

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

2. Section 10.155 is amended by revising paragraph (a) to read as follows:

**§ 10.155 Appeal to the Commissioner.**

(a) Within thirty (30) days from the date of the initial decision of the administrative law judge under § 10.154, either party may appeal to the Commissioner. If an appeal is taken, the time for filing a cross-appeal expires 14 days after the date of service of the appeal pursuant to § 10.142 or 30 days after the date of initial decision of the administrative law judge, whichever is later. An appeal or cross-appeal by the respondent will be filed and served with the Director in duplicate and will include exceptions to the decisions of the administrative law judge and supporting reasons for those exceptions. If the Director files the appeal or cross-appeal, the Director shall serve on the other party a copy of the appeal or cross-appeal. The other party to an appeal or cross-appeal may file a reply brief. A respondent's reply brief shall be filed and served in duplicate with the Director. The time for filing any reply brief expires thirty (30) days after the date of service pursuant to § 10.142 of an appeal, cross-appeal or copy thereof. If the Director files a reply brief, the Director shall serve on the other party a copy of the reply brief. Upon the filing of an appeal, cross-appeal, if any, and reply briefs, if any, the Director shall transmit the entire record to the Commissioner.

\* \* \* \* \*

Dated: December 7, 1995.

Bruce A. Lehman,

*Assistant Secretary of Commerce and  
Commissioner of Patents and Trademarks.*

[FR Doc. 95-30340 Filed 12-13-95; 8:45 am]

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**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 52**

[CA141-1-7247; FRL-5326-7]

**Approval and Promulgation of State  
Implementation Plans; California—  
Ozone**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving certain provisions in the state implementation plan (SIP) revision submitted by the State of California. The California Air Resources Board (CARB) adopted these

provisions on November 15, 1994, as part of "The 1994 California State Implementation Plan for Ozone." The portions of the SIP approved today are commitments by the CARB to adopt regulations for various mobile source and consumer product categories by particular dates to achieve specific emission reductions of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) in order to attain the national ambient air quality standards (NAAQS) for ozone.

The effect of EPA's approval of these commitments is to incorporate the commitments into the federally approved SIP. EPA is approving the commitments under provisions of the Clean Air Act (CAA or "the Act") regarding EPA actions on SIP submittals and general rulemaking authority because these revisions strengthen the SIP.

**EFFECTIVE DATE:** This approval is effective on January 16, 1996.

**ADDRESSES:** Materials relevant to this rulemaking are available for review at the following location: Office of Federal Planning (A-1-2), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Interested persons may make an appointment with Ms. Virginia Petersen at (415) 744-1265, to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

A copy of the SIP submittal is also available for inspection at the address listed below: California Air Resources Board, 2020 L Street, Sacramento, California.

**FOR FURTHER INFORMATION CONTACT:** Julia Barrow (415) 744-2434, at the Office of Federal Planning (A-1-2), Air and Toxics Division, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105-3901.

**SUPPLEMENTARY INFORMATION:** On August 21, 1995 (60 FR 43421), EPA proposed to approve certain State commitments included in Volume II of the California Ozone SIP, "The Air Resources Board's Mobile Source and Consumer Products Elements." These commitments were originally submitted on November 15, 1994, were subsequently updated, corrected, and resubmitted on December 29, 1994, and were found to be complete on January 30, 1995 and April 18, 1995, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V.<sup>1</sup>

<sup>1</sup>EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

EPA is today finalizing approval of the State's commitments listed below, in advance of CARB adoption of regulations. EPA is finalizing SIP approval of these enforceable CARB commitments under section 110(k)(3) and 301(a) for their strengthening effect. The CARB commitments approved today are as follows:

*Measure M3, Accelerated Ultra-Low Emission Vehicle (ULEV) requirement for Medium-Duty Vehicles (MDVs), adoption 1997, implementation 1998-2002, South Coast reductions in 2010-32 tons per day (tpd) NO<sub>x</sub>, 4 tpd reactive organic gases (ROG).* These reductions will be achieved by an increase in MDV ULEVs, as currently defined by CARB, from 10 percent of sales of new MDVs in 1998 model year to 100 percent in 2002 and later model years.

*Measure M5, Heavy-Duty Vehicles (HDVs)—NO<sub>x</sub> regulations, adoption 1997, implementation 2002, South Coast reductions in 2010-56 tpd NO<sub>x</sub>, 4 tpd ROG.* These reductions will be achieved by CARB adoption of a 2.0 gram per brake horsepower-hour NO<sub>x</sub> exhaust emission standard for new heavy-duty truck engines sold in California beginning in 2002, or by implementation of alternative measures which achieve equivalent or greater reductions. Alternatives under consideration include expanded introduction of alternative-fueled and low-emission diesel engines through demand-side programs and incentives, retrofit of aerodynamic devices, reduced idling, and speed reduction.

*Measure M8, Heavy-Duty Gasoline Vehicles (HDGVs)—lower emission standards, adoption 1997, implementation 1998-2002, South Coast reductions in 2010-3 tpd NO<sub>x</sub>.* These reductions will be achieved by application of 3-way catalyst technology in HDGVs will obtain 50 percent reductions of NO<sub>x</sub> and ROG emissions from these engines.

*Measure M11, Industrial Equipment, Gas & LPG—three-way catalyst technology, adoption 1997, implementation 2000-2004, South Coast reductions in 2010-14 tpd NO<sub>x</sub>, 29 tpd ROG.* Emission standards for new engines greater than 25 hp and less than 175 hp will be phased in beginning in 2000, based on the use of closed-loop 3-way catalyst systems, which are expected to reduce ROG by 75 percent and NO<sub>x</sub> by at least 50 percent.

