factors and in relation to relevant statutory and regulatory requirements.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, 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).

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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 the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

F. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (sections 3745.70—3745.73 of the Ohio Revised Code). EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the Clean Air Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio Clean Air Act program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, federal approval for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

G. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. 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 September 8, 1998. 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)).

V. List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen oxides, Transportation conformity.

Dated: July 1, 1998.

David A. Ullrich,

Acting 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 *et seq.*

Subpart KK—Ohio

2. Section 52.1885 is amended by adding paragraph (a)(9) to read as follows:

§ 52.1885 Control Strategy: Ozone

(a) * * *

(9) Approval—On March 13, 1998, Ohio submitted a revision to the maintenance plan for the Columbus area. The revision consists of establishing a new out year for the area's emissions budget. The new out year emissions projections include reductions from point and area sources; the revision also defines new safety margins according to the difference between the areas 1990 baseline inventory and the out year projection. Additionally, the revision consists of allocating a portion of the Columbus area's safety margins to the transportation conformity mobile source emissions budget. The mobile source budgets for transportation conformity purposes for the Columbus area are now: 67.99 tons per day of volatile organic compound emissions for the year 2010 and 70.99 tons per day of oxides of nitrogen emissions for the year 2010.

[FR Doc. 98–18420 Filed 7–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–008–BU, FRL–6120–4]

Designation of Areas for Air Quality Planning Purposes; State of California; Redesignation of the San Francisco Bay Area to Nonattainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to redesignate the San Francisco Bay Area (Bay Area) as a nonattainment area for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). The Clean

Air Act (CAA or Act) provides that EPA may at any time revise the designation of an area on the basis of air quality, planning and control considerations, following notification to the Governor. On August 21, 1997, EPA notified the Governor of California that the Agency intended to propose to redesignate the Bay Area from attainment to nonattainment of the federal 1-hour ozone standard, based on a total of 43 exceedances and 17 violations of the standard since the June 1995 redesignation to attainment.

EFFECTIVE DATE: This action is effective on August 10, 1998.

ADDRESSES: A copy of this document and related information are available in the air programs section of EPA Region 9's website, http://www.epa.gov/region09/air. The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 744–1249 or 744–1251 for assistance.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (415) 744–1251 or Celia Bloomfield (415) 744–1249, Planning Office (AIR–2), Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

Outline

I. Executive Summary

On December 19, 1997 EPA published a Notice of Proposed Rulemaking to redesignate the Bay Area to nonattainment of the federal 1-hour ozone standard. During the 60-day public comment period that followed publication, EPA received comments both in support of and in opposition to our proposed action. All commenters, regardless of their views on the proposed redesignation or the proposed requirements associated with redesignation, expressed strong support for clean air progress in the Bay Area. EPA appreciates the thoughtful comments on the proposal and greatly values the commenters' commitment to improved air quality and public health protection in the Bay Area. EPA has made significant changes and clarifications in response to the comments and EPA believes the final action recognizes the innovation and collaborative efforts that can contribute to clean air in the Bay Area.

After carefully considering all of the comments received, EPA has decided to finalize the redesignation of the Bay Area to nonattainment of the 1-hour ozone standard while clarifying and streamlining the actions necessary to reach attainment. Although the Bay Area Air Quality Management District (BAAQMD), the California Air Resources Board (CARB), other regulatory agencies, businesses, and the community as a whole have made great strides in improving air quality in the Bay Area, there is still more work to be done. Redesignation is the most appropriate course of action to assure further air quality improvements and protection of public health and should place minimal burdens on the local economy, residents, industry and regulators.

When the federal ozone standard is exceeded, people, and in particular children, the elderly, and those with respiratory diseases, may experience ozone's ill effects, such as chest pain, cough, lung inflammation, respiratory infection, and chronic bronchitis. In light of these significant public health concerns, EPA believes that it is important to provide the public with accurate information and the correct message that ozone pollution is still a problem.

EPA is compelled to redesignate the Bay Area to nonattainment because of the numerous and widespread violations of the 1-hour ozone standard, a standard that was designed to protect public health. The Bay Area's air quality during 1996 ranked as the 6th worst in the nation and for the three-year period 1995–1997, it was the 8th smoggiest of the major metropolitan areas in the country. The absence of violations in 1997 is a positive sign but the Agency does not feel that the clean smog season last year proves that the serious ozone problem revealed in 1995 and 1996 has been solved. Compliance with the standard is measured over a three-year period so as to account for the effects of weather and other meteorological conditions that can work to either the advantage or disadvantage of air quality. This is particularly relevant to the Bay Area's case since the meteorological conditions prevailing on the West Coast during 1997 were unusually favorable to good air quality and, according to an October 1997 report by the BAAQMD, the ozone-conducive meteorology that occurred in 1995 and 1996 is likely to recur. The BAAQMD report also revealed that during the 1990s ''progress appears to have lapsed; there appears to have been an increase in ozone potential, after accounting for meteorology.''

The number of violations of this public health standard that occurred in the Bay Area during 1995 and 1996 is

especially significant when compared to the air quality in other parts of the country and the nonattainment designation and requirements applicable to those areas. For example, EPA recently reclassified or ''bumped-up'' the Phoenix and Santa Barbara areas from ''moderate'' to ''serious'' nonattainment areas for failure to attain the ozone standard by 1996. This ''bump-up'' to the ''serious'' nonattainment classification means that these areas must comply with additional planning and control requirements (e.g. attainment demonstration, reasonable further progress demonstration, enhanced vehicle inspection and maintenance program, Photochemical Assessment Monitoring) and must attain the ozone standard by 1999 or face ''bump-up'' to the severe classification, which would impose still more requirements. Phoenix monitored 13 violations of the ozone standard, and Santa Barbara recorded 7 violations, during the three-year period 1994–1996. The Bay Area experienced 17 violations during that same three-year period. Such a comparison reinforces the appropriateness of a nonattainment designation for the Bay Area.

EPA concluded that a redesignation to nonattainment not only accurately describes air quality in the Bay Area, but also provides an opportunity for reevaluating the causes of the Bay Area's ozone violations, the quantity of emission reductions needed to attain the health-based standard, and the measures that will achieve those reductions quickly. Some believe that EPA should not proceed with redesignation under the 1-hour standard, and that the BAAQMD should instead focus all its energies on planning for the revised 8-hour ozone standard. EPA is convinced, however, that some near-term action is essential to protecting the health and welfare of the Bay Area residents. Emission reduction strategies will be evaluated and put in place much sooner through a redesignation under the 1-hour standard than under a plan to meet the revised 8-hour ozone standard. In addition, everything that the Bay Area does to meet the 1-hour standard will help in meeting the more protective 8-hour standard. The Bay Area won't have to complete its planning for the 8-hour standard until 2003 or comply with the new standard until 2005 at the earliest. That is five years during which Bay Area residents would be breathing dirtier air than they should be. It is the public's right, and EPA's obligation, to be assured that current health standards are met now.

EPA is redesignating the Bay Area to nonattainment without assigning it a specific classification. The classification system (marginal, moderate, serious, severe, or extreme) associated with other current ozone nonattainment areas was created as part of the 1990 Clean Air Act amendments to match a nonattainment area's planning and control requirements with the severity of the area's ozone problem. The Bay Area is in a unique position. It was designated nonattainment under the 1990 amendments, redesignated to attainment after implementing most of the moderate nonattainment area requirements, and is now being returned to nonattainment. The existing Clean Air Act classification system does not specifically apply to the Bay Area. In order to allow maximum flexibility and in keeping with the best legal reading of the Act, EPA is redesignating the Bay Area under the longstanding general nonattainment provisions of the Act, which have no associated classifications. During public comment, the flexibility allowed by this approach generated uncertainty as to the planning and control requirements for the Bay Area. In response to this concern, and to make sure the Air District's time and energy are spent on control measures, not unnecessary paperwork, EPA has been more specific in the final rulemaking notice describing what is required of the Bay Area.

Redesignation should not result in a burdensome and duplicative planning effort. EPA wants the District and its co-lead agencies to focus on emission reductions, not paperwork. EPA is asking for only three plan elements: the existing 1995 emissions inventory for Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X); an assessment of emission reductions, using available data and technical analyses, needed to attain the federal standard; and control measures to achieve those reductions. EPA will accept, in addition to or in lieu of adopted regulations, control measures with enforceable commitments to adopt in regulatory form and implement by specified dates sufficient to attain the 1-hour ozone standard by the attainment date. It is an additional public safeguard to make the control measures in this plan federally enforceable elements of the State Implementation Plan (SIP), since only in this way can the EPA and the public ensure that the commitments in the plan are fully implemented and the plan's promised air quality benefits are realized.

In response to public comment, EPA has modified both the schedule and content for State submissions and the attainment date. First, EPA is requiring only one formal State Implementation Plan (SIP) submittal instead of two. The one formal SIP submittal will include the emissions inventory, attainment assessment, and control measures so that the District can avoid having to undergo two public hearing and adoption processes, one for the inventory and assessment and a second for the control measures. EPA is allowing the BAAQMD to make a single SIP submittal with the understanding, pursuant to a letter of commitment from the Air District and co-lead agencies dated June 23, 1998, that the emissions inventory and attainment assessment will be made available to the public and submitted informally to EPA within 5 months after signature of the final redesignation by the Regional Administrator. This early, informal submittal will allow EPA to review the draft inventory and assessment and work with the District to address any deficiencies.

Second, EPA has extended the deadlines for the formal SIP submittal from May 1998 for the emissions inventory and attainment assessment, and from September 1998 for the adopted control measures and/or enforceable commitments, to June 15, 1999 for both. This extension gives the BAAQMD and its co-lead agencies more time to address the substantive requirements of the redesignation and carry out their formal adoption and submittal processes.

Third, EPA has extended the attainment deadline from November 15, 1999 to November 15, 2000 in order to allow additional time for the emission reduction strategies to take effect on air quality in the Bay Area.

Fourth, both CARB and the BAAQMD submitted compelling arguments that a weekend emissions inventory was too difficult and resource intensive to complete at this time, and so EPA has streamlined the SIP requirements still further by eliminating that obligation.

Finally, in response to public comment, EPA has eliminated the requirement to submit an emissions inventory for carbon monoxide (CO).

The above changes from the proposed redesignation are summarized as follows:

Proposal—weekend emissions inventory and CO inventory required	Final—weekend emissions inventory and CO inventory not required
Emissions inventory and attainment assessment due 5/1/98	Final emissions inventory and attainment assessment due 6/15/99. (Commitment to make draft available to EPA and the public by 11/25/98.)
Adopted regulations and/or control measures with enforceable commitments due 9/1/98.	Adopted regulations and/or control measures with enforceable commitments and final emissions inventory and attainment assessment due 6/15/99.
Attainment date of 11/15/99	Attainment date of 11/15/2000.

EPA recognizes that innovative methods, including voluntary measures, have the potential to contribute in a cost-effective manner to emission reductions needed for progress toward attainment. To promote the creation and expansion of effective voluntary mobile source programs, the Agency has developed a new policy that allows SIP credit for such programs.[1] The Bay Area has already demonstrated leadership in crafting innovative approaches to air quality problems through the ''Spare-the-Air'' and Silicon Valley ECOPASS programs. EPA is eager to work with the local government agencies and members of the business and environmental communities, who are critical to building public support for voluntary programs, to explore opportunities for innovation and to ensure that the voluntary measures stand the test of public accountability.

II. Background

A. Original Nonattainment Designation and Redesignation to Attainment

For more detailed information on the Bay Area's original ozone nonattainment designation, classification under the 1990 Clean Air Act Amendments, and redesignation to attainment, the reader is directed to EPA's proposed redesignation, published on December 19, 1997 (62 FR 66578–66583).

The Bay Area was initially designated under section 107 of the 1977 CAA as nonattainment for ozone on March 3, 1978 (40 CFR part 81.305). The Bay Area consists of the following counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano (part), and Sonoma (part).[2] Following the 1990 amendments to the Act, the area was classified by operation of law, under section 181(a), as a ''moderate'' ozone nonattainment area. (56 FR 56694, Nov. 6, 1991). On May 22, 1995 (60 FR 27028), EPA approved the maintenance plan adopted by BAAQMD, the Metropolitan Transportation Commission (MTC), and the Association of Bay Area Governments (ABAG) and submitted to EPA by CARB. In the same document, EPA redesignated the area to attainment for ozone, based on 3 violation-free years of data from the Bay Area's official monitoring network.

