TABLE 1 TO SUBPART E.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. code citation	Civil monetary penalty description	Year penalty amount was last set by law	Original statutory maximum penalty amount	Adjusted maximum penalty amount
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES TO OTHERS/GAINS TO SELF.	1990	100,000	110,000
	FOR ANY OTHER PERSONS/SUBSTANTIAL LOSSES TO OTHERS/GAIN TO SELF.	1990	500,000	550,000
15 USC 78u(d)(3)	FOR NATURAL PERSON	1990	5,000	5,000
	FOR ANY OTHER PERSON	1990	50,000	55,000
	FOR NATURAL PERSON/FRAUD	1990	50,000	55,000
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	100,000	110,000
	FOR ANY OTHER PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	500,000	550,000
15 USC 80a–9(d)	FOR NATURAL PERSON	1990	5,000	5,500
	FOR ANY OTHER PERSON	1990	50,000	55,000
	FOR NATURAL PERSON/FRAUD	1990	50,000	55,000
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES TO OTHERS/GAINS TO SELF.	1990	100,000	110,000
	FOR ANY OTHER PERSON/SUBSTANTIAL LOSSES TO OTHER/GAINS TO SELF.	1990	500,000	550,000
15 USC 80a–41(e)	FOR NATURAL PERSON	1990	5,000	5,500
	FOR ANY OTHER PERSON	1990	50,000	55,000
	FOR NATURAL PERSON/FRAUD	1990	50,000	55,000
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	100,000	110,000
	FOR ANY OTHER PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	500,000	550,000
15 USC 80b–3(i)	FOR NATURAL PERSON	1990	5,000	5,500
	FOR ANY OTHER PERSON	1990	50,000	55,000
	FOR NATURAL PERSON/FRAUD	1990	50,000	55,000
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES TO OTHERS/GAIN TO SELF.	1990	100,000	110,000
	FOR ANY OTHER PERSON/SUBSTANTIAL LOSSES TO OTHERS/GAIN TO SELF.	1990	500,000	550,000
15 USC 80b–9(e)	FOR NATURAL PERSON	1990	5,000	5,500
	FOR ANY OTHER PERSON	1990	50,000	55,000
	FOR NATURAL PERSON/FRAUD	1990	50,000	55,000
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	100,000	110,000
	FOR ANY OTHER PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	500,000	550,000

Dated: November 1, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28596 Filed 11–7–96; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 078–2–0016; FRL–5642–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and a limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the Federal Register on February 28, 1995. The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). This final action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules concern the control of NO_X emissions from facilities in the SCAQMD with four or more tons of NO_X or SO_X emissions per year from permitted equipment. The subject facilities, in order to meet annual emission reduction requirements, will participate in an economic incentive program (EIP) in order to reduce emissions at a significantly lower cost. This document also serves to respond to comments received from the public on the February 28, 1995 notice of proposed rulemaking (NPRM).

EFFECTIVE DATE: This action is effective on December 9, 1996.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.
Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095.
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT:

Kenneth Israels, Rulemaking Section, (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1194.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1995 in 60 FR 10819, EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: South Coast Air Quality Management District, Regulation XX, NO_X and SO_X Regional Clean Air Incentives Market (RECLAIM). Regulation XX was adopted by SCAQMD on October 13, 1993. This rule was submitted by the California Air Resources Board to EPA on March 21, 1994. These rules were adopted as part of South Coast Air Quality Management District's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to section 182(f) NO_X reasonably available control technology (RACT) requirements of the Clean Air Act (CAA). A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPRM cited above.