*Measure CP-2, Mid-Term Consumer Products ("Phase II"), adoption July 1997, reductions in 2005-25 percent reduction beyond currently adopted CARB regulations, South Coast reductions in 2010-34 tpd ROG.*

Two public comments were received on the proposed approval. Texaco Refining and Marketing recommended that EPA recognize and consider the flexibility that CARB intended for Measure M3, citing the following language from the SIP submittal:

[t]he heaviest medium-duty vehicles may have problems meeting the ULEV standard. However it may be possible to compensate for this situation through flexible standards which allow credits to be generated by the more populous lighter medium-duty vehicles. In addition, other mixes of vehicles and technologies could provide equivalent emission reductions.

EPA fully supports CARB's statement of its flexibility in developing and implementing this measure.

The Chemical Specialties Manufacturers Association (CSMA) commented on Measure CP-2. CSMA noted that EPA incorrectly identified the measure as "phase III." In the current CARB nomenclature, CP-2 is "phase II" of the State's consumer product element. EPA has revised the measure identification accordingly. CSMA also commented that CARB did not cite its full legislative authority to adopt the measure. EPA believes that CARB has sufficient authority to adopt and implement regulations to achieve the SIP's reduction targets. Finally, CSMA stated that CARB's proposed 25 percent reduction target for the measure is not supported by CARB's data, and CSMA further noted that EPA, CARB, and industry have met recently to discuss refinements to the categorization of consumer products. EPA continues to believe that the State's commitment to adopt the CP-2 measure, including its reduction target, should be approved.

As discussed in the proposed approval, EPA is firmly committed to assisting CARB in its efforts to develop and adopt the associated State regulations, which are essential if the State is to meet the public health goals of the Act. EPA shares the State's dedication, reflected in these commitments, to achieve real and sustainable progress toward clean air at the least cost. EPA intends to work closely with CARB to speed full SIP approval of the regulations eventually adopted by the State.

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, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### Regulatory Process

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

SIP approvals under sections 110 and 301 and subchapter I, part D of the Clean Air Act, 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, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

#### Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of these SIP revisions, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 182 of the CAA. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent

that the rules being approved today will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law.

Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 22, 1995.

Felicia Marcus,  
Regional Administrator.

Part 52, chapter I, 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 F—California

2. Section 52.220 is amended by adding paragraph (c)(204)(i)(A)(5) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

- (c) \* \* \*
- (204) \* \* \*
- (i) \* \* \*
- (A) \* \* \*

(5) Mid-Term Measures, Accelerated Ultra-Low Emission Vehicle (ULEV) requirement for Medium-Duty Vehicles (Measure M3), Heavy-Duty Vehicles NO<sub>x</sub> regulations (Measure M5), Heavy-Duty Gasoline Vehicles lower emission standards (Measure M8), Industrial Equipment, Gas & LPG—3-way catalyst technology (Measure M11), Mid-Term Consumer Products (Measure CP-2), as contained in The California State Implementation Plan for Ozone, Volume II: The Air Resources Board's Mobile

Source and Consumer Products  
Elements, adopted on Nov. 15, 1994.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric  
Administration**

**50 CFR Part 675**

[Docket No. 950206040-5040-01; I.D.  
120895B]

**Groundfish of the Bering Sea and  
Aleutian Islands Area; Pacific Cod by  
Vessels Using Hook-and-Line Gear in  
the Bering Sea and Aleutian Islands**

**AGENCY:** National Marine Fisheries  
Service (NMFS), National Oceanic and  
Atmospheric Administration (NOAA),  
Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed  
fishing for Pacific cod by vessels using

hook-and-line gear in the Bering Sea  
and Aleutian Islands management area  
(BSAI). This action is necessary because  
the 1995 prohibited species bycatch  
mortality allowance of Pacific halibut  
specified for the Pacific cod hook-and-  
line fishery in the BSAI has been  
reached.

**EFFECTIVE DATE:** 12 noon, Alaska local  
time (A.l.t.), December 11, 1995, until  
12 midnight, A.l.t., December 31, 1995.

**FOR FURTHER INFORMATION CONTACT:**  
Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The  
groundfish fishery in the BSAI exclusive  
economic zone is managed by NMFS  
according to the Fishery Management  
Plan for the Groundfish Fishery of the  
Bering Sea and Aleutian Islands Area  
(FMP) prepared by the North Pacific  
Fishery Management Council under  
authority of the Magnuson Fishery  
Conservation and Management Act.  
Fishing by U.S. vessels is governed by  
regulations implementing the FMP at 50  
CFR parts 620 and 675.

The 1995 Pacific halibut bycatch  
mortality allowance for the hook-and-  
line Pacific cod fishery, which is

defined at § 675.21(b)(2)(ii)(A), is 725  
metric tons (60 FR 8479, February 14,  
1995).

The Director, Alaska Region, NMFS,  
has determined, in accordance with  
§ 675.21(d), that the Pacific halibut  
bycatch mortality allowance for the  
Pacific cod hook-and-line fishery in the  
BSAI has been reached. Therefore,  
NMFS is prohibiting directed fishing for  
Pacific cod by vessels using hook-and-  
line gear in the BSAI.

Maximum retainable bycatch amounts  
for applicable gear types may be found  
in the regulations at § 675.20(h).

**Classification**

This action is taken under § 675.20  
and is exempt review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 1995.

Richard W. Surdi,  
*Acting Director, Office of Fisheries  
Conservation and Management, National  
Marine Fisheries Service.*

[FR Doc. 95-30468 Filed 12-11-95; 12:34  
pm]

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