitment were met. In an enforceable commitment, an owner or operator commits to achieving before January 1, 1994 a 90 (95) percent reduction in emissions from the established base year HAP emission level at the early reductions source. If the owner or operator submits a demonstration (as defined by the amended Early Reductions Rule) that promised reductions had been achieved before the deadline and that demonstration is approved by EPA, then the terms of the enforceable commitment will have been met and the source could decide to forego receiving the compliance extension and instead meet the applicable section 112(d) standard on schedule, without penalty.

D. Hexachlorocyclopentadiene

Finally, the high-risk weighting factor for hexachlorocyclopentadiene (CAS No. 77474) as listed in Table 1 of § 63.74 is corrected to read "10" instead of "100." This change simply corrects a typographical error from the publication of the Early Reductions Rule.

E. Effective Date

The EPA is publishing this rule as a final rule, and it is effective immediately upon publication. The Agency believes that this action is supported by the "good cause" exception in the Administrative Procedures Act, which permits an agency for "good cause" to proceed directly to a final rule where issuing a proposed rule would be "impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b)(B)) and for "good cause found" (5 U.S.C. 553(d)) to dispense with the general requirement that a rule be published 30 days before its effective date. The EPA believes that "good cause" exists here to issue a final, immediately effective rule because of the nearness of the December 1, 1993 permit application deadline (for sources that have made enforceable commitments) specified in the December 29, 1992 version of the Early Reductions Rule. If the changes in this rulemaking were only being proposed, then the December 1, 1993 application date would still be in effect and this would negate the intent of the changes such as delaying the permit application date until April 30, 1994 for sources that have made enforceable commitments.

Furthermore, EPA views this action, which delays information submissions but improves accounting measurements, as noncontroversial.

F. Judicial Review

Under section 307(b)(1) of the Act, judicial review of the actions taken by this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of publication of this action. Under section 307(b)(2) of the Act, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated Early Reductions Rule (57 FR 61970) were submitted to and approved by the Office of Management and Budget. A copy of this Information Collection Request (ICR) document (OMB control number 2060–0222) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, DC 20460 or by calling (202) 260–2740. Today's changes to the Early Reductions Rule do not affect the information collection burden estimates made previously, only the timing of submittal of the information requested has been affected somewhat. Therefore, the ICR has not been revised.

B. Executive Order 12866 Review

This rule was classified "non-significant" under Executive Order 12866 and, therefore was not reviewed by the Office of Management and Budget.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Reporting and recordkeeping requirements.

Dated: November 22, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. In § 63.74 paragraph (d)(2) is revised and paragraphs (d)(4) and (i) are removed and reserved as follows:

§ 63.74 Demonstration of early reduction.

* * * * *

(d) * * *

(2) The best available data accounting for actual emissions, during the year following the applicable emission reduction deadline as specified in § 63.72(a)(2), of all hazardous air pollutants from each emission point in the source listed pursuant to paragraph (b)(2) of this section.

* * * * *

(d)(4) (Reserved).

* * * * *

(i) (Reserved).

* * * * *

3. In § 63.74 Table 1 entitled "List of High-Risk Pollutants," the entry for "hexachlorocyclopentadiene" (CAS No. 77474) is revised to read as follows:

§ 63.74 Demonstration of early reduction.

* * * * *

TABLE 1.—LIST OF HIGH RISK POLLUTANTS

Cas. No.	Chemical	Weighting factor
*	* *	* *
77474 ...	Hexachlorocyclopentadiene.	10
*	* *	* *

4. Section 63.75 is amended by adding paragraph (f) to read as follows:

§ 63.75 Enforceable commitments.

* * * * *

(f) An enforceable commitment submitted under this section shall not be in effect and enforceable until the base year emissions contained in the commitment have been approved according to the procedures in § 63.76. An owner or operator is under no obligation to continue to seek approval of commitments that have not been approved by December 1, 1993.

5. Section 63.77 is revised to read as follows:

§ 63.77 Application procedures.