In the NPRM, EPA proposed conditionally approving RECLAIM provided that the SCAQMD submitted an enforceable commitment within one year of publication of the NPRM to correct the deficiencies cited. EPA did not receive an enforceable commitment from SCAQMD within one year of the publication of the NPRM, therefore EPA is finalizing, as proposed in the alternative in the NPRM, a simultaneous limited approval and limited disapproval under CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

On August 28, 1996 the State of California submitted revisions to EPA which EPA believes address all of the deficiencies cited in the February 28, 1995 NPRM. Therefore, EPA is proposing elsewhere in the Federal Register today to approve into the SIP the August 28, 1996 submittal which addresses the cited deficiencies. The final approval of the August 28, 1996 submittal will supersede the limited disapproval of the March 21, 1994 submittal and remove the possibility of sanctions associated with this limited approval/limited disapproval noted above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM. EPA is finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. The NO_X and SO_X RECLAIM program contains the following deficiencies:

- the program allows the use of variances to avoid compliance with program requirements; this results in the program failing to meet the requirements of section 110(i) of the Act,
- the program does not meet certain new source review (NSR) requirements of the Act and Part D,
- the program allows the use of Executive Officer discretion in the implementation of certain emissions monitoring provisions; this results in the program failing to meet the requirements of section 110(i) of the Act,
- the program's references to other programs, notably those involving the use of mobile source emission reduction credits (MERCs) is inconsistent with section 110(i) of the Act, and
- the submittal does not provide all of the necessary demonstrations to ensure that the requirements of EPA's EIP rules are being met.

A detailed discussion of the rule provisions and evaluations has been provided in the NPRM and in the technical support document (TSD) available at EPA's Region IX office (TSD dated February, 1995). On August 28, 1996 the State of California submitted revisions to EPA which EPA believes address all of the deficiencies cited in the February 28, 1995 NPRM. Therefore, EPA is proposing elsewhere in the Federal Register today to approve into the SIP the August 28, 1996 submittal which addresses the cited deficiencies.

Response to Public Comments

A 30-day public comment period was provided in 60 FR 10819. EPA received comments on a wide range of issues including the approval of the overall program. Four industry commentors supported full approval of the program, one environmental group opposed approval of the program, and one regulatory agency supported resolving program issues identified by EPA in the conditional approval and approving the program. EPA agrees with the commentors supporting approval of a federally enforceable RECLAIM program and is optimistic that such a program will lead to emission reductions necessary to achieve attainment of the ozone national ambient air quality standard (NAAQS) in the SCAQMD.

EPA also received specific comments from the public on the following issues: (1) program definitions, (2) NSR, (3) the use of variances in the program, (4) the use of MERCs in the program, (5) EIP rule demonstrations, (6) monitoring requirements, (7) environmental justice, (8) planning requirements, (9) public participation, (10) the program's penalty structure, and (11) RACT. Following are EPA's responses to these more specific comments:

1. Program Definitions

Comments: Two industry groups disagreed with EPA's request to modify or add definitions to RECLAIM to ensure that federal requirements relating primarily to NSR were being met.

Response: EPA believes that the definitions cited are necessary to demonstrate that the fundamental requirements of NSR programs are being met. For example, the construction-related definitions cited as deficiencies in the NPRM are necessary to ensure that the statutory offset provisions found in Section 182 of the CAA are being met. Throughout the TSD, EPA cited the appropriate federal requirements to ensure that the rationale for requiring modification or addition of key definitions was clear.

With respect to specific comments made regarding construction definitions, EPA believes that there is a fundamental need to address such definitions, via rule language or legal interpretation, in programs like RECLAIM which implement NSR requirements via trading mechanisms.

2. NSR Issues

a. Offset Ratios and Tracking System:

Comments: One environmental group commented that the NSR offset ratio for South Coast sources should be greater than 1:1. Two industry commentors commented that a tracking system is not necessary to ensure that the statutory offset ratio is being met by sources in South Coast in the aggregate.

Response: EPA believes that the statutory offset ratios (1.5:1 or 1.2:1 if all major sources apply best available control technology—BACT) in an extreme ozone nonattainment area should be maintained. EPA believes that this requirement can be met on an aggregate basis. [See discussion in EIP preamble at 59 FR 16696, dated April 7, 1994] In order to meet this requirement, as EPA noted in its NPRM, a tracking system is necessary to demonstrate that the statutory offset ratios are met. The purpose of the tracking system would be to demonstrate that a balance of reductions between non-major and major sources both in RECLAIM and outside of RECLAIM achieved the statutory NSR offset ratio (considering factors such as the RECLAIM declining mass emissions cap).

b. NSR Analysis on a Trade-by-trade Basis:

Comment: One industry commentor stated that EPA's proposed approval would lead to a NSR analysis on a trade-by-trade basis in RECLAIM.