B. Subsequent Violations and Petitions to Redesignate the Bay Area to Nonattainment

Despite implementation of most of the measures in the Bay Area's maintenance plan, the monitoring network has recorded 43 exceedances and 17 violations of the federal 1-hour ozone standard over the years 1995–1996.[3]

EPA has received 2 petitions requesting that the Administrator redesignate the Bay Area to nonattainment with the federal 1-hour ozone standard. On March 31, 1997, the Sierra Club and Communities for a Better Environment (CBE) requested that EPA withdraw the 1995 redesignation action, or alternatively redesignate the area to nonattainment. The Sierra Club also requested that EPA issue a CAA section 110(k)(5) SIP call based on the inadequacy of the current SIP. On July 14, 1997, U.S. Congressman Gary Condit and a coalition of federal, state and local elected officials and public interest and industry groups from downwind areas (primarily the San Joaquin Valley) petitioned EPA to withdraw the 1995 redesignation to attainment, or alternatively redesignate the area to nonattainment, and issue a SIP call. Congressman Condit incorporated this petition in his public comment on the proposed action, and the petition is summarized in more detail in section III.C., Overview of Public Comments.

C. Applicable Statutory Provisions

Section 107(d)(3) of the Act gives the Administrator the authority to redesignate areas. Under this provision, the Administrator may ''(O)n the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate, * * * at any time notify the Governor of any State that available information indicates that the designation of any area * * * should be revised.'' Section 107(d)(3)(A). The Governor then has 120 days to submit the redesignation, as the Governor considers appropriate. Section 107(d)(3)(B). The Administrator must promulgate the redesignation within 120 days of the Governor's response. The Administrator may make any modifications to the Governor's redesignation which she deems necessary, but must notify the Governor of such changes 60 days before promulgating a final redesignation. If the Governor does not submit the redesignation, the Administrator shall promulgate the redesignation which she deems appropriate. Section 107(d)(3)(C).

D. Notification to the Governor and the Governor's Response

EPA notified the Governor of California by letter dated August 21, 1997, that EPA believes that the Bay Area should be redesignated to nonattainment, based on repeated violations of the ozone NAAQS. In the letter to the Governor, EPA proposed that the Bay Area be classified as a ''moderate'' nonattainment area, and that the area be required to submit by March 1, 1998, an emissions inventory and an attainment assessment; submit by May 1, 1998, a schedule and plan for completing a field study and modeling; and submit by September 1, 1998, rules and/or control measures sufficient to attain the 1-hour ozone NAAQS by 1999.

The Governor responded to this letter on December 10, 1997. Noting that the Bay Area had recorded no exceedances of the 1-hour ozone NAAQS in 1997, the

[1] Memorandum dated October 23, 1997 entitled, ''Guidance on Incorporating Voluntary Mobile Sourve Emission Reduction Programs in State Implementation Plans (SIPs).''

[2] For a description of those portions of Solano and Sonoma County that are included in the Bay Area, the reader is directed to 40 CFR part 81.21.

[3] An exceedance of the 1-hour ozone standard occurs when the hourly average ozone concentration at a given monitoring site is greater than or equal to .125 parts per million (ppm). A violation of the standard occurs when the expected number of days per calendar year with maximum hourly average ozone concentrations at or above .125 ppm is greater than one. 40 CFR part 50.9. The average number of days is calculated for a 3-year period. 40 CFR part 50, Appendix H. This 3-year period was established to reduce the impact of yearly fluctuations in ozone levels. Table 1 in EPA's proposed redesignation (62 FR 66579) lists both the exceedances and the 3-year average number of days over the 1-hour ozone standard for the period 1994–1996 at Bay Area monitoring sites in the official State and Local Monitoring (SLAMS) network.

Governor opposed the redesignation, preferring that EPA allow the BAAQMD maintenance plan, subsequent BAAQMD measures, and CARB measures to ensure that the area would not violate the ozone NAAQS in the future. See sections III.B. and III.D. below for a more detailed summary of the Governor's comments and EPA's response.

E. Proposed Action

On December 11, 1997, EPA issued its proposal to redesignate the San Francisco Bay Area to nonattainment for the 1-hour ozone NAAQS because ozone levels have violated the federal standard 17 times over the 3-year period 1994–1996. The proposal was published on December 19, 1997, and invited public comment through February 17, 1998.

After summarizing applicable CAA provisions and the Bay Area's record of exceedances and violations, EPA proposed to require the BAAQMD and its co-lead agencies to develop and submit a SIP revision designed to provide for attainment of the 1-hour ozone NAAQS by 1999. EPA's proposal set forth the Agency's reasons for concluding that the Bay Area should not be classified under subpart 2 of the CAA, but should rather be subject to the basic SIP requirements of section 110 and the general nonattainment plan requirements of section 172 (62 FR 66580). Finally, EPA proposed that the State be required to submit SIP revisions on the schedule in the table reproduced below, labeled ''Proposed Schedule of Submittal of Revisions to the State Implementation Plan for Ozone for the San Francisco Bay Area.''

PROPOSED SCHEDULE OF SUBMITTAL OF REVISIONS TO THE STATE IMPLEMENTATION PLAN FOR OZONE FOR THE SAN FRANCISCO BAY AREA (62 FR 66578, December 19, 1997)

Action/SIP submittal	Date
Current and complete baseline annual average and summer weekday and weekend day emissions inventory for volatile organic compounds (VOC), nitrogen oxides (NO_X), and carbon monoxide.	5/1/98
Assessment, employing available modeling information, of the level of emission reductions needed to attain the current 1-hour ozone National Ambient Air Quality Standard (NAAQS). This assessment should take into account the meteorological conditions and ambient concentrations associated with the violations of the ozone NAAQS in the period 1995–6, and should be based on likely control measures for reducing VOC and NO_X emissions.	5/1/98
Adopted regulations and/or control measures, with enforceable commitments to adopt and implement the control measures in regulatory form by specified dates, sufficient to meet reasonable further progress and attain the 1-hour NAAQS expeditiously.	9/1/98

III. Summary of Public Comments and EPA Response

A. Introduction

EPA received 127 comments between EPA's notification to the Governor on August 21, 1997, and the close of the public comment period on February 17, 1998. The docket for this notice includes the public comments. Of the comments, 68 supported the redesignation and 59 opposed the redesignation. In section III.D. below, EPA summarizes and responds to each of the substantive comments.

B. Response of the State

On the day EPA issued its proposed redesignation, EPA received an extensive response from the Governor, dated December 10, 1997. This was supplemented by a letter dated February 17, 1998, from Peter M. Rooney, Secretary for Environmental Protection, California Environmental Protection Agency. The Governor's letter was timely, in that it was received 7 days before the expiration of the 120-day period for the Governor to respond to EPA's notification letter.

This section provides a general summary of the State's comments, expressed in the two letters. EPA's response to the State's comments appears in section III.D., which organizes by subject matter all of the public comments and EPA's responses.

The State opposed the redesignation as an inefficient use of resources, in view of the forthcoming planning responsibilities to address the new, more stringent 8-hour ozone NAAQS.[4] The State preferred that EPA allow the region to pursue additional emission reductions through the air quality maintenance process and through implementation of the Bay Area's 1997 Clean Air Plan, rather than force the Bay Area to divert resources to an unnecessary planning process triggered by redesignation.[5] The State noted that EPA had followed a similar, flexible approach by not redesignating other areas that have violated the ozone standard.

Both letters from the State attached two legal opinions (CARB memorandum dated December 8, 1997, from Kathleen Walsh to Michael P. Kenny; BAAQMD memorandum dated December 4, 1997, from Robert N. Kwong to Ellen Garvey). These legal analyses concluded that, while EPA has the authority to redesignate the Bay Area to nonattainment even if the Governor does not submit a redesignation request, the Act also gives EPA other preferable options. The BAAQMD memorandum discusses 3 options: federal maintenance plan, SIP call, and Clinton Administration's common sense plan. The CARB memorandum argues that EPA should issue a call for a revision to the Bay Area's maintenance plan under CAA section 110(k)(5) if the Administrator determines that a SIP revision is necessary to correct a violation, since this approach would allow a more targeted effort to correct the problem. The BAAQMD memorandum adds that a maintenance plan is the means Congress established for addressing exceedances following redesignation to attainment, and both memoranda conclude that the existing maintenance plan and the Bay Area's 1997 Clean Air Plan are already at work toward returning the District to attainment, as indicated by the absence of any exceedances of the 1-hour ozone NAAQS in the Bay Area during 1997.

The State argued that there is no technical basis for determining a specific emission reduction target by EPA's proposed deadline of May 1, 1998, and that a quasi-technical assessment would not be accepted by the public or the business community. The State contended that modeling information is outdated and inadequate for purposes of determining an emissions reduction target.

The State argued that redesignation would hurt attainment efforts in the Central Valley, since it would distract the Bay Area from achieving real

[4] EPA promulgated a revised 8-hour ozone NAAQS on July 18, 1997 (62 FR 38856).

[5] This plan was adopted by the BAAQMD on December 17, 1997, to address requirements of the California Clean Air Act, including a triennial update to the area's comprehensive strategy for attaining the State's air quality standards. The plan was not adopted to address Federal CAA requirements and it has not been submitted to EPA as a SIP revision.

emissions reductions.[6] The Governor stated that he has directed the Chairman of CARB to work with involved districts to ensure that the BAAQMD develops additional measures to address the needs of the Central Valley.

The State concluded that EPA's proposed schedule does not provide sufficient time for planning or attainment, and that accomplishment of the proposed SIP requirements would be too costly. The State noted that the BAAQMD had estimated that EPA's proposed planning process, although streamlined, would still cost in the range of one million dollars or more, and would require significant investments of staff time, advisory committee time, and governing board time for all 3 co-lead agencies. The State specifically argued against EPA's proposed requirements for a weekend emissions inventory, which would require several person-years of effort and associated costs in the range of a half-million dollars. As an additional financial burden, the State asserted that EPA's proposed redesignation of the Bay Area without a classification jeopardizes the region's Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding.

Finally, the State cited the President's directive that accompanied the promulgation of the new federal standards for ozone and particulate matter.[7] The State encouraged EPA to comply with the spirit of the directive, which emphasizes that ''implementation of the air quality standards is to be carried out to maximize common sense, flexibility, and cost effectiveness.'' The State concluded that EPA withdrawal of the redesignation proposal would be most consistent with this directive.

C. Overview of Public Comments

EPA's proposed redesignation elicited a very large number of comments, offering strong arguments either in support of, or in opposition to, redesignation. Many of the letters also provided helpful information regarding the impacts, beneficial or adverse, expected to result from redesignation. Regardless of whether or not the writer favored redesignation, every commenter strongly supported clean air progress in the Bay Area. It is notable, for example, that many commenters from the Bay Area business community wished to do their part to improve air quality and maintain a sound economy, based on their conviction that investments in air quality directly enhance the area's economic vitality and their employees' quality of life. EPA appreciates each comment and greatly values the commenters' commitment to improved air quality and public health protection.

As previously noted, well over 100 individuals or organizations submitted comments on the proposed redesignation.

Included among the comments were letters supporting redesignation from Congressman Gary Condit (Fresno) and from 6 Members of Congress from the Bay Area (Representatives George Miller, Lynn Woolsey, Nancy Pelosi, Pete Stark, Anna Eshoo, and Tom Lantos). Four Northern California Members of Congress (Representatives Ellen Tauscher, Tom Campbell, Frank Riggs, and Vic Fazio) signed a letter in opposition to the redesignation.

The Bay Area Members of Congress opposing the redesignation believed that such an action is neither consistent with the CAA nor in the spirit of the President's 1997 directive on implementing the ozone and particulate matter NAAQS. These Representatives noted that the CAA does not mandate redesignation but allows EPA to recognize the Bay Area's track record and overall quality of air. The Members felt that redesignation will trigger a costly, duplicative planning process that will detract from collaborative efforts to improve air quality and prepare for compliance with the 8-hour NAAQS. The Representatives indicated that sources informed them that EPA's proposed action would provide no new authority, funding and technology. The legislators felt that declining Bay Area emissions and the clean 1997 ozone season prove that a region can quickly return to attainment without the economic, political, and administrative complexities of redesignation. The Representatives indicated that they are not opposed to the new 8-hour ozone NAAQS but wish an efficient, common sense transition to achieve the NAAQS. Finally, if EPA redesignates the Bay Area, the legislators wanted assurance that the CMAQ funding for the Bay Area will not be jeopardized by EPA's action.

Congressman Condit fully supported the proposed redesignation and referenced scientific data relating to Bay Area's exceedances and to the impact of transported pollutants to downwind areas, such as the San Joaquin Valley. Congressman Condit asked that a July 14, 1997 petition to EPA be incorporated in his comment. This petition was signed by 4 Congressmen in addition to Congressman Condit (Representatives George Radanovich, Richard Pombo, John Doolittle, and Sam Farr), 4 state legislators, local elected officials, and officials representing farm and manufacturing organizations, environmental groups, and the San Joaquin Valley Unified Air Pollution Control District.