(a) To apply for an alternative emission limitation under § 63.72, an owner or operator of the source shall file a permit application with the appropriate permitting authority.

(b) Except as provided in paragraph (e) of this section, the permit application shall contain the information required by § 63.74, as applicable, and the additional information required for a complete permit application as specified by the applicable permit program established pursuant to title V of the Act.

(c) Permit applications under this section for sources not subject to enforceable commitments shall be submitted by the later of the following dates:

(1) 120 days after proposal of an otherwise applicable standard issued under section 112(d) of the Act; or

(2) 120 days after the date an applicable permit program is approved or established pursuant to title V of the Act.

(d) Permit applications for sources subject to enforceable commitments pursuant to § 63.75 shall be submitted no later than April 30, 1994.

(e) The post-reduction emissions information required under § 63.74 (d)(2), (d)(3), and (d)(5) shall not be filed as part of the initial permit application but shall be filed later as a supplement to the application. This supplementary information shall be filed no earlier than one year after the date early reductions had to be achieved according to § 63.72(a)(2) and no later than 13 months after such date.

(f) If a source test will be the supporting basis for establishing post-reduction emissions for one or more emissions units in the early reductions source, the test results shall be submitted by the applicable deadline for submittal of a permit application as specified in paragraph (c) or (d) of this section.

(g) Review and disposition of permit applications submitted under this section will be accomplished according to the provisions of the applicable permit program established pursuant to title V of the Act.

[FR Doc. 93–29143 Filed 11–26–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[CA-44-1-5804; FRL-4807-3]

Designation of Areas for Air Quality Planning Purposes; California

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Clean Air Act as amended November 15, 1990 (Act), the Environmental Protection Agency (EPA) is authorized to redesignate areas (or portions thereof) as nonattainment for the PM-10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) national ambient air quality standards (NAAQS). Additionally, under this section of the Act, the Governor of any state (or his/her designee) may, on the Governor's own motion, submit to EPA a revised designation of any area or portion of an area in a state. EPA, in turn, must approve or deny such redesignation.

In this final action, EPA is approving the California Air Resources Board's (CARB) (the Governor's designee) recommendation regarding the PM-10 designation for the Mono Basin portion of Mono County, California. EPA is taking final action to revise the PM-10 designation for this area from "unclassifiable" to "nonattainment." The redesignation is based upon recorded violations of the PM-10 NAAQS which occurred on or after January 1, 1989. A more detailed discussion regarding the Mono Basin portion of Mono County is provided in the following portions of this notice.

EFFECTIVE DATE: December 29, 1993.

ADDRESSES: Information supporting this final action can be obtained by contacting: Wallace Woo, Chief, Plans Development Section, Air Planning Branch (A-2-2), United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, (415) 744-1207.

FOR FURTHER INFORMATION CONTACT:

Stephanie Valentine, Plans Development Section (A-2-2), Air Planning Branch, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, (415) 744-1178.

Barbara A. Bates (PM-10), Plans Development Section (A-2-2), Air Planning Branch, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, (415) 744-1206.

SUPPLEMENTARY INFORMATION:

I. PM-10 Background

On July 1, 1987, EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called "PM-10" that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers ("μ"). At the same time, EPA set forth regulations for implementing the revised particulate matter standards and announced EPA's State implementation plan (SIP) development policy elaborating PM-10 control strategies necessary to assure attainment and maintenance of the PM-10 NAAQS (see generally 52 FR 24672). EPA adopted a PM-10 SIP development policy dividing all areas of the country into three categories based upon their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new PM-10 NAAQS and requiring substantial SIP adjustments were placed in Group I; (2) areas that might well have been attaining the PM-10 NAAQS and whose existing SIP's most likely needed less adjustment were placed in Group II; (3) areas with a strong likelihood of attaining the PM-10 NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679-24682).