Response: EPA's understanding of RECLAIM NSR is that NSR requirements do not, with respect to the need to purchase offsetting emissions, need to be examined on a trade-by-trade basis. The NSR offset requirements would only be triggered if a particular facility exceeded its initial RECLAIM allocation plus nontradeable emission allocation. However, the NSR lowest achievable emission rate (LAER) requirement is one which needs to be examined on a trade-by-trade basis when such trades increase emissions at an emissions unit. In these instances, while NSR offsets may not be necessary, LAER must still be applied to the emissions unit.

c. Incorporation of the Requirements of 40 CFR 51.164 into RECLAIM:

Comment: One industry commentor did not believe that the Stack height procedures found in 40 CFR 51.164 needed to be incorporated into the RECLAIM rules.

Response: NSR regulations must state that sources may not affect their emissions by erecting a stack that does not meet the Stack height requirements found in Section 123 of the CAA and in 40 CFR 51.164. EPA disagrees with the commentor.

3. The Use of Variances in the RECLAIM Program

Comment: Two industry commentors want the use of variances from program requirements in the program while one environmental group wants the use of variances out of the program.

Response: Section 110(i) of the Clean Air Act prohibits the use of variances to change the federally-enforceable SIP. EPA agrees with the environmental group commentor in that the use of such mechanisms in a market system may be detrimental to the system's achievement of clean air goals.

4. The Use of Mobile Source Emission Reduction Credits (MERCs) in the Program

Comment: One industry group does not believe MERC rules need to be SIP approved prior to being used in RECLAIM while one environmental group believes that MERCs can not be used in RECLAIM regardless of SIP approval.

Response: EPA believes that MERCs can be used in the RECLAIM program as a means of compliance with the RECLAIM mass emissions cap. However, the use of MERCs generated using rules which have not been SIP approved raises an issue of whether such uses are consistent with the federally-enforceable SIP. EPA believes that if the underlying rules used to generate MERCs for RECLAIM compliance purposes have not been SIP-approved, the credits are not federally-enforceable. EPA believes that the District and EPA can work out a satisfactory solution on this issue which provides facilities using such unapproved MERCs notice that such credits are not federally enforceable (until the particular MERC-generating rule(s) are approved into the SIP) and consequently users of such credits may be subject to federal enforcement action.

5. EIP Rule Demonstrations

Comment: One industry group does not believe that the environmental benefit demonstration found at 40 CFR 51.493(e)(1)(ii) is needed as other program elements address this issue while one environmental group does not believe that the program as a whole meets the EIP requirements.

Response: With respect to the environmental benefit demonstration, the package EPA proposed for action on February 28, 1995 did not address this issue and therefore did not meet the EIP requirements. However, EPA believes that, given the RECLAIM declining caps' rate of reduction goes beyond existing RACT requirements, the environmental benefit provision in the EIP can be met as a result of the program's design.

With respect to the program as a whole meeting the EIP demonstration requirements, EPA agrees that some of the requirements were not met and therefore cited these demonstrations in the NPRM and February, 1995 TSD as deficiencies.

6. Monitoring Requirements

Comment: One industry commentor did not support using the SIP-approval mechanism to incorporate changes to RECLAIM monitoring requirements into the federally-approved SIP.

Response: EPA intends to use the SIP-approval mechanism to incorporate changes to monitoring requirements in RECLAIM into the federally-enforceable SIP. In the future, if a generic set of criteria to determine the approvability of monitoring changes is developed, EPA may reconsider its position, provided such criteria are SIP-approved. Section 110(i) of the Clean Air Act does not allow such changes to become federally-enforceable without a SIP revision.

7. Environmental Justice

Comment: One environmental group does not believe that EPA considered RECLAIM's environmental justice impacts in its proposed action.