The petition summarizes the adverse impacts of elevated ozone levels on public health, health care costs, and crops. The petition also notes reasons why the years during the early 1990's when the Bay Area recorded no violations were exceptional: A severe drought limited biogenic emissions, summer peak temperatures were lower than normal, the area was experiencing an economic recession, and the 55 mph speed limit was in effect, reducing emissions of ozone precursors from cars and trucks.

The petition notes that no modeling supported the redesignation of the Bay Area to attainment, and that contingency measures in the maintenance plan yielded no additional air quality benefit, particularly in light of EPA's decision to waive certain NO_X control requirements. Thus, the maintenance plan failed to comply with the requirement in CAA section 175A(d) that the plan contain contingency measures sufficient to assure that the State will promptly correct any violation of the standard which occurs after the redesignation. The petition adds that it is now apparent that the maintenance plan failed to comply with the even more fundamental requirement of section 175(A)(a) that such plans contain additional measures, if any, as may be necessary to ensure maintenance of the NAAQS.

The petition recounts the Bay Area's ozone NAAQS violations immediately following redesignation, some lasting up to 7 hours on 11 different days, with the worst exceedance in excess of .150 ppm, and 13 exceedances at or above .140 ppm. The petition concludes that prompt action is necessary to achieve the overriding purpose of the Act, since the SIP controls have been shown to be insufficient for attainment or maintenance.

The petition asks EPA either to withdraw the redesignation or redesignate the Bay Area to nonattainment, and further asks EPA to find that the current Bay Area SIP is inadequate and require the State to

[6] California's Central Valley comprises the Sacramento Valley to the northeast of the Bay Area and the San Joaquin Valley to the southeast. CARB has concluded that the Sacramento Valley, the San Joaquin Valley, and the North Central Coast (to the south of the Bay Area) are affected by transport of ozone and ozone precursors from the Bay Area.

[7] Memorandum from the President to the Administrator of the Environmental Protection Agency, dated July 16, 1997, entitled ''Implementation of Revised Air Quality Standards for Ozone and Particulate Matter,'' and attaching ''Implementation Plan for Revised Air Quality Standards.'' 62 FR 38421 (July 18, 1997).

revise the SIP to attain the NAAQS expeditiously.

The petition states that there is no longer a defensible basis to believe that the Bay Area has attained or that the approved maintenance plan is still adequate. The petition continues: ''The existing attainment designation sends a false signal to the public, the regulated community, local agencies and the District itself that ozone pollution is no longer a problem. The complacency created by that message will hinder rather than help solve the problem within the Bay Area and the San Joaquin Valley * * *.''

The petitioners requested EPA to establish a SIP requirement that the State perform a comprehensive analysis of all factors affecting the ozone precursor ''carrying capacity'' for maintenance of the NAAQS in the Bay Area, and provide accurate estimates of emission reductions anticipated to be achieved from additional measures to be included in the plan, based upon an updated emissions inventory. While the nonattainment SIP is being prepared, a SIP call should allow the State 1 year to submit a maintenance revision that includes adopted additional measures to ensure the earliest practicable attainment and maintenance of the ozone NAAQS. The petitioners stated that, ''Given history, the submittal should demonstrate the reliability and adequacy of those measures convincingly.'' The subsequent SIP offers an opportunity to fine tune the maintenance SIP revision and address any problems that may surface in implementation.

The 6 Bay Area Members of Congress supporting the redesignation stressed that protecting the health of their constituents is one of their highest responsibilities as lawmakers. After careful consideration, these Representatives concluded that the specific proposed redesignation presented by EPA is the best course of action to provide the greatest assurance of improving Bay Area air quality and protecting public health, while placing the fewest burdens on the local economy, residents, industry and regulators.

The legislators noted as significant a recent BAAQMD report showing a worsening trend in ozone pollution in the 1990s. While acknowledging the BAAQMD's new plan for future actions, the Members of Congress expressed concern that the plan, adopted to meet California Clean Air Act requirements, is inadequate since it contains only proposals, not binding commitments, and can be changed at any time. Since the plan is not enforceable by EPA or the public, the Representatives were unable to verify that the plan would achieve attainment or genuinely improve air quality.

The Representatives' letter went on to stress that there is no way to know whether Bay Area actions are sufficient for attainment until federal and local regulators have a common understanding of the extent of local air pollution problems. These Members of Congress considered that EPA's redesignation proposal allows the maximum flexibility to the BAAQMD to reach attainment by building on its existing plan and avoiding redundancy, specifically with respect to emissions inventory and modeling. The Members stated that it is incumbent upon the BAAQMD to work with EPA to find common ground on credible and binding actions and timetables.

While aware of arguments against redesignation based on EPA's recent adoption of a more stringent 8-hour ozone NAAQS, the Members of Congress still favored redesignation and action now to address the 1-hour standard, since 10 years may pass before the Bay Area must comply with the revised ozone standard, and any steps taken to comply with the current standard will only help, not hinder, the area's ability to meet the 8-hour standard when it is officially in place. In the meantime, Bay Area residents are likely to be exposed to harmful pollution levels if there is no action.

Finally, these 6 Representatives noted that the Department of Transportation has concluded that EPA's proposed redesignation would not jeopardize the Bay Area's eligibility for CMAQ funds under either the existing Intermodal Surface Transportation and Efficiency Act (ISTEA) or pending revisions to the Act.

EPA received numerous letters from State legislators, mayors, and boards of supervisors, in almost equal number supporting and opposing the redesignation. Fifteen city councils or county boards of supervisors in the San Joaquin Valley adopted resolutions supporting the redesignation and Federal actions to mandate additional controls in the Bay Area to reduce pollution levels exported into the Valley.

Five California air pollution control districts (Monterey, San Joaquin, Sacramento, Yolo-Solano, and Placer) wrote to support further emission reductions in the Bay Area, while the BAAQMD opposed the redesignation. EPA summarizes and responds to the BAAQMD's extensive comments in section III.D., below.

EPA received letters from over 20 Bay Area businesses and business organizations arguing against the proposed redesignation, as well as several letters from San Joaquin Valley businesses supporting the redesignation.

Letters supporting the redesignation and encouraging adoption of specific additional controls were sent by Northern California environmental groups. These commenters generally perceived a contrast between the major threat to public health reflected in the recent ozone violations and the lack of political will shown by State and Bay Area officials. The commenters supported a stringent timetable for SIP revisions and attainment, agreeing with EPA that the urgent priority is to actually adopt measures to ensure that the Bay Area ozone violations will not recur.

Nineteen public interest groups representing the Bay Area Environmental Justice Community signed a letter in support of the redesignation, emphasizing the need to stem job flight to the suburbs and to increase public transit within the Bay Area. The environmental justice groups noted that these changes would benefit poor people and communities of color both by improving their health and by increasing their access to jobs and essential services.

All letters from downwind areas (including, notably, the San Joaquin Valley) strongly urged EPA to finalize the redesignation, on the grounds that the Bay Area exports ozone or ozone precursors to their region, thus jeopardizing public health, prosperity, and scenic and resource values. These letters typically noted that the Bay Area, as an attainment area, does not confront Federal control responsibilities, and that this double standard unfairly penalizes downwind nonattainment areas, which face specific CAA mandates associated with their ''serious'' or ''severe'' ozone classifications.

Letters from Bay Area local officials and businesses generally pointed to unusual weather during 1995 and 1996 as the cause of the ozone exceedances; the Bay Area's continuing efforts to reduce emissions and the BAAQMD's projections that emission levels will decline significantly in future years; the fact that the Bay Area recorded no exceedances in 1997; and the importance of not diverting resources from implementation of existing measures and planning for the more protective 8-hour ozone NAAQS. The commenters frequently observed that EPA's proposed SIP timetable was too hasty to allow for good decision making.

D. Specific Comments and EPA Response

1. Comments Relating to the Basis of EPA's Proposal to Redesignate the Bay Area to Nonattainment

a. Air Quality and Emissions

Comment: The primary cause of the recent ozone exceedances is the very unusual weather patterns of 1995 and 1996. There were fewer exceedances of the 1-hour ozone NAAQS in 1996 and no exceedances in 1997. The Bay Area should therefore continue to be considered an attainment area.

Response: The Bay Area is not in compliance with the federal ozone standard, a standard that was designed to protect public health. The absence of violations in 1997 is a positive sign, but compliance with the federal ozone standard is measured over a 3-year period, not on an annual basis. The primary reason for the 3-year time frame is to account for the effects of weather and other meteorological conditions that can work to either the advantage or disadvantage of air quality. This is particularly relevant in the Bay Area's case, since the meteorological conditions prevailing on the West Coast during 1997 were unusually favorable to good air quality. Furthermore, according to a recent technical analysis by the BAAQMD, the ozone-conducive meteorology that occurred in 1995 and 1996 is likely to recur (BAAQMD *Evaluation of the 1995 and 1996 Ozone Seasons in the San Francisco Bay Area*, October 1997, attached to Governor Wilson's December 10, 1997 letter to EPA Administrator Browner). Bay Area residents must be assured of clean air under all weather conditions.

The Bay Area recorded 17 violations of the 1-hour standard over the 3-year period 1994–1996. During that period, exceedances of the ozone standard were measured at 15 official network monitoring locations throughout the Bay Area. Although air quality improved between 1995 and 1996, the Bay Area's ranking in 1996 was the 6th worst in the nation for number of days when ozone levels exceeded the federal standard. Over the period 1995–1997, the Bay Area recorded 15 violations and had significantly worse air quality than most other metropolitan areas designated as nonattainment for ozone (see response to the following comment). Many of these areas are classified as ''serious'' or higher under the Clean Air Act, and are subject to specific mandatory requirements which would not apply to the Bay Area in EPA's redesignation proposal.

These high ozone levels are harmful to public health in the Bay Area. Exposure to ambient ozone concentrations, even at relatively low levels and for brief periods of time, can cause respiratory symptoms such as a reduction in lung function, chest pain, and cough. Repeated exposure can make people more susceptible to respiratory infection and lung inflammation, and can aggravate preexisting respiratory diseases such as asthma. In consideration of these significant public health concerns associated with the Bay Area's elevated ozone levels, EPA continues to believe that redesignation to nonattainment is warranted.

Comment: The Bay Area has the cleanest air of any metropolitan region in the nation. Since 1990, the Bay Area has been in attainment 99.995% of the time.

Response: There is no question that air quality in the Bay Area has improved over the last 40 years. However, the Bay Area is not currently attaining the federal 1-hour ozone standard, a standard that was designed to protect public health and which has been made more protective by adoption of a new, 8-hour standard. The magnitude of the problem is significant as demonstrated by the number of violations (17 since redesignation to attainment in 1995) and the number of days when the standard was exceeded (19 days between 1995–1997). When comparing air quality in the Bay Area to other major metropolitan areas, there are a number of large metropolitan areas, such as Chicago and Detroit, with fewer violations and exceedance days than experienced in the Bay Area. Furthermore, the Bay Area ranks among the worst of the 243 Air Quality Control Regions in the country, based on data from the most recent 3-year period. Finally, in contrast to most areas of the Country, there is not a significant downward trend in the number of ozone exceedances in the Bay Area since 1989.

Comment: EPA's reliance on a statistic ranking the Bay Area the 6th worst in the nation in number of days over the ozone standard is misplaced. EPA's simplistic characterization of the number of exceedances fails to realistically depict the situation. A more realistic characterization is based on a review of the exceedances in terms of hours over the standard relative to hours in the ozone season for six or seven years. Following this approach, the number of hours over the standard is less than $^{2}/_{100}$ of a percent for 1990–1996. This analysis properly focuses on long-term trends rather than short-term data.

Response: When EPA establishes an ambient air quality standard, it sets not only the level of the standard (in this case, .12 ppm) but also the averaging time of the standard (1-hour) and the form of the standard (how compliance is measured). Each of these components of the NAAQS is set based on EPA's review of the available health effects data. When EPA set the 1-hour ozone NAAQS, EPA specified that the form be based on the number of exceedance days per year averaged over 3 years. Therefore, EPA's characterization of the Bay Area air quality in terms of number of days over the standard is appropriate. The form of the standard is not based on the number of hours over the standard relative to hours in the ozone season for 6 or 7 years, so an examination of the Bay Area's air quality on this basis would not be appropriate.

Comment: Some commenters concluded that the absence of violations in 1997, in conjunction with predicted further declines in emissions, proves that the Bay Area's ozone problem has been solved. Other commenters noted that the West Coast's extraordinary meteorology in 1997 kept ozone concentrations unusually low, and that emissions in the Bay Area may in fact not be decreasing as much as predicted, given the strong economic growth in the area and other factors.

Response: The October 1997 BAAQMD report referenced above identifies a downtrend in ozone precursor emissions from 1979 through the early 1990s, but notes that during the 1990s ''progress appears to have lapsed; there appears to have been an increase in ozone potential, after accounting for meteorology'' (page v). The report further notes that the ozone violations in 1995 and 1996 cannot be attributed solely to unusual circumstances. It identifies possible explanations for increased emissions over this time period (e.g., increased speed limits, increased congestion levels, and increased employment levels in East Bay communities).