Pursuant to sections 107(d)(4)(B) and 188(a) of the Act, areas previously identified as Group I, as well as Group II and Group III areas which had monitored violations of the PM-10 NAAQS prior to January 1, 1989 were, by operation of law upon enactment of the 1990 Amendments to the Clean Air Act (Pub. L. No. 101-549, 104 Stat. 2399), designated as moderate nonattainment areas for PM-10. All other areas of the country with no violations of the PM-10 NAAQS prior to January 1, 1989, including Mono Basin, were designated as unclassifiable for PM-10 by operation of law upon enactment of the 1990 Amendments [section 107(d)(4)(B)(iii) of the Act]. Formal codification in 40 CFR part 81 of those areas designated nonattainment and unclassifiable for PM-10 by operation of law upon enactment was announced in a **Federal Register** notice dated November 6, 1991 (56 FR 56694). See also 57 FR 56762 (November 30, 1992).

II. EPA's Final Action to Redesignate Mono Basin

On the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate, EPA is authorized to initiate redesignation of unclassifiable areas (or portions thereof) as nonattainment for PM-10 pursuant to section 107(d)(3) of the Act by notifying the state that available information indicates that the designation of the area should be revised. After providing an opportunity for the State to respond, EPA must promulgate the redesignation that EPA deems necessary and appropriate, consistent with section 107(d)(3)(C) of the Act. In addition, section 107(d)(3)(D) provides that a Governor of a state (or his/her designee) may, on his or her own initiative, submit to EPA a revised designation of an area within the state. EPA must approve or deny the redesignation.

In a letter to EPA, dated August 1, 1991, the California Air Resources Board (CARB), the Governor's designee, recommended that EPA redesignate the Mono Basin portion of Mono County as nonattainment for the 24-hour PM-10 NAAQS. In a **Federal Register** notice dated July 16, 1993 (58 FR 38331) EPA proposed to approve redesignation of the Mono Basin as nonattainment for PM-10 and solicited comments on this proposal. The public comment period closed August 16, 1993.

As described in more detail in the proposal, exceedances of the 24-hour PM-10 NAAQS were measured at the Warm Springs monitoring site in 1988 and 1990 (the monitor did not operate during 1989 for reasons unrelated to air quality). Two such exceedances were monitored in 1991. Four exceedances were measured in the area during 1992, two at the Warm Springs monitoring site and two at the Simis Ranch site.

Section 107(d)(1)(A) of the Act sets out definitions of nonattainment, attainment, and unclassifiable status. These definitions provide the applicable legal standard for designations or redesignations to the relevant attainment status. A nonattainment area is defined as any area that does not meet, or that significantly contributes to ambient air quality in a nearby area that does not meet, the national primary or secondary ambient air quality standard for the relevant pollutant [see section 107(d)(1)(A)(i) [1]]. The exceedance monitored in the Mono Basin area demonstrate that the area does not meet the 24-hour PM-10 NAAQS. Further, in determining appropriate boundaries for

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

the Mono Basin nonattainment area, EPA has considered not only areas where violations of the PM–10 NAAQS have been monitored, but nearby areas which significantly contribute to such violations. An unclassifiable area is defined as any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant [see section 107(d)(1)(A)(iii)].

III. Response to Comments

In the July 16, 1993 proposal for today's action, EPA provided a 30-day comment period ending August 16, 1993, in order to solicit public comments on "all aspects" of the proposal to redesignate the Mono Basin portion of Mono county, California, from "unclassifiable" to "nonattainment" for PM–10 (58 FR 38333). Comments from one party were received. The Department of Water and Power of the City of Los Angeles ("LADWP") submitted a letter dated August 16, 1993[2]. In this final rulemaking, EPA has considered and responded to LADWP's comments, below. EPA has determined that it is appropriate to finalize the redesignation in the manner proposed. The public is referred to the July 16, 1993 notice of proposed rulemaking for a full discussion of the action EPA is finalizing.

Comment 1: The LADWP describes the Mono Lake area and contends that: Only a relatively small amount of exposed lake bed produces PM–10 emissions; PM–10 emissions are produced only under certain windy conditions; and the area impacted by the PM–10 emissions is relatively desolate with little or no human habitation.