Response: RECLAIM is a program designed to reduce ozone precursor emissions from stationary sources. As such, it is designed to address the area-wide ozone issue in the Los Angeles area, not the localized toxics impacts issue. As the SCAQMD develops regulations which regulate toxic emissions, EPA will review those regulations under section 112 of the Clean Air Act. With respect to the concern that RECLAIM may incidentally increase toxic emissions as a result of trading, the RECLAIM program, as noted in the NPRM, meets the requirements of Section 182(e)(3) of the CAA which requires clean fuels or advanced controls for boilers which emit greater than 25 tons per year of NO_X (see the February, 1995 TSD). The majority of emissions which can potentially be traded in RECLAIM are covered by this clean fuels/advanced controls requirement (see RECLAIM supporting documentation). As a result, the bulk of RECLAIM emissions (including toxic emissions) will be controlled to a high degree through compliance with Section 182(e)(3) of the CAA, which can not be met through trading. Further, SCAQMD examined the toxic impacts of RECLAIM (see pages EX–14 and 15 and EX–29 and 5–31 of Volume 1 of the RECLAIM documentation); this analysis

shows that there will be no increase in toxic air pollutants as a result of the trading of NO_X and SO_X under the RECLAIM program. EPA has reviewed the SCAQMD analysis and agrees with its conclusions that there will be little, if any, impact on local communities as a result of trading in RECLAIM as most of the products of incomplete combustion (combustion is the primary source of NO_X emissions in RECLAIM) are not classified as hazardous air pollutants (HAPs). For those incomplete combustion products which are classified as HAPs, their impact on local communities will be addressed in the SCAQMD's and EPA's toxic control strategies (see Section 112 of the CAA). EPA believes that, as a result of each of these factors (Section 182(e)(3) of the CAA controls and State, local, and federal measures to control toxics) in the program design, EPA's approval of RECLAIM is consistent with the goals set out in Executive Order 12898, which provides the framework for federal agencies to address environmental justice issues.

8. Planning Requirements

a. RECLAIM and the 1991 Air Quality Management Plan (AQMP) and reasonable further progress (RFP):

Comment: One environmental group believes that the program is less effective than the 1991 AQMP and that it will not show RFP.

Response: EPA's decision to approve NO_X/SO_X RECLAIM is based on the District's lack of federally approved rules regulating these source categories, not on the 1991 AQMP which had, at the time of submittal, not been approved. The RECLAIM program, from this perspective, strengthens the federally enforceable SIP and is more effective than measures in an unapproved attainment plan. Further, the test for the effectiveness of an attainment plan under Section 182(c)(2) does not rely on a single measure to demonstrate attainment, but relies on all of the measures in the plan used to achieve attainment. As with the comment regarding RECLAIM and the 1991 AQMP, the RECLAIM program alone does not have to demonstrate compliance with the CAA's RFP requirements. In Section 182(c)(2)(B) of the CAA, RFP is defined over the period of 1990 to 1996 in terms of VOC emission reductions; after 1996, NO_X emission reductions may be substituted for VOC emission reductions. EPA disagrees with the commentor that RECLAIM does not meet RFP requirements as individual measures do not shoulder the burden of meeting requirements taken on by an entire progress showing.

b. Baselines:

Comment: One environmental group believes that the baselines have been inflated causing the program to fail to meet planning requirements.

Response: EPA recognizes the need for EIPs to address economic inequities in the design of such programs. In the case of RECLAIM, as the commentor has pointed out, baselines for some facilities may have been established in recognition of such inequities. Provided that increases in emissions resulting from the recognition of these inequities are addressed, then there should be no failure of the SCAQMD to meet the CAA planning requirements. As noted elsewhere in this notice, individual measures in an attainment plan need not meet specific CAA planning requirements as long as the plan as a whole demonstrates attainment.

9. Public Participation

Comment: One environmental group believes that the program does not provide enough public participation.

Response: EPA believes that RECLAIM afforded the public ample opportunity to comment during the design of the program and affords the public ample opportunity to participate during the implementation of the program via the permitting and auditing processes. The development of RECLAIM used a public process almost unprecedented in the history of air quality regulatory development. Over a three year period a steering committee, an advisory committee, and a myriad of workgroups dealing with such issues as socio-economic impacts, allocations (baselines), and energy impacts met on a regular basis. RECLAIM was adopted by the SCAQMD Governing Board after a two-session hearing, during which issues such as the baseline-setting procedures, environmental justice, NSR, public participation, and enforcement were discussed. In addition, the RECLAIM permitting process conforms to the CAA's NSR and Title V permitting requirements for public review.