EPA believes that a redesignation to nonattainment not only accurately describes air quality in the Bay Area, but also provides an opportunity for reevaluating the causes of the Bay Area's ozone violations, the quantity of emission reductions needed to attain the health-based standard, and the measures that will achieve those reductions expeditiously. This may involve not only CARB and BAAQMD but also MTC and ABAG in cooperative efforts to reduce the motor vehicle contribution to the Bay Area's continuing smog problem.

Comment: EPA has not demonstrated that contingency measures in the Bay Area's maintenance plan in conjunction with other projected reductions will fail to bring the region back into attainment.

Response: EPA acknowledges that additional emission reductions are likely to be achieved from measures already in the SIP or submitted for SIP approval. No commenter, however, has provided any evidence that these reductions will be sufficient to avoid violations in the future. Indeed, many commenters, including the BAAQMD and the State, emphasized that recently adopted control measure commitments in the Bay Area's 1997 Clean Air Plan are important in order to ensure continued air quality progress.

The Clean Air Act places the burden on the State to demonstrate that its plan, at all times, provides for attainment and maintenance of the NAAQS, through federally enforceable emission reductions sufficient to avoid violations of the NAAQS. The Federal CAA also provides protections to the public in the event that State plans are not fully and successfully implemented to achieve the scheduled emission reductions and air quality improvements. These protections include federally imposed nonimplementation sanctions and opportunities for citizens to sue to compel implementation.

EPA believes, therefore, that redesignation and new SIP obligations for the Bay Area are consistent with the overall structure and intent of the CAA, and provide key public health benefits. The State and BAAQMD will assess, using available data and technical analyses, the amount of emission reductions needed to ensure that violations of the 1-hour ozone NAAQS do not recur. The State, BAAQMD, and other responsible local agencies must then identify control measures that will achieve these reductions. EPA expects that the agencies will analyze which control measures from the 1997 Clean Air Plan are needed to attain the standard and which measures beyond those contained in the plan are also needed. The State, BAAQMD, and other responsible agencies will be subject to a schedule for adopting and implementing the necessary controls. The public will have increased protections as a result of making control measures needed to attain the standard part of the SIP, thus providing insurance that the measures will be carried out, if necessary, through federal enforcement or citizen suit.

Comment: EPA received a number of comments related to the continued applicability of the 1-hour ozone NAAQS in light of the new 8-hour standard.

Response: EPA is responding to these comments at length below to further the public's understanding of this issue. However, EPA's decisions that (1) the 1-hour standard will remain in effect in an area until it is attained, and (2) that the standard continues to apply in the Bay Area because the area is not attaining the standard, are not at issue in this rulemaking action and are not appropriately challenged here. EPA's views regarding these issues are set forth in 63 FR 31013, June 5, 1998.

Comment: The Bay Area had attained the 1-hour ozone NAAQS and, therefore, rather than being redesignated to nonattainment, the area was entitled to revocation of the 1-hour NAAQS in conformance with the President's directive.

Response: The President's ''Implementation Plan for Revised Air Quality Standards'' (''Implementation Plan'') (62 FR 38424) called for EPA to revoke the 1-hour ozone NAAQS in all areas that attain the standard. The President did not direct EPA to revoke the 1-hour ozone standard in all areas currently designated as maintenance or attainment areas. The President clearly intended that current air quality be the basis of EPA's determination of which areas attain. The Implementation Plan states that ''[f]or areas *where the air quality does not currently attain* the 1-hour standard, the 1-hour standard will continue in effect'' (emphasis added). Moreover, the controlling regulatory provision, 40 CFR section 50.9(b), specifies that an area must have air quality that meets the standard at the time of the decision. EPA's rulemaking action to determine that the 1-hour standard no longer applies in areas that are not currently violating the standard is therefore consistent with the Presidential memorandum. 63 FR 31013 (June 5, 1998). Because the Bay Area is currently violating the 1-hour ozone standard, the area is not currently eligible for this determination.

Comment: EPA has indicated that if the Agency's review of recent monitoring data finds that an attainment or maintenance area now violates the 1-hour standard, EPA will not redesignate these areas to nonattainment under the 1-hour standard.

Response: Both EPA's final regulation promulgating the new ozone regulation (62 FR 38873) and the Presidential memorandum regarding implementation of the standards (62 FR 38424) explain that in order to ensure a smooth transition to the implementation of the 8-hour ozone standard, the 1-hour standard will remain applicable to an area until it has attained the 1-hour standard. As long as the 1-hour standard remains in effect in an area, so does EPA's authority under CAA section 107(d)(3) to redesignate that area as a nonattainment area. EPA's ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS'' (December 29, 1997 Memorandum from Richard D. Wilson, to EPA Regional Administrators) clarifies that ''in certain cases where air quality data through 1997 show nonattainment, EPA may be redesignating areas from attainment to nonattainment for the 1-hour standard.''

Comment: EPA should treat the Bay Area like other maintenance areas in the Country, where the 1-hour NAAQS is not being revoked because the areas have had recent violations of the NAAQS. These areas are not being reclassified to nonattainment.

Response: The Bay Area's number of exceedances and violations and the Bay Area's peak concentrations (highest monitored value and design concentration) far exceed those in all other maintenance areas that have had exceedances since 1994. There are 5 other ozone maintenance areas in addition to the Bay Area that have experienced violations of the 1-hour ozone standard after redesignation: Kansas City, Detroit-Ann Arbor, Dayton-Springfield, Grand Rapids and Memphis. Three of these maintenance areas (Detroit-Ann Arbor, Grand Rapids, and Dayton-Springfield) already meet the test for attainment of the 1-hour ozone NAAQS based on 1995–1997 data and are therefore proposed for revocation of the 1-hour ozone standard (63 FR 27247, May 18, 1998). The remaining 2 areas, Kansas City and Memphis, could meet that test at the end of 1998, assuming that no more than 2 exceedances are recorded at the peak monitor during 1998. Because the peak monitor in the Bay Area recorded 8 exceedances in 1996, the Bay Area would still violate the 1-hour ozone NAAQS even if no exceedances occur in 1998, since the average number of exceedances for the 3-year period 1996–1998 would exceed 1 per year.

b. Legal Authority

(i) General Comments on Mandatory and Discretionary Authorities To Redesignate

Comment: A number of commenters felt that EPA should not redesignate the Bay Area to nonattainment because the Clean Air Act contains no mandatory duty to do so.

Response: EPA agrees that section 107(d)(3)(A) does not require EPA to redesignate the Bay Area. However,

section 107(d)(3) of the Act grants the Administrator broad discretion to redesignate areas when she determines that it is appropriate. For the reasons discussed at length in the proposal and in today's final notice, the Administrator believes that it is necessary to redesignate the Bay Area.

(ii) Authority To Redesignate Without Classification

Comment: The BAAQMD commented that it disagrees with EPA's interpretation of section 181(b)(1) of the Act, and believes that the ambiguity contained in the language of this section argues in favor of a SIP call to strengthen the maintenance plan, rather than redesignation without classification.

Response: As EPA explained at length in its proposal, section 181(b)(1), which provides for new designations to nonattainment, does not on its face apply to the Bay Area. (Please refer to 62 FR 66580, December 19, 1997, for EPA's analysis of the applicability of section 181.) Section 181(b)(1) explicitly sets forth which areas it governs. Specifically, section 181(b)(1) covers only those areas that were originally designated attainment or unclassifiable pursuant to section 107(d)(4) of the 1990 amendments. This section is silent with regard to areas, like the Bay Area, that were designated nonattainment under the 1990 amendments, redesignated to attainment, and that subsequently returned to nonattainment.

In its comments on the proposal, the BAAQMD cautions EPA against inferring anything from Congress' silence with regard to areas like the Bay Area. However, because Congress *was* silent on this point, some inference must be made in order to decide how an area like the Bay Area is to be treated under the Act. The BAAQMD would like us to infer that we cannot redesignate an area back to nonattainment once it has attained the standard, but must instead issue a SIP call to address the inadequacies in the maintenance plan and contingency measures. While a SIP call is one possible option, it is clearly not the only option authorized by the Act. There is no ambiguity in the language of section 107(d)(3), which grants the Administrator the authority to redesignate an area ''any time'' she deems it is appropriate based on air quality data, planning and control considerations, or any other air quality-related considerations.[8] EPA continues to believe that redesignation, rather than a SIP call, is the appropriate action in this instance. Given the broad discretion granted the Administrator under section 107(d)(3), EPA is exercising that discretion today to redesignate the area to nonattainment. Moreover, we also continue to believe that the ambiguity contained in the language of section 181(b)(1) is best interpreted as placing the Bay Area under subpart 1 of the Act for the following reasons. The plain language of section 181(b)(1) applies only to areas designated attainment under section 107(d)(4) and excludes areas like the Bay Area. Second, as an area that was previously designated nonattainment, the Bay Area has already done much of the work required for a nonattainment area SIP and should not need the lengthy time period granted to new nonattainment areas to complete its planning process. The Bay Area has already implemented the section 181 requirements applicable to its previous moderate classification. Finally, sections 172(a)(1) and (2) contain express statements that they do not apply to nonattainment areas that are specifically covered by other provisions of Part D of the Act, thereby demonstrating that the Act contemplates that some areas will fall under subpart 1, rather than subpart 2.

c. Policy Issues

(i) Public Notification and Public Perception

Comment: Some commenters considered redesignation to be simply a labeling exercise that will have a negative impact on public support for existing air quality programs by emphasizing redundant and counterproductive procedural and paperwork tasks above real progress in emission reductions.

Other commenters noted that the redesignation debate in the Bay Area shows that labels are significant, and that ''nonattainment'' accurately conveys the message that making the Bay Area's air safe to breathe is a task still unfinished; there needs to be a clear and consistent signal to the affected sources and the public about why new measures are necessary. These commenters concluded that, to win approval of additional reductions in air pollution, the public needs to know the actual status of air quality in the Bay Area. The broader public will not support efforts to reduce pollution if air quality is deemed to be in attainment of health standards. If local regulators maintain that air quality is fine and if there is no public accountability through EPA oversight or the right of public interest groups to enforce attainment plans, the regulators will not take on the difficult task of requiring polluters to invest further in pollution prevention or control technology.

Response: The large number of Bay Area exceedances in 1995 and 1996 indicates that we do not have a convincing basis for predicting an end to ozone violations without further reductions. Designations of attainment are intended to apply to areas that have demonstrated clean air over a 3-year period.

Moreover, EPA does not believe that the Bay Area's current attainment designation is appropriate since it tells the affected public, the regulated community, local agencies, and the District that ozone pollution is no longer a problem. This inaccurate message tends to undercut collaborative and progressive actions in the near term, and contributes to confusion and dissension both within the Bay Area and in downwind populations.

EPA remains convinced that near-term action is needed to protect the health and welfare of the State's residents. Emission reduction strategies will be evaluated and put in place 4–5 years sooner through a redesignation under the 1-hour standard than is expected under a plan to meet the revised ozone standard (new plans are not expected to be due under the revised standard until 2003 and the attainment date for an area such as the Bay Area for the 8-hour standard is expected to be 2005 at the earliest). That is at least 4–5 years during which Californians would be breathing dirtier air than they should be.

Finally, EPA continues to believe that a redesignation to nonattainment not only accurately describes air quality in the Bay Area but also provides an opportunity for reevaluating the causes

[8] The Bay Area recorded 43 exceedances of the ozone standard in the two-year period 1995–1996. The standard allows no more than three exceedances at any one monitor over three years. In addition, the area recorded violations at special purpose monitors (SPMs) from 1992–1993, prior to being redesignated to attainment. While these violations were not considered in EPA's original decision to redesignate the area to attainment because the monitors were not part of the official monitoring network, the Agency has since issued a policy that requires that any reliable monitoring data be relied upon in such decisions. (August 22, 1997 memorandum entitled, ''Agency Policy on the Use of Special Purpose Monitoring Data,'' from John Seitz, Director of the Office of Air Quality Planning and Standards.) As we noted in the proposal (62 FR 66579, December 19, 1997), EPA has determined that the SPMs data should have been considered in the 1995 redesignation action. With the advantage of hindsight, these violations can be viewed as an indicator that the air quality problem in the Bay Area has not been solved at the time the area was redesignated, as was borne out by the high number of exceedances during 1995–1996. As we have discussed at length herein and in the notice of proposed rulemaking, the severity of the air quality problem makes redesignation the appropriate action in this case.

of the Bay Area's ozone violations, the quantity of emission reductions needed to attain the health-based standard, and the measures that will achieve those reductions expeditiously.