Response 1: This comment has no bearing on whether the area meets or does not meet the PM–10 NAAQS. Section 107 of the Act sets forth the procedures for designating the attainment status of an air basin and the criteria that the EPA must use in making that designation. Where the EPA has both received a request for redesignation from a Governor, or the Governor's designee, and available data demonstrates a violation of the relevant NAAQS, EPA believes it is appropriate to approve the State's request and to redesignate the area as nonattainment. As set forth in the notice of proposed rulemaking, both of these factors are present in this rulemaking action. The EPA has received from the California Air Resources Board, the designee for the Governor of California, a request to redesignate Mono Basin portion of Mono County to nonattainment for PM–10. In addition, ambient air monitoring data clearly establishes a violation of the NAAQS for PM–10. The EPA defines ambient air as that portion of the atmosphere, external to buildings, to which the public has access. See 40 CFR 50.1(e). The public has access to the Mono Basin areas in which air monitors have measured violations of the NAAQS for PM–10.

The role of wind conditions in Mono Basin is for consideration during the state implementation plan (SIP) development process that follows a nonattainment designation. See section 188(f) of the Act. In any event, the legislative report accompanying the addition of section 188(f) to the Act states that the emissions from exposed portions of the Mono Lake shoreline should be considered anthropogenic sources:

> The term anthropogenic sources is intended to include activities that are anthropogenic in origin. An example of such sources is the dry lake beds at Owens and Mono Lakes in California, which give rise to dust storms that are a result of the diversion of water that would otherwise flow to such lakes and should be considered anthropogenic sources. H.R. Rep. No. 490, 101st Cong., 2d Sess. 265–66 (1990).

Comment 2: The LADWP asserts that the air quality in the Mono Basin is excellent, and that the only population center in the Basin, the Town of Lee Vining, has never experienced an exceedance of the NAAQS for PM–10.

Response 2: See Response 1. The exceedances of the NAAQS for PM–10 experienced at the Warm Springs and Simis Ranch areas provide sufficient evidence that there is a PM–10 air quality problem in the Mono Basin.

Comment 3: The LADWP claims that designation of the Mono Basin as nonattainment for PM–10 could influence the California Water Resources Control Board's judgment or actions in balancing the uses of the Mono Lake area's public trust resources. The LADWP asserts that designation of the area as nonattainment would result in the Board "feeling obligated" to raise the level of Mono Lake without the benefit of the SIP development process. This in turn could negatively impact: the scenic resources of the Mono Lake area; water and hydroelectric supplies for the citizens of Los Angeles; and recreational resources along the Owens River and associated lakes.

Response 3: See Response 1. It is inappropriate for EPA to delay making its final technical judgment regarding the air quality status of the area because of the potential political implications outlined by the commenter. Further, upon final redesignation of the Mono Basin to nonattainment for PM–10, the appropriate California agencies will have 18 months to develop a SIP for the Mono Basin area. The SIP process serves to identify the sources of pollution which contribute to violations of the NAAQS and develop control strategies for those sources. While the reasonableness of implementing available control measures, including economic factors, are considered during the SIP development process, EPA's redesignation of the attainment status of the Mono Basin area is based upon the presence or absence of violations of the NAAQS in that air basin. See section 107(d)(1)(A)(i) of the Act.

Comment 4: The LADWP argues that environmental statutes should be implemented on a cost-benefit basis and that in the case of the Mono Basin the costs of bringing the area into attainment of the NAAQS for PM–10 would outweigh the health benefits of achieving attainment.

Response 4: See Responses 1 and 3; see also *Central Arizona Water Conservation Dist.* v. *EPA*, 990 F.2d 1531 at 1542, n.10 (9th Cir. 1993), cert. denied 62 U.S.L.W. 3245 (October 4, 1993).