10. Penalty Structure

Comment: One environmental group believes that the penalty structure is too lenient.

Response: In crafting the RECLAIM emission violation penalty structure, EPA, the SCAQMD, and members of the RECLAIM Steering Committee conducted a thorough analysis of what penalties for such violations are appropriate. In this analysis, the group sought to define appropriate penalties by examining the level of deterrence necessary to discourage noncompliance with applicable emission limits. EPA examined the history of enforcement of a variety of federal CAA programs to discover what level of deterrence has been historically effective. The group also linked the market mechanism to the amount of statutory maximum penalties in the RECLAIM program. EPA believes that a penalty structure which is based on the mass exceedance of the emission cap like the one in RECLAIM is suitable for this particular type of program. The results of this analysis led to the RECLAIM penalty scheme.

11. RACT

a. RACT aggregation:

Comment: One environmental group believes that RACT aggregation violates the Act.

Response: EPA disagrees with the commentor. This issue was thoroughly explored in the final EIP rule. In the preamble to the final EIP rule EPA states:

> ''An EIP may allow sources subject to the RACT requirement to attain RACT-level emissions reductions in the aggregate, * * *'' [See 59 FR 16695, dated April 7, 1994]

Further, the EIP preamble states:

> ''Under the EPA's interpretation, the application of the requirement to impose RACT upon ''existing sources'' meant that RACT applied in the aggregate, as opposed to source by source. This interpretation, which is reflected in the Emissions Trading Policy Statement [51 FR 43814 (December 4, 1986), the ''Bubble Policy''], was upheld in *NRDC* v. *EPA*, 33 ERC 1657 (4th Cir. 1991), an unpublished decision.'' [See 59 FR 16703, dated April 7, 1994]

Finally, the final EIP rule preamble states:

> ''Under the 1990 Act, the EPA continues to take the position established under the 1977 Act that RACT applies in the aggregate because the RACT requirement of section 172(c)(1) of the Act is phrased identically to the RACT requirement of the 1977 Act (vis., ''existing sources''). EPA does not read section 182(b)(2) to indicate to the contrary. Rather, the cross-reference to section 172(c)(1) contained in section 182(b)(2) indicates that RACT is to be interpreted in the same manner under section 182(b)(2) as under section 172(c)(1).'' [See 59 FR 16703–16704, dated April 7, 1994]

b. Long term averaging to meet RACT:

Comment: One environmental group believes that long term averaging to meet RACT violates the Act.

Response: EPA disagrees with the commentor. In the preamble to the final EIP rule EPA states:

''The final rules retain the proposed allowance for long-term emissions

averaging, as well as requirements that States make statistical showings that any such emissions averaging is consistent with applicable RACT, RFP, and short-term NAAQS. These statistical showings are necessary to show equivalency to, or noninterference with, each of these statutory requirements, although as a practical matter the same showing may suffice to assure consistency with more than one of the requirements. The statistical showings should take into account the extent to which emissions variations from an individual source or from all sources are random or systematic and, thus, the extent to which the variations can be considered to be independent. The showings must demonstrate that the pattern of emissions resulting from relaxed averaging periods would approximate the pattern of emissions that would occur without relaxed averaging periods to an extent sufficient to reasonably conclude that the relaxed averaging periods would not interfere with the statutory requirements.'' [See 59 FR 16706, dated April 7, 1994]

EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rule. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the NPRM. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the NPR, upon the effective date of this NFR, the 18 month clock for sanctions and the 24 month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the NFR, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rule covered by this NFRM has been adopted by the SCAQMD and is currently in effect in the SCAQMD. EPA's limited disapproval action will not prevent SCAQMD or EPA from enforcing this rule.

On August 28, 1996 the State of California submitted revisions to EPA which EPA believes address all of the deficiencies cited in the February 28, 1995 NPRM. Therefore, EPA is proposing elsewhere in the Federal Register today to approve into the SIP the August 28, 1996 submittal which addresses the cited deficiencies. The final approval of the August 28, 1996 submittal will supersede the limited disapproval of the March 21, 1994 submittal and remove the possibility of sanctions associated with this limited approval/limited disapproval noted above.