(ii) Impact of Bay Area Emissions on Downwind Nonattainment Areas and Issues of Equity

Comment: Commenters from downwind areas and environmental groups referenced a CARB study indicating that pollution transported from the Bay Area produces up to 27% of the smog in the Central Valley. Monterey Bay Unified Air Pollution Control District noted that CARB has found that half of the exceedances of the State 1-hour ozone standard in the North Central Coast Air Basin result from overwhelming transport from the Bay Area (i.e., the exceedances would have occurred even in the absence of local emissions). Commenters expressed the belief that continued Bay Area progress toward meeting federal requirements is key to achieving air quality in these downwind areas, and that further NO_X reductions in the Bay Area are especially important. Commenters noted high pollution levels in areas downwind of the Bay Area, and argued that redesignation would help ensure that the Bay Area pays the price of controlling its pollution rather than passing it on in the form of health impacts and added regulatory requirements for downwind areas. Downwind areas stated that enhanced motor vehicle inspection and maintenance (or enhanced I/M, which is known in California as Smog Check 2) should be required in the Bay Area, just as it is in urbanized portions of the Central Valley.

The BAAQMD argued that redesignation without classification would not ensure implementation of Smog Check 2 in the Bay Area under existing State law. The State argued that redesignation would hurt attainment efforts in the Central Valley, since it would distract the Bay Area from achieving real emissions reductions. Bay Area industry commented that redesignation will not solve pollution transport issues in California and that any reliance on pollutant transport concerns to support redesignation is unfounded and legally impermissible.

Response: The basis for the nonattainment designation is the large number of recent violations of the 1-hour ozone NAAQS in the Bay Area, not any new evidence regarding the impact of Bay Area pollution on downwind areas within the State. EPA believes that primary responsibility for addressing transport to and from the Bay Area resides with the State.

With respect to the importance of Smog Check 2 in the Bay Area, EPA strongly endorses enhanced I/M as one of the most cost-effective measures that could be added to the Bay Area's existing controls, since the program has the potential to achieve substantial emissions reductions in the near term and to ensure that the benefits of California's stringent motor vehicle standards are not diminished because of poorly maintained vehicles.

(iii) Effect of Redesignation on Limited Air Pollution Control Resources

Comment: Redesignation will trigger an expensive, duplicative planning process that will detract from effective collaborative efforts to improve air quality. Redesignation provides no new funds, authority, or technology but simply imposes paperwork and process requirements.

Response: Redesignation should not result in a burdensome and duplicative planning effort. EPA wants the District and its co-lead agencies to focus on emission reductions, not paperwork.

EPA is asking, in fact, for only three plan elements: the existing 1995 emissions inventory for VOC and NO_X, an assessment of emissions reductions needed to attain the federal standard, and control measures to achieve those reductions. EPA is allowing the District to use available data and technical analyses to establish the emission reduction targets. Finally, EPA expects that most of the work to identify potential control measures has also been completed for the District's recently adopted 1997 Clean Air Plan. EPA expects that the District will analyze which control measures from this plan are needed to attain the standard and which measures beyond those contained in the plan are also needed. Making these control measures federally enforceable elements of the SIP provides an important public safeguard since only in this way can EPA and the public ensure that the commitments in the plan are fully implemented and the plan's promised air quality benefits are realized. This streamlined planning effort also provides an opportunity for the Bay Area to quickly determine whether additional reductions from transportation sources are appropriate, in the event that attainment requires more near-term reductions than the Clean Air Plan currently identifies.

While EPA concedes that redesignation may provide no new funds, authority, or technology, the Agency does not agree that the redesignation, as finalized in this action, simply imposes burdensome paperwork and process requirements on the Bay Area. EPA's proposed streamlined and flexible set of requirements contrasts with extensive and prescriptive planning and control requirements that apply to ozone nonattainment areas with 1999 attainment deadlines. Most of these areas, which were classified as ''serious'' under the Clean Air Act, have far fewer ozone exceedances and far fewer planning resources than does the Bay Area. The following are examples of ''serious'' ozone nonattainment area mandates, which EPA does *not* propose to require in the Bay Area: (1) A more stringent definition of major stationary source for purposes of Title V operating permit requirements; (2) more stringent applicability thresholds and offset ratios for purposes of permitting new and modified stationary sources; (3) a more stringent definition of major stationary source for purposes of applying reasonably available control technology requirements to existing stationary sources; (4) specific, detailed plan elements addressing rate-of-progress; (5) an enhanced vehicle inspection and maintenance program; and (6) specific, detailed provisions relating to transportation control.

Comment: Redesignation is inconsistent with the President's directive that the new federal air quality standards be implemented in a flexible, cost-effective and common-sense manner; that EPA respect agreements already made by States, communities, and businesses to clean up the air; and that EPA implement the standards with the minimum amount of paperwork necessary. Redesignation also fails to promote the ideals of the President's and Vice President's reinvention report which calls for the building of partnerships, the reduction of red tape, and the use of sound science to set priorities.

Response: A key component of the President's implementation plan for the new federal air quality standards is that continued progress toward meeting the 1-hour standard will ensure a smooth and effective transition to the 8-hour standard. EPA's action to redesignate the Bay Area as a nonattainment area for the 1-hour ozone standard and the simplified set of planning objectives that accompany this action are consistent with continuing progress towards meeting the 1-hour standard. They are also consistent with other elements of the implementation plan pertaining to respecting existing agreements, reducing paperwork, and maximizing common sense flexibility, and cost-effectiveness. As discussed above, EPA is asking for only 3 plan

elements: the existing 1995 emissions inventory for VOC and NO_X, an assessment of emissions reductions needed to attain the federal standard, and control measures to achieve those reductions, without requiring expensive new modeling or unnecessary paperwork. The District has already identified additional control measures in its 1997 California Clean Air Act plan that could be used for a new federal plan. In addition, partnerships between the private sector, environmental groups, and regulators to promote innovative methods for addressing the air quality problem could be an important part of the Bay Area's response to the redesignation.

(iv) Alternatives to Redesignation

Comment: EPA should allow the Bay Area to implement and supplement, if necessary, the contingency measures in the Bay Area's Maintenance Plan, as the remedy to violations. The CAA recognizes that attainment areas will experience violations from time to time and that contingency provisions should be adequate to cure the problem. If EPA determines that the existing Bay Area Maintenance Plan is inadequate, the CAA provides a remedy: EPA may issue a SIP call under section 110(k)(5) to strengthen the maintenance plan.

Response: EPA hoped and expected that the Bay Area's maintenance plan would be the means to prevent future exceedances of the ozone standard. Unfortunately, almost all of the emission reductions from the Bay Area's maintenance and contingency measures were in effect at the time that the Bay Area experienced so many violations of the ozone standard in 1995 and 1996. After completing a stakeholder process over the past several years, EPA concluded that additional public health protections are needed beyond current Bay Area plans. EPA evaluated all of the options available under the Clean Air Act to address the public health problem and continues to believe that redesignation is the most direct and sensible outcome.

The proposal that EPA rely only on a ''SIP Call'' would apparently involve EPA using the authority of CAA section 110(k)(5) to mandate submission of a strengthened maintenance plan. For the reasons discussed above, EPA believes that redesignation to nonattainment is a more appropriate course under the framework of the Act. While EPA considered the ''SIP Call'' option, the Agency concluded that a federal nonattainment designation for the Bay Area was important to provide the public with accurate information and the correct message: Pollution levels must be reduced quickly in order to eliminate unhealthy air quality within the Bay Area. Since the amount of reductions necessary to attain the federal 1-hour ozone standard has not yet been established, EPA believes that the proper SIP remedy is twofold. First, the BAAQMD must submit its existing 1995 emissions inventory for VOC and NO_X and an assessment, using available data and technical analyses, of the emissions reductions needed to attain the standard. Second, the BAAQMD and its co-lead agencies must identify, adopt, and submit for incorporation in the SIP all of those control measures that are needed to meet the reduction target expeditiously. EPA proposed and is now finalizing this simplified SIP remedy, which does not substantively differ from the planning requirements that would need to be addressed by the State in revising the Bay Area's maintenance plan so that it provides for attainment.

Comment: The BAAQMD commented that if redesignation is finalized EPA should classify the Bay Area as a ''marginal'' ozone nonattainment area, subject to the requirements specifically delineated in CAA section 182(a). This certainty would provide a more specific and defensible foundation for the responsibilities of the co-lead agencies, CARB, and EPA. The BAAQMD expressed the belief that areas designated as ''marginal'' would have 3 years to develop a SIP submittal and 5 years to reach attainment. Other commenters recommended a ''moderate'' classification as more appropriate to the Bay Area's air quality.

Response: As discussed above and in the proposal, EPA concluded that subpart 2 of the Clean Air Act (which includes the ozone classifications and specific requirements for each classification) applies, on its face, only to: (1) Areas designated nonattainment under 107(d)(4) at the time the 1990 amendments were passed, and (2) areas designated nonattainment under 107(d)(3) for the first time after passage of the 1990 amendments. See CAA 181(b)(1). Thus, the subpart 2 provisions would not seem to apply to the Bay Area, which was initially nonattainment, redesignated to attainment, and then redesignated back to nonattainment.

In the proposed redesignation (62 FR 66580), EPA also presented two policy reasons for not classifying the Bay Area or requiring the District to meet all of the subpart 2 requirements for a ''moderate'' ozone nonattainment area:

(1) Many of the classification requirements served no purpose for the Bay Area, because the requirements had already been addressed previously when the area was nonattainment or because the requirements would contribute no specific emission reductions. For example, ''moderate'' area requirements include the gasoline vapor recovery program (which has been approved as part of the Bay Area SIP for many years) and the rate-of-progress plan (which would be superfluous given the compressed attainment schedule for the Bay Area). EPA's proposal stressed the Agency's determination to eliminate paperwork and focus the Bay Area's energies on achieving the emission reductions needed to attain the 1-hour NAAQS quickly.

(2) It did not seem appropriate to allow the Bay Area as much time as subpart 2 gives to newly designated and classified nonattainment areas. The CAA allows newly designated nonattainment areas the same amount of time to meet subpart 2 requirements as was given to areas initially nonattainment under the 1990 CAA amendments. This would mean that the Bay Area would have either 3 years or 4 years from the effective date of the final designation to make a ''moderate'' SIP submittal, depending upon whether sophisticated photochemical modeling was employed (approximately 6/2001 or 6/2002, instead of the 6/1999 date for SIP submittal set in this action). The Bay Area would also have 6 years to attain the 1-hour ozone NAAQS (2004, instead of the 2000 date in this action).

The same analysis applies to an even greater extent with respect to a ''marginal'' classification. The Bay Area has previously addressed the CAA ''marginal'' area requirements for corrections to RACT rules, NSR rules, basic I/M, and rules requiring sources to report on their emissions. If EPA were to classify the area as ''marginal,'' in fact, the Bay Area would only need to submit a single new SIP element—an updated emissions inventory—which would not be due until 2 years from the effective date of the final designation (approximately 6/2000, instead of the 11/1998 informal submittal date agreed to by the BAAQMD, and the 6/1999 SIP deadline set in this action). The CAA does not require ''marginal'' areas to submit attainment assessments, but sets an attainment deadline 3 years after the effective date of the nonattainment designation (i.e., 2001).

EPA does not believe that either the ''moderate'' or ''marginal'' classification requirements and schedule represent an efficient, common-sense, or adequate response to the urgent public health concerns associated with the Bay Area's large number of recent ozone NAAQS

violations. EPA continues to conclude that the proposed approach of redesignation without classification, setting near-term deadlines for SIP revision and attainment, is not only better supported by the terms of the CAA but also better fits the goals of this action: To provide the Act's clean air protections to Bay Area residents as quickly as possible, with minimal process and paper, and with the greatest flexibility afforded to the State and local agencies.

Comment: The BAAQMD proposed that, in lieu of redesignation, the BAAQMD, EPA, CARB, the Metropolitan Transportation Commission, the Association of Bay Area Governments, the San Joaquin Valley Unified Air Pollution Control District, CBE, Earth Justice, and the Sierra Club could enter into a binding memorandum of understanding or agreement that would result in additional stationary and mobile source control measures, with their concomitant emission reductions, being added to the BAAQMD's Maintenance Plan or SIP. The BAAQMD argued that this approach was supported by the President's emphasis on regulatory flexibility.

Response: EPA strongly supports collaborative efforts between all involved parties, and particularly encourages consultation with downwind air districts and environmental groups. EPA does not view broad cooperative efforts such as the BAAQMD proposes as incompatible with redesignation to nonattainment, and notes that half of the parties named by the BAAQMD support EPA's proposed redesignation action. EPA is unclear, however, regarding the scope of the BAAQMD's proposed binding MOU or MOA, whether all of the parties would have the authority to enter into a binding MOU or MOA, and whether all necessary parties would be bound. There are significant statutory constraints, for example, on EPA's authority to enter into binding agreements. Nevertheless, EPA would be pleased to participate in any process established by the BAAQMD.