IV. Significance of Today's Action

In taking final action to redesignate Mono Basin to nonattainment for PM–10, Mono Basin will by operation of law initially be classified as moderate [see section 188(a) of the Act]. For areas redesignated nonattainment for PM–10 and, classified as moderate, States must submit PM–10 SIP's to EPA within 18 months of the nonattainment redesignation meeting the applicable requirements of Part D, Title I of the Act [see, e.g., sections 172(c) and 189 of the Act]. In addition to meeting the general nonattainment area plan requirements identified in section 172(c) of the Act, the moderate area SIP must specifically include:

---

[2] Additionally, in a letter dated August 2, 1993, the Los Angeles Department of Water and Power (LADWP) requested a 90-day extension of the deadline for submitting comments on the proposed redesignation. The LADWP asserted that a "decision by the EPA regarding the PM–10 attainment/nonattainment status of the Mono Basin at this time may unduly influence the public trust balancing decision of the [California Water Resources Control] Board" in upcoming hearings regarding water rights in the Mono Basin. In a letter dated August 12, 1993, EPA denied the request for an extension of the comment period on the grounds that the EPA's action regarding the attainment or nonattainment designation of an air basin are made on the technical and legal merits of the situation, and that the Clean Air Act does not allow the EPA to "balance interests" when making such designations.

(A) Either: (i) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable, but no later than the end of the sixth calendar year after the areas's designation as nonattainment; or (ii) a demonstration that attainment by such date is impracticable [see section 189(a)(1)(B)].

(B) Provisions to assure that reasonably available control measures (including reasonably available control technology) for the control of PM–10 shall be implemented no later than 4 years after designation [see section 189(a)(1)(C)].

(C) A new source review permit program, meeting the requirements of section 173 of the Act, for the construction and operation of new and modified major stationary sources of PM–10 [see section 189(a)(1)(A)].

(D) Quantitative milestones to be achieved every 3 years until the area is redesignated attainment and which demonstrate "reasonable further progress" towards attainment [see section 189(c)].

(E) Control requirements for PM–10 precursors. The control requirements applicable to major stationary sources of PM–10 (e.g., reasonably available control technology and nonattainment new source review control requirements) also must apply to major stationary sources of PM–10 precursors unless EPA determines that sources of precursors do not contribute significantly to PM–10 levels which exceed the NAAQS in the area [see section 189(e)].

EPA has issued detailed guidance on the Clean Air Act requirements applicable to moderate PM–10 nonattainment areas. See 57 FR 13498 (April 16, 1992) & 57 FR 18070 (April 28, 1992).

The State is also required to submit contingency measures, pursuant to section 172(c)(9) of the Act, which are to take effect without further action by the State or by EPA, upon a determination by EPA that an area has failed to make reasonable further progress or attain the PM–10 NAAQS by the applicable attainment date (see 57 FR 13510–13512, 13543–13544). The EPA is establishing the schedule for submission of contingency measures as called for in section 172(b) of the Act. The State is to submit contingency measures for Mono Basin within 18 months of the effective date of today's final rule. This is the same time the other moderate area SIP requirements described above are due.

The EPA also has the authority to reclassify Mono Basin to serious if EPA determines that the area cannot practically attain the PM–10 standards for moderate areas by the applicable attainment date or if the area fails to timely attain the NAAQS. See section 188(b) of the Act. In addition to meeting the requirements applicable to moderate nonattainment areas, areas reclassified as serious must implement more stringent control requirements.

VI. Miscellaneous

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. The requirement of preparing such analysis is inapplicable, however, if the Administrator certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities (see 5 U.S.C. 605(b)). The final redesignation of Mono Basin will not impact or impose any significant requirements on a substantial number of small entities.

Redesignation of an area to nonattainment under section 107(d)(3) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that the state must adopt new regulations, based on an area's nonattainment status, EPA will review the effect those actions have on small entities at the time the state submits these regulations. Accordingly, I hereby certify that the action proposed today will not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12866

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 81

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

Dated: November 12, 1993.

John Wise,

Acting Regional Administrator.