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

Administrative Requirements

A. Executive Order 12866

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 (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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 businesses, 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 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by January 7, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 6, 1996.

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)(232) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(232) New regulations for the following APCD were submitted on March 21, 1994, by the Governor's designee:

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Regulation XX, adopted October 15, 1993.

* * * * *

[FR Doc. 96–28594 Filed 11–7–96; 8:45 am]

BILLING CODE 6560–50–W

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 110196A]

Fisheries of the Exclusive Economic Zone Off Alaska; Tanner Crab Bycatch Allowances for Vessels Using Trawl Gear in Zone 1 of the Bering Sea and Aleutian Islands

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS has determined that the current bycatch allowances of the *Chionoecetes bairdi* (*C. bairdi*) Tanner crab prohibited species catch (PSC) limit allocated to the yellowfin sole and rock sole/flathead sole/''other flatfish'' trawl fishery categories in Zone 1 of the Bering Sea and Aleutian Islands management area (BSAI) are incorrect. NMFS is respecifying the PSC limit apportioned to these categories. These actions are necessary to achieve the optimum yield from the groundfish fisheries. They are intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: 1200 hrs, Alaska local time (A.l.t.), November 4, 1996, until 2400 hrs, A.l.t., December 31, 1996. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 19, 1996.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Attn: Lori Gravel, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, or be delivered to Room 457, Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907-486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

Pursuant to § 679.21(e)(1)(ii) the PSC limit of *C. bairdi* Tanner crab caught while conducting any trawl fishery for groundfish in Zone 1 of the BSAI during any fishing year is 1 million animals. In accordance with § 679.21(e)(3)(i) the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) apportioned this PSC limit among the trawl gear fishery categories defined at § 679.21(e)(3)(iv) as follows: (1) Yellowfin sole, 250,000 animals; (2) rock sole/flathead sole/''other flatfish'', 425,000 animals; (3) Pacific cod, 250,000 animals; and (4) pollock/Atka mackerel/other species, 75,000 animals.

As of October 12, 1996, 80,000 animals remain of the *C. bairdi* Tanner crab PSC limit to be taken in the trawl rock sole/flathead sole/''other flatfish'' category in Zone 1. This fishery category will not reopen during 1996. The yellowfin sole fishery category has no *C. bairdi* Tanner crab PSC limit apportionment remaining in Zone 1 and cannot harvest the 45,000 mt of yellowfin sole remaining in that species total allowable catch (TAC) in Zone 1. NMFS has determined that the Zone 1 PSC limit for *C. bairdi* Tanner crab apportioned to the yellowfin sole and rock sole/flathead sole/''other flatfish'' fishery categories is incorrectly specified based on the best available scientific information pertaining to bycatch rates reported by NMFS-certified observers. The *C. bairdi* Tanner crab PSC limit apportioned to the yellowfin sole fishery category needs to be augmented to promote achieving the optimum yield from the yellowfin sole fishery.

Under § 679.25(a)(1)(iii), the Administrator, Alaska Region, NMFS, is adjusting the *C. bairdi* Tanner crab PSC limit by (1) increasing the apportionment specified for the yellowfin sole fishery category in Zone 1 by 80,000 animals, resulting in an adjusted apportionment of 330,000 animals for this fishery, and (2) decreasing the apportionment specified for the rock sole/flathead sole/''other flatfish'' fishery category in Zone 1 by 80,000 animals, resulting in an adjusted apportionment of 345,000 animals for this fishery. This adjustment is necessary to prevent the underharvest of the BSAI yellowfin sole TAC and is authorized pursuant to § 679.25(a)(2)(i)(C).

As required by § 679.25(b), all information relevant to this inseason adjustment, including the effect of overall fishing effort within the statistical area and economic impacts on affected fishing businesses, was considered. Current *C. bairdi* Tanner crab bycatch allowances in Zone 1 will prevent harvest of the remaining 45,000 mt of yellowfin sole remaining in that