Comment: EPA should follow the Clinton Administration's ''Common Sense'' option, and allow the Bay Area simply to focus on the 8-hour ozone standard on the schedule established for new ozone SIPs.

Response: This option apparently involves no near-term actions by State and local Bay Area agencies, since most substantive requirements and deadlines for SIPs addressing the 8-hour ozone NAAQS will not come due for approximately 5 years. The commenter appears to conclude that we should abandon efforts to reach a less stringent ozone standard on our way to achieving a more stringent ozone standard.

EPA's final promulgation of the revised 8-hour ozone NAAQS and final interim implementation policy, ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS'' (December 29, 1997), responded to commenters on the proposals, who argued that abandonment of SIP obligations to provide attainment plans for the 1-hour ozone NAAQS would be inconsistent with national public health goals, in view of the fact that new plans addressing the 8-hour ozone NAAQS will not be due until mid-2003. In order to ensure that momentum is maintained by state and local agencies, the final policy provides that the 1-hour standard and applicable Clean Air Act requirements will continue to apply to an area until EPA makes a determination that the area has met the 1-hour standard. As discussed elsewhere in response to comments, EPA believes that a compressed and streamlined planning process is necessary for the Bay Area to expedite efforts to protect public health. EPA agrees with commenters who concluded that this process will benefit rather than detract from eventual preparation of a SIP addressing the 8-hour ozone NAAQS.

2. Comments Relating to EPA's Proposed SIP Requirements

a. Emissions Inventory

Comment: While the BAAQMD has been maintaining and updating a weekday inventory for many decades, preparing a weekend day inventory, as EPA proposes to require, would demand extensive new data gathering and compilation, several person-years of effort, and one half-million dollars or more. Although assumptions could be made and best-judgment factors could be applied to weekday data to generate an estimate of weekend day data, the resulting uncertainties would hamper planning efforts based on their use. Such an extensive new requirement would be more appropriate for a SIP submittal focused on the new 8-hour NAAQS.

Response: Based on these comments from the State and the BAAQMD, EPA has decided to amend the proposed SIP submittal schedule to delete the weekend day emission inventory requirement. Nevertheless, EPA encourages BAAQMD and CARB to work together with State and regional planning and transportation agencies to assess weekend emissions and develop appropriate additional control measures as may be necessary and appropriate to ensure that weekend violations do not persist.

Comment: EPA proposed to require an updated carbon monoxide (CO) emissions inventory. A commenter noted that, although a CO inventory may help shed light on sources of ozone precursors, the CO inventory has no direct bearing on ozone attainment status and EPA should delete the requirement from the final redesignation.

Response: In order to minimize still further the scope of the Bay Area SIP obligation, EPA agrees to eliminate this requirement. Consequently, EPA finalizes in this action a SIP requirement for the existing 1995 inventory for VOC and NO_X emissions only.

b. Attainment Assessment

Comment: Bay Area industry, the State, and the BAAQMD argued that a credible attainment assessment, particularly one that takes into account the 1995–6 meteorological conditions and ambient concentrations, cannot be performed by May 1, 1998, due to data gaps and lack of modeling capability. If the BAAQMD should attempt an assessment, it would not be technically defensible and would not be accepted by the public or business community. Reliable modeling cannot be performed until the results of a new field study (conducted in 1999 or 2000) are available. Bay Area industry expressed concern that EPA's unrealistic schedule may lead the BAAQMD to prematurely ''lock in'' a control strategy that emphasizes counterproductive NO_X reductions.

On the other hand, environmental groups and other commenters felt that EPA's proposed schedule struck an appropriate balance between the competing concerns for acting quickly and acting knowledgeably. These commenters emphasized that the BAAQMD cannot assure compliance with the 1-hour NAAQS without first knowing what emissions are and what reductions are needed, and any extra time and effort spent to understand the problem now will pay double dividends in the future, in helping the regulatory agencies and affected industry comply with the Federal 8-hour NAAQS and the California 1-hour standard.

Response: EPA continues to believe that available data and technical analyses can be used to provide, within a very short period of time, a reasonable estimate of emission reductions needed to attain. The BAAQMD's October 1997 report, *Evaluation of the 1995 and 1996*

Ozone Seasons in the San Francisco Bay Area, recommended such an assessment. EPA remains willing to work with the BAAQMD to ensure that the exercise can be completed within the established time limits and resource constraints, and that the analysis will comply with applicable federal requirements. EPA notes that there is no CAA requirement that the Bay Area use Urban Airshed Modeling, and that other approaches may be appropriate to target the amount of emission reductions needed to attain the NAAQS expeditiously. The quality of technical data and analyses techniques will continually improve, but it does not make sense to wait for the ''perfect'' science to take action. Regulatory agencies need to use the best information available now to make reasonable decisions about how to protect public health. In order to allow more time to assess the reductions needed for attainment, EPA is extending the formal SIP submittal deadline for the attainment assessment from May 1, 1998 to June 15, 1999. The District has committed to submit a draft attainment assessment informally to EPA, and make it available to the public, by November 25, 1998. (Letter from BAAQMD, ABAG, and MTC dated June 23, 1998.) This early informal submittal will allow EPA to review the draft inventory and assessment and work with the District to address any deficiencies. Finally, with respect to industry's contention that EPA's schedule may lead the District to ''lock in'' allegedly counterproductive NO_X controls, EPA does intend to allow CARB and BAAQMD the flexibility to select the appropriate mix of ozone precursor controls to ensure attainment. This issue is also discussed below in the context of the NO_X waiver.

c. Control Measures

(i) Suggested Measures

Comment: Several of the commenters recommended particular control measures that could be adopted to speed Bay Area attainment. The most frequently mentioned new measure was the Smog Check 2 program. Sacramento Valley air pollution control districts and environmental groups also urged implementation of two additional reduction programs: (1) A heavy duty mobile source NO_X control strategy that includes incentives for early introduction of clean engine and fuel technologies; and (2) a requirement for permits and controls on smaller stationary sources, including natural gas fired boilers and internal combustion engines, and regulation of stationary diesel internal combustion engines, which are now exempt. The Sierra Club attached to their comment an extensive list of control measures for inclusion into the SIP, particularly suggestions for specific improvements to the Bay Area transportation control measures. CBE provided detailed recommendations for a variety of specific additional controls at Bay Area refineries and chemical plants. CBE also endorsed a public comment on the proposed redesignation from Chesapeake Environmental Group, Inc., advocating further reductions in VOC emissions from land fills by prohibitions on the use of petroleum-contaminated soil as a landfill cover. The Bay Area Environmental Justice Community recommended tough rules on oil refining and other polluting manufacturing processes, control on the movement of jobs to the outer suburbs, and commitments to redirect public funds to transit instead of highway building.

Response: EPA believes that the suggested control measures merit serious attention by the responsible agencies. EPA has forwarded the comments to CARB, BAAQMD, MTC and ABAG with encouragements to these agencies to consider the suggestions for incorporation into the SIP, as appropriate. In order to allow more time for evaluation of additional control measures, EPA is extending the SIP submittal deadline for adopted regulations or enforceable commitments to adopt regulations, from September 1, 1998, to June 15, 1999.

Comment: The Association of International Automobile Manufacturers, Inc., the New United Motor Manufacturing, Inc. (NUMMI), and Toyota Motor Manufacturing North America, Inc., commented that the adoption and implementation schedule of rules in the Bay Area's 1997 Clean Air Plan was coordinated with the implementation schedule of CAA section 183(e) rules for reducing VOC emissions and the Federal schedule for implementation of the maximum achievable control technology (MACT) standards for automobiles and light duty trucks. The commenters noted that the respective deadlines for these Federal rules are 2003 and 2000, respectively. The commenters emphasized that any acceleration of the BAAQMD's current schedule to meet EPA's proposed 1999 attainment deadline would likely result in duplicative efforts and inconsistent requirements, and thus increased costs to affected industry.

Response: EPA has asked the State to perform an assessment of reductions needed to attain the 1-hour ozone NAAQS expeditiously, in order to prevent recurrence of the violations experienced following the redesignation to attainment. EPA wishes the State to use its good judgment to determine which new controls should be adopted or expedited to meet attainment requirements, assuming that the attainment assessment identifies the need for more reductions to prevent exceedances by the attainment year 2000. EPA encourages the BAAQMD and other responsible agencies to select control approaches that maximize common sense and cost effectiveness.

Comment: Industry commenters questioned whether controls adopted to meet the 1-hour ozone NAAQS would necessarily be helpful in meeting the new 8-hour ozone NAAQS. Other commenters, however, noted that controls adopted to meet the Federal 1-hour ozone standard would contribute to eventual attainment of California's more stringent 1-hour ozone standard and could be generally presumed to benefit attainment of the new 8-hour ozone NAAQS.

Response: While EPA believes that the great majority of control possibilities for meeting the 1-hour ozone NAAQS will also advance attainment of the 8-hour ozone NAAQS in the Bay Area, EPA encourages CARB, BAAQMD, MTC, and ABAG to assess any new control measures that may be considered for expeditious attainment of the 1-hour ozone NAAQS, in order to ensure that the measures will also promote attainment of the 8-hour ozone NAAQS.

Comment: The BAAQMD proposed that new contingency measures be added to the SIP to augment the ones currently implemented. The BAAQMD stated that the process for identifying these measures ''can occur quickly through consultation among EPA, CARB, and the co-lead agencies. Through this process, we can commit our energies and our limited resources to pursuing our real shared goal—clean air for all people all the time—through common sense, flexible, cost-effective, and coordinated actions.''

In its comment letter, the BAAQMD identified the following options for supplementing the existing SIP controls:

(1) already adopted measures which have not been submitted into the SIP, such as controls on refinery fugitive emissions and pressure relief valves, NO_X Best Available Retrofit Control Technology (BARCT) controls on refineries and utilities, $1 increase in bridge tolls;

(2) measures that the BAAQMD will be pursuing in the near term, such as an aqueous solvents rule, new CMAQ-funded projects);

(3) State measures, such as further improvements to the I/M program.

Response: EPA shares completely the BAAQMD's goal statement to provide ''clean air for all people all the time—through common sense, flexible, cost effective, and coordinated actions.'' EPA also appreciates the BAAQMD's point that additional control measures can be identified quickly through consultation with EPA, CARB, and the co-lead agencies; and EPA would be happy to consult on appropriate measures.

In terms of supplementing the current SIP with additional control measures, EPA agrees the example measures are feasible. Depending on the outcome of the attainment assessment, however, additional controls may be needed. The Bay Area has already identified several feasible control measures in response to the State requirement for a 1997 Clean Air Plan. Upon review of the Bay Area's 1997 Clean Air Plan, CARB suggested a number of modifications to existing Bay Area regulations and transportation control measures that could result in additional emission reductions (See letter from Lynn Terry, Assistant Executive Officer, CARB to Ellen Garvey, Air Pollution Control Officer, BAAQMD, dated December 1, 1997.) In addition, EPA's Office of Air Quality Planning and Standards identified 42 cost effective control measures that may be appropriate for the Bay Area. (E.H. Pechan & Associates, Inc., ''Control Measure Analysis of Ozone and PM Alternatives: Methodology and Results,'' prepared for Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. EPA, RTP, NC July 17, 1997.) Whatever additional SIP measures are pursued, they must provide sufficient emission reductions to ensure expeditious attainment of the 1-hour ozone NAAQS in the Bay Area.

(ii) NO_X Waiver and the Efficacy of NO_X Controls

Comment: Industry commenters stated that EPA provided no adequate notice of its retroactive revocation of the NO_X waiver and the waiver remains appropriate to avoid requirements for expensive and counterproductive NO_X controls, since modeling evidence shows that NO_X reductions may elevate ozone concentrations at locations within the Bay Area under certain meteorological conditions, and thus could detract from attaining the ozone NAAQS.

Earthjustice, on behalf of Sierra Club and CBE, agreed with EPA's position that no waiver of NO_X control requirements now applies, but contended that the waiver continued during the maintenance period. Earthjustice considered that the waiver expired by its own terms, however, because it was explicitly conditional, lasting only as long as the area's monitoring data continue to demonstrate attainment. Finally, Earthjustice concluded that the Bay Area is therefore now subject to CAA section 182 requirements for NO_X control.