For reasons set forth in the preamble, part 81 of title 40, Code of Federal Regulations, is amended to read as follows:

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.305 is amended in the table for "California—PM–10" by adding an entry for "Mono County" to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—PM–10 NONATTAINMENT AREAS

Designated area	Designation Date	Designation Type	Classification Date	Classification Type
* * * *	*	*	*	*
Mono County				
Mammoth Lake planning area	November 15, 1990.	Nonattainment	November 15, 1990.	Moderate.

CALIFORNIA—PM-10 NONATTAINMENT AREAS—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
Includes the following sections: a. Sections 1–12, 17, and 18 of Township T4S, R28E; b. Sections 25–36 of Township T3S, R28E; c. Sections 25–36 of Township T3S, R27E; d. Sections 1–18 of Township T4S, R27E; and e. Sections 25 and 36 of Township T3S, R26E				
Mono Basin				
Hydrologic Unit 1809010	December 29, 1993.	Nonattainment	December 29, 1993.	Moderate.
* * * *	*		*	*

[FR Doc. 93-29140 Filed 11-26-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-162; FCC 93-458]

Financial Interest and Syndication Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: By this Memorandum Opinion and Order, the Commission generally affirms its decision in the Second Report and Order in this proceeding, which modified the financial interest and syndication (finsyn) rules. In addition, the Commission responds to petitions for reconsideration of the Second Report and Order; makes minor adjustments to the reporting requirements in § 73.661 of its Rules; makes a technical correction to § 73.660(a) of its Rules; and codifies in new § 73.663 the approach adopted in the Second Report and Order toward scheduling the expiration of the finsyn rules.

EFFECTIVE DATE: December 29, 1993, except for the amendments to § 73.661, which shall go into effect December 29, 1993, or upon approval by the Office of Management and Budget, whichever is later. The Commission will publish a document announcing the effective date of the § 73.661 amendments in the Federal Register.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz or Kathleen O'Brien Ham, (202) 632-7792.

SUPPLEMENTARY INFORMATION: Public reporting burden for the collection of information under § 73.661 is estimated to average 182 hours per response. The recordkeeping for the collection of information under § 73.3526(a)(11) is estimated to average 12 hours per recordkeeper. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, AMD-PIRS, Records Management Division, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0479), Washington, DC 20503.

This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 90-162, adopted September 23, 1993, and released October 22, 1993. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Memorandum Opinion and Order

1. In this Memorandum Opinion and Order, the Commission addresses the issues raised in petitions for reconsideration of its Second Report and Order (Second R&O), 58 FR 28927 (May 18, 1993), which amended the financial interest and syndication ("finsyn") rules. For the most part, the petitions and responsive pleadings reiterate arguments that the Commission considered and rejected in its Second R&O. After careful review, the Commission finds no new evidence warranting fundamental changes in the rules as adopted. To the extent that new arguments have made, particularly with respect to the Commission's decision in the Second R&O to exempt emerging networks from most finsyn restrictions and to schedule a timetable for expiration of all finsyn constraints, the Commission is, with a few minor exceptions, also unpersuaded that the rules should be changed. Thus, by this Memorandum Opinion and Order, the Commission denies most aspects of the petitions before it. The Commission does, however, make minor adjustments to the reporting requirements set forth in § 73.661 of its Rules, and makes a technical correction to the language of § 73.660(a) of its Rules. In addition, the Commission has decided to codify in new § 73.663 the approach adopted in the Second R&O toward scheduling the expiration of the finsyn rules.

2. The Commission initiated this proceeding in 1990 to determine whether modification of the finsyn rules was warranted. Those rules, originally adopted in 1970, placed significant restrictions on the ability of the established networks (ABC, CBS and NBC) to own programming and engage in the practice of syndication. The Commission had imposed these restraints to limit network control over television programming and thereby encourage the development of a diversity of programs through diverse and antagonistic sources of program services. In its 1991 Report and Order (R&O), 56 FR 26242 (June 6, 1991), the Commission declined to substantially repeal the 1970 finsyn rules, but did relax them, observing that the role and power of the three established networks had diminished, that cable television had emerged as a competitive force, and that the fundamental objectives of the rules—to foster a robust syndication industry and to prevent extraction of rights from non-network producers—