Response: Section 182(f) of the Act extends the ozone nonattainment area VOC requirements of subpart 2 of the Act to emissions of NO_X. This section also provides that the Administrator may, either on her own or in response to a petition, waive these subpart 2 NO_X requirements if, for nonattainment areas outside an ozone transport region, either of 2 tests are met. The section 182(f) NO_X requirements would not apply if the Administrator determines that (1) for the sources concerned, net air quality benefits are greater in the absence of the NO_X reductions, or (2) additional NO_X reductions would not contribute to attainment of the ozone NAAQS. Additionally, the NO_X control requirements, under the same tests, could be relieved as to any portion of the controls that are shown to result in excess emissions reductions. On December 16, 1993, EPA issued guidance on obtaining NO_X waivers.[9] This guidance was subsequently revised on May 27, 1994.[10]

At the time the Bay Area submitted its redesignation request, EPA guidance governing redesignations required, pursuant to section 107 of the Act, that an area must meet all applicable requirements of section 110 and part D prior to redesignation. Thus, before EPA could redesignate the Bay Area to attainment, the Bay Area had to adopt all required NO_X RACT rules. However, based on air quality data from official SLAMS monitors, EPA determined that the Bay Area had attained the NAAQS without adopting all of these rules. Based on the determination that the area was attaining without benefit of additional NO_X reductions, it was apparent that such reductions would not contribute to attainment of the ozone NAAQS. Thus, the Bay Area qualified for a waiver under the test provided in subsection 182(f)(1)(A). Therefore, the Bay Area requested, and EPA approved, a NO_X waiver under that subsection. One commenter points out that the waiver was granted in the same notice as the redesignation to attainment, arguing that this fact supports the position that the waiver must remain in effect. However, the waiver was acted on in the same notice so that the area could be redesignated without first meeting any remaining part D NO_X requirements. Because the Agency was ready to act on both requests at the same time, it saw no reason to hold up the redesignation so that it could grant the NO_X waiver first.

The NO_X waiver acts only to relieve an ozone nonattainment area from subpart 2 nonattainment area NO_X requirements. Once an area is redesignated to attainment these requirements no longer apply and a NO_X waiver is irrelevant. Moreover, as the May 27, 1994 John Seitz guidance memo cited above points out, the NO_X exemption test set forth in section 182(f)(1)(A) asks only if additional reductions of NO_X would contribute to attainment of the ozone NAAQS, not whether they would contribute to maintenance of the standard once attainment is confirmed through redesignation to attainment. Recognition of this by both the BAAQMD and EPA is inherent in the fact that the Bay Area's maintenance plan contingency measures, approved as part of the redesignation to attainment, are nearly all NO_X measures.

The commenters cite language in the May 27, 1994, guidance to support their position that EPA must notify the state and provide notice in the **Federal Register** in order to revoke NO_X exemptions. However, this language deals with a situation where a nonattainment area is granted a NO_X waiver based upon clean air quality data, the area is not redesignated to attainment, and the area subsequently violates the ozone NAAQS. In this situation the exemption must be revoked because the area remains a nonattainment area and, unless revoked, the exemption would continue, inappropriately, to apply. Such is not the case with an area, such as the Bay Area, which is redesignated to attainment and thereby becomes a maintenance area. In such areas the exemption, which applies to nonattainment areas, by its terms no longer applies.[11]

The commenters argue that EPA should not take any action to revoke the NO_X exemption because it remains appropriate due to the commenters'

[9] ''Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f),'' John Seitz, Director, Office of Air Quality Planning and Standards.

[10] ''Section 182(f) Nitrogen Oxides (No) Exemptions—Revised Process and Criteria,'' John Seitz, Director, Office of Air Quality Planning and Standards.

[11] Sections I.C. and II.A. of a later guidance document entitled ''Conformity: General Preamble for Exemption from Nitrogen Oxides Provisions expands on this point.'' See 59 FR at 31239–40, including note 1 (June 17, 1994).

position that the Bay Area is ''hydrocarbon limited, and * * * NO_X reduction measures may elevate ozone concentrations * * *.'' Even assuming that this is true, there is no legal basis for retaining the NO_X exemption. The Bay Area's exemption was granted based on three years of clean air quality data. After 43 exceedances and 17 violations of the ozone NAAQS in two years, the basis for the exemption no longer exists.

The commenters' concerns regarding the relationship between NO_X emissions and ozone formation in the Bay Area are appropriately addressed through the District's SIP revision process. Because the Bay Area is being redesignated under subpart 1 of the Act, there are no mandatory NO_X measures which must be adopted. On the other hand, the Bay Area may not eliminate from the SIP any existing NO_X controls without a demonstration that such revision would not interfere with progress, attainment, or other applicable requirements of the Act (CAA section 110(l)). In response to the redesignation, EPA expects CARB and BAAQMD to pursue whatever combination of VOC and NO_X reductions is most consistent both with expeditious attainment in the Bay Area and with the State's determination of appropriate and necessary emissions levels in the Bay Area consistent with the attainment and maintenance requirements of downwind areas. In view of the fact that nitrates appear to constitute more than one third of the Bay Area's fine particulate matter, EPA also recommends that the Bay Area take into account the role of NO_X emissions reductions in the control of fine particulates.

d. Attainment Deadline

Comment: The 1999 attainment deadline (assuming that attainment is to be based on 1997–99 air quality) is unrealistic, since most of the 1998 season will have passed before the control measure SIP submittal to EPA; consequently the plan will affect emissions only for 1999.

Response: The commenters appear to have misunderstood EPA's proposal. In accordance with the Agency's interpretation of the CAA requirement that plans ''provide for attainment,'' under a 1999 attainment deadline, the State would need only show that its SIP includes sufficient emission reductions in effect by the start of the 1999 smog season to ensure that no more than one exceedance at any monitor will occur in 1999. Moreover, EPA's proposal noted that, under the terms of CAA section 172(a)(2)(C), the area may be eligible for up to 2 1-year extensions of the attainment deadline if no more than 1 exceedance occurred in the year preceding the extension and the SIP is fully implemented. Finally, EPA notes that the same commenters arguing against a 1999 attainment deadline also claim that there is already strong evidence that the Bay Area will not experience future violations, since no exceedances were recorded in 1997 and both CARB and BAAQMD project that the emissions inventory will continue to decline. EPA recognizes that the proposed 1999 deadline may be difficult to meet if the attainment assessment demonstrates that substantial additional control measures are needed. In an effort to balance the time constraints associated with SIP adoption and submittal with the goal of protecting public health as quickly as possible, EPA has decided to extend the attainment deadline by one year to November 15, 2000.

Comment: Redesignation of the Bay Area will have no effect on air quality within the time frame proposed by EPA. The time from the start of rule development to achievement of the reductions is generally well over 18 months. Consequently, implementation of control measures would not occur until after the end of the 1999 ozone season. If EPA is seeking only to add federal enforceability to existing state air quality control requirements, then redesignation is clearly nothing more than a paperwork exercise since those control requirements are already in place.

Response: As discussed earlier, EPA wants the District to focus on near-term emission reductions, not paperwork. Because the District has already identified additional control measures in its 1997 California Clean Air Act plan, these measures could be used for a new federal plan and implemented sooner than initially planned to achieve near term emission reductions. Otherwise, under the California Clean Air Act plan, the Bay Area would not implement these measures until 2000 or later. EPA also believes that it is important to make federally enforceable all of the control measures needed to bring the Bay Area into attainment. This provides further assurance to the public that the control measures will be implemented and the emission reductions needed to protect public health achieved.

e. Planning Schedule

Comment: EPA's SIP schedule provides insufficient time to complete planning processes, public involvement, and adoption, since the co-lead agency planning process normally requires 15 months, California Environmental Quality Act (CEQA) requirements for public review must be satisfied under State law, at least 2 months are required for CARB review prior to submittal, and the regulated community needs adequate lead time to change or install new controls. The BAAQMD also concluded that more time to prepare a plan for the 1-hour ozone NAAQS would not result in a better plan, better air quality, or better health. The prudent course, according to the BAAQMD, is to focus on the new 8-hour NAAQS.

Response: EPA acknowledges the time constraints associated with SIP development, adoption, and submittal. On the other hand, EPA does not expect that the agencies will launch a wholly new planning exercise but rather that they will continue the 1997 Clean Air Plan planning effort, adding only an attainment assessment using available data and technical analyses and adjustments to the control measures that may be necessary to ensure expeditious attainment. In an effort to be responsive to the District's scheduling concerns without sacrificing near term public health protections, EPA has agreed to allow the State to submit only one official SIP revision on June 15, 1999 based on the District's commitment to submit a draft of the emissions inventory and attainment assessment to EPA by November 25, 1998. In committing to submit a draft inventory and assessment within 5 months after signature of the final redesignation by the Regional Administrator, the District also agreed to hold an early public workshop on the inventory and assessment. (Letter from Ellen Garvey, BAAQMD; Eugene Leong, ABAG; and Lawrence Dahms, MTC to Felicia Marcus dated June 23, 1998.) These changes not only extend the time frames contained in the proposal but also enable the District to hold one public hearing for all three elements of the SIP revision.

3. Comments on Miscellaneous Issues

a. Conformity

Comment: Several commenters questioned the effect of Bay Area redesignation on transportation conformity. One commenter argued that it would be inconsistent with CAA section 176(c) if EPA were to determine that the emissions budget from a new Bay Area SIP submittal applied simultaneously with the emissions budget in the currently-approved Bay Area maintenance plan.

Response: Today's action does not have an immediate effect on transportation conformity in the Bay

Area. The Bay Area currently has an approved ozone maintenance plan and the budgets in this plan continue to apply. Any EPA action with potential effects on transportation conformity will take place in the context of EPA's review of the Bay Area's June 15, 1999 SIP submittal.

The transportation conformity rule does not directly address a situation, like that in the Bay Area, where an approved maintenance plan proves to be inadequate and the area is redesignated and required to submit a new plan. However, EPA believes the correct interpretation of the conformity rule would require any new budgets contained in the June 15, 1999 submittal to become effective after a 45-day review period unless EPA finds them inadequate. EPA will continue to work with the US Department of Transportation (DOT) to resolve DOT's concerns regarding the interpretation of the rule and simultaneous applicability of budgets and will make a final policy decision in the future.

b. Congestion Mitigation and Air Quality (CMAQ) Funding

Comment: Redesignation of the Bay Area to nonattainment without a classification could jeopardize the Bay Area's continued eligibility for CMAQ funding pursuant to either current law or the pending bills for reauthorization of the Intermodal Surface Transportation Efficiency Act (ISTEA).

Response: Under the Transportation Equity Act for the 21st Century (TEA–21), the new transportation funding legislation, signed recently by the President, redesignation of the Bay Area to nonattainment for ozone will not affect CMAQ eligibility. In fact, the Bay Area will be eligible for more CMAQ funding than they were allocated under ISTEA, the previous transportation funding legislation.

c. Unfunded Mandates Reform Act (UMRA)

Comment: Some commenters asserted that EPA failed to comply with the Unfunded Mandates Reform Act (UMRA), and should have prepared a statement in accordance with section 202 of UMRA. In the proposal, EPA stated that the redesignation did not trigger section 202, as it did not contain any federal mandate because it did not impose any enforceable duties, and that even if it did contain a federal mandate, the resulting expenditures would not exceed $100 million in any one year. Commenters argued that the redesignation does impose an enforceable duty upon California and the BAAQMD, because failure to adopt a SIP would result in loss of highway funds and, in addition, result in more stringent emissions offset requirements for new and modified stationary sources, result in loss of grants, and trigger a duty for EPA to issue a federal implementation plan (FIP).

One commenter also argued that the redesignation constitutes a private sector mandate under UMRA, because it requires the District to submit regulations or enforceable commitments to adopt regulations imposing duties on emissions sources. However, the test for a private sector mandate under UMRA is whether it ''would impose an enforceable duty upon the private sector.'' Clearly the redesignation has created no duty enforceable against any private party. The commenter also states that EPA is requiring that new source review permitting requirements, applicability thresholds and offset ratios be set ''by analogy'' at the levels otherwise applicable to moderate nonattainment areas. These are the levels currently in effect in the Bay Area as a result of the area's previous status as a moderate nonattainment area and therefore present no new burdens on private parties in any event.

Some commenters also asserted that the redesignation will impose costs in excess of $100 million. This estimate was based on projected costs of complying with the types of requirements the commenter believes would be imposed if the state were to adopt a SIP.

Response: EPA does not believe that it is necessary to resolve the issues of whether the redesignation constitutes a ''federal mandate'' or requires consideration of costs to private parties, as well as costs to the state, under UMRA.

EPA believes that even if it were construed as a federal mandate, with costs to private parties to be considered as well as costs to the state, those costs could not reasonably be expected to exceed $100 million in any one year. EPA has conducted an analysis of potential costs to private parties. In terms of the impact on the private sector, the BAAQMD has yet to determine the amount of needed reductions and the mix of VOC and NO_X measures to achieve the needed reductions. EPA used cost data developed for the July 1997 ''Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule,'' as the basis of its analysis. This data shows that the national average cost for reasonably available VOC control measures is higher than the national average cost for reasonably available NO_X control measures ($2,652 per ton per year for VOC; $1,937 per ton per year for NO_X, expressed in 1990 dollars). EPA assumes that reductions of both VOC and NO_X will be necessary to bring the Bay Area back into attainment. However, for the purpose of this analysis EPA assumed that all the needed reductions would come from VOC measures because this approach would over-estimate the actual costs. In addition, EPA assumed that VOC emissions may need to be reduced by as much as 80 tons per day (approximately 28,800 tons per year) above and beyond measures currently underway at the State and local levels. This amount of reductions is significantly greater than that assumed to be needed by the various interested parties. During the extensive stakeholder process EPA has heard that anywhere from 0 to 50 tons per day in additional reductions will be necessary. Thus, by assuming 80 tons per day for the purposes of this analysis, EPA believes that it is significantly overestimating the costs. Even by employing cost numbers and tons to be reduced that are significantly higher than what EPA believes the actual results will be, the impacts would still be less than $100 million (i.e., $76,377,600).

As previously discussed in Section III.D.3.b. of this notice, one commenter indicated that the redesignation without classification under the Clean Air Act would result in loss of highway funds in excess of $100 million under ISTEA and that this should be viewed as the cost of the ''mandate''. The interplay of these two distinct statutes, were it to result in a significant decrease in highway funding to the Bay Area, would not be a mandate as it is defined in UMRA, as it would impose no enforceable duty on State, local or tribal governments. Moreover, as discussed above in section III.D.3.b., EPA, in consultation with the Department of Transportation, has determined that the redesignation will not result in any significant loss of highway funding to the Bay Area under the recently passed reauthorization of ISTEA.

d. Procedural Obligations Under CAA Section 107 and the Administrative Procedures Act (APA)

Comment: EPA has failed to follow the procedure set forth in section 107(d)(3) of the Act for redesignating areas, and consequently has failed to follow procedural requirements of the Administrative Procedure Act.

Response: The commenters misinterpret both the plain language of sections 107(d)(3) (A), (B) and (C), and

the intent of these sections. As described more fully below, the exchange of correspondence between EPA and a State provided for by section 107(d)(3) is intended to address situations where there is agreement that a redesignation is necessary, but differing opinions concerning the boundaries of the area, or portion thereof, to be redesignated.

Section 107(d)(3) of the Act sets forth the procedure for redesignation of areas and provides that the Administrator may at any time notify the Governor of any state that available information indicates that the designation of any area should be revised. Section 107(d)(3)(B) provides that the Governor has 120 days from receipt of this letter to submit to the Administrator such redesignation, if any, of the appropriate area (or areas) or portion thereof as the Governor considers appropriate.

Section 107(d)(3)(C) contemplates four potential outcomes which flow from a Governor's response to notification from EPA that an area should be redesignated:

(1) The Governor concurs with EPA's notification and submits a redesignation of the same area, or portion thereof, that was proposed by EPA. In this event, section 107(d)(3)(C) provides that EPA must promulgate the redesignation no later than 120 days after receipt of the Governor's redesignation submittal. No further correspondence with the Governor is required.

(2) The Governor concurs with EPA's notification that a redesignation is necessary, but submits a redesignation of the area with different boundaries, or submits a redesignation of only a portion of the area that was proposed by EPA. If EPA agrees with the Governor's redesignation submittal, section 107(d)(3)(C) provides that EPA must promulgate the redesignation no later than 120 days after receipt of the Governor's redesignation submittal. No further correspondence with the Governor is required.

(3) The Governor concurs with EPA's notification that a redesignation is necessary, but submits a redesignation of the area with different boundaries, or submits a redesignation of only a portion of the area that was proposed by EPA. If EPA disagrees with the Governor's submittal, section 107(d)(3)(C) provides that EPA may make such modifications as it deems necessary, but must notify the State 60 days before promulgation of the redesignation in order to provide the State with an opportunity to demonstrate why any proposed modification is inappropriate.

(4) The Governor does not submit a redesignation for an area, or portion thereof. Section 107(d)(3)(C) provides that EPA ''shall promulgate such redesignation, if any, that the Administrator deems appropriate.'' No further correspondence with the Governor is required.

In the instance at hand, EPA notified the Governor of California by letter dated August 21, 1997, that the Bay Area should be redesignated to nonattainment for ozone, based on available air quality data demonstrating 43 exceedances and 17 violations of the standard in the two-year period from 1995 through 1996. The Governor of California did not submit a redesignation of the Bay Area. Rather, the Governor responded, by letter dated December 10, 1997, that he does not believe any redesignation is appropriate. Thus, EPA's action is governed by the last sentence of section 107(d)(3)(C), which provides that EPA ''shall promulgate such redesignation, if any, that the Administrator deems appropriate.''

EPA has complied with the requirements of both the Clean Air Act and the Administrative Procedure Act in its action to redesignate the Bay Area. EPA has conducted notice and comment rulemaking, fully considering all comments received, including those provided by the Governor. Contrary to the assertions of the commenter, there is nothing in either statute which precludes EPA from proposing a redesignation at any time following notification of the Governor. EPA is free to solicit comment from the general public simultaneously with the Governor's notification, at any time during the 120 day period for the Governor's response, or at any time following the Governor's response, so long as EPA complies with the time periods set forth in section 107(d)(3), and its general duty to consider and respond to all comments.

While it is true that EPA made minor changes to the redesignation requirements set out in the Governor's notification when the Agency published its proposal, the State was in no way prejudiced by this fact. The changes did not relate to area boundaries, or portions thereof, and therefore did not invoke the notification procedures. EPA's proposed rulemaking provided a 60 day public comment period and the State was provided with a copy of the proposal on December 11, 1997, 8 days before it was published in the **Federal Register**. The State provided EPA with comments on its proposal on February 17, 1998. These comments, as well as the Governor's response letter, have been fully considered in EPA's decision to redesignate the Bay Area.

IV. Final Action

A. Overview

As discussed in the response to comments, EPA remains convinced that the Agency's appropriate action, in the face of numerous and widespread violations of the 1-hour ozone standard in the Bay Area, is to finalize the redesignation of the San Francisco Bay Area to nonattainment for the 1-hour ozone NAAQS. EPA takes this action under CAA section 107(d), based specifically on the Bay Area's 17 violations of the 1-hour ozone NAAQS over the 3-year period, 1994–1996.

EPA also finalizes the Agency's determination that the Bay Area should not be classified under subpart 2 of the CAA, but rather should be required to meet applicable requirements of CAA subpart 1.

B. SIP Requirements and Deadlines

In accordance with CAA sections 110 and 172, the State must submit by June 15, 1999 a SIP revision containing: (1) The existing 1995 emissions inventory for NO_X and VOC in the Bay Area; (2) an assessment, using available data and technical analyses, of the emission reductions needed to attain the federal 1-hour ozone standard; and (3) adopted regulations and/or control measures with enforceable commitments to adopt and implement the control measures in regulatory form by specified dates. The extension for the emissions inventory and attainment assessment submittal is being granted in response to a commitment made by the Air District (Letter from Ellen Garvey, BAAQMD et al. to Felicia Marcus, EPA Region IX, dated June 23, 1998) to provide the inventory and assessment to EPA in draft within 5 months of the final redesignation. This early, informal submittal will allow EPA to review the draft inventory and assessment and work with the District to address any deficiencies. The District also agreed to hold an early public workshop on the draft inventory and assessment. The adopted regulations and control measures, and the schedule for adoption and implementation of such measures, must be sufficient to meet reasonable further progress and attain the 1-hour NAAQS expeditiously but no later than November 15, 2000. EPA emphasizes that the submittal due on June 15, 1999 must include contingency measures that go into effect if the Bay Area does not attain the NAAQS by the prescribed deadline in order to address the specific requirement of CAA section 172(c)(9).

For a more complete discussion of subpart 1 elements applicable to these SIP submittals, the reader is referred to the proposal (62 FR 66580–66581).

SCHEDULE OF SUBMITTALS STATE IMPLEMENTATION PLAN FOR OZONE FOR THE SAN FRANCISCO BAY AREA

Action/SIP submittal	Date
1995 emissions inventory for VOC and NO_X	Draft—11/25/98 Final—6/15/99
Assessment, employing available data and technical analyses, of the level of emission reductions needed to attain the current 1-hour ozone National Ambient Air Quality Standard (NAAQS). This assessment should take into account the meteorological conditions and ambient concentrations associated with the violations of the ozone NAAQS in the period 1995–6, and should be based on likely control measures for reducing VOC and NO_X emissions.	Draft—11/25/98 Final—6/15/99
Adopted regulations and/or control measures, with enforceable commitments to adopt and implement the control measures in regulatory form by specified dates, sufficient to meet reasonable further progress and attain the 1-hour NAAQS expeditiously but no later than November 15, 2000.	6/15/99

C. Changes from Proposal

In this final action, EPA has amended both the schedule and content of the proposed SIP requirements in response to public comments, as discussed above in section III.D.2. The changes are as follows:

Proposal—weekend emissions inventory and CO inventory required	Final—weekend emissions inventory and CO inventory not required.
Emissions inventory and attainment assessment due to EPA 5/1/98	Emissions inventory and attainment assessment due to EPA 6/15/99. (Commitment to submit draft by 11/25/98.)
Adopted regulations and/or control measures with enforceable commitments due 9/1/98.	Adopted regulations and/or control measures with enforceable commitments, and final emissions inventory and attainment assessment due 6/15/99.
Attainment date of 11/15/99	Attainment date of 11/15/2000.

V. Emission Reduction Opportunities

Under EPA's final redesignation, the Air District and its co-lead agencies are responsible for determining the appropriate mix of control measures that will most effectively bring the Bay Area into attainment with the 1-hour ozone standard. The Bay Area, like other major metropolitan areas, is experiencing rapid economic growth and an increasing population that may lead to emission increases from both the stationary and mobile source sectors. Given these circumstances, the Air District may wish to explore new and innovative approaches for achieving reductions from both source sectors. EPA believes that traditional control strategies aimed at reducing emissions from stationary sources are essential to any air pollution control program. At the same time, EPA supports efforts to develop alternative emission reduction methods. Mobile source emissions, for example, make up the majority of the ozone precursor inventory in many urban areas, including the Bay Area, but air pollution control agencies often have difficulty regulating these emissions. Mobile sources are therefore good candidates for non-traditional approaches. EPA encourages the BAAQMD and its co-lead agencies to identify opportunities for innovation, in addition to traditional control strategies, as they develop measures to bring the Bay Area into attainment of the ozone standard.

A. Stationary Sources

Stationary sources in the Bay Area emit approximately 152 tons of VOC and 157 tons of NO_X per day (Bay Area Clean Air Plan, Volume 1, p.21). This current level of emissions reflects tremendous progress in stationary source reductions over the past 20 years. Nonetheless, BAAQMD will need to assess whether additional stationary source measures are needed to help the Bay Area attain the federal 1-hour ozone standard. Recently, BAAQMD proposed in its 1997 Clean Air Plan several stationary source measures believed to be both feasible to implement and effective at reducing emissions. EPA expects that the District will analyze which control measures from this plan are needed to attain the standard and assess whether any measures beyond those contained in the plan are also needed. If additional measures are needed, the District may want to consider stationary source measures suggested by public commenters on the redesignation proposal such as improving tank and flare design, eliminating exemptions from certain District rules, and improving controls on energy sources (e.g., natural gas fired boilers and privately owned and operated power plants). However, EPA is not requiring adoption of these or any other specific controls; it is the BAAQMD's authority and responsibility to determine the appropriate mix of Bay Area measures.

B. Transportation Control Measures

Given that on-road motor vehicles emit 43% of the total VOC and 47% of the total NO_X emissions in the Bay Area (Bay Area 1997 Clean Air Plan, Volume 1, p.7), that vehicle travel has been steadily increasing, and that the Metropolitan Transportation Commission (MTC) directs the allocation of billions of dollars of transit funds, MTC plays an important role in the Bay Area's overall strategy to attain the 1-hour ozone standard. MTC is currently updating its 20-year plan and will continue to revise this plan every two years. MTC's planning process offers a good opportunity to incorporate air quality goals into both long term planning and short term projects. In addition, MTC is required to identify possible transportation control measures (TCMs) as part of the California Clean Air Plan (CAP). The Bay Area's 1997 CAP contained an estimated 7 tons per day (3 tpd VOC, 4 tpd NO_X) worth of potential reductions from TCMs for the year 2000 and even more for later years (Bay Area 1997 Clean Air Plan, Volume 1, p.49). If these measures were adopted and submitted for SIP approval, they could make a measurable contribution toward attainment of the 1-hour ozone standard. Finally, MTC may be able to help reduce emissions by reevaluating

the way it distributes transportation funds, the way it finances transportation projects, its policies with respect to land use and transportation and giving priority to the most cost-effective (i.e., tons of emission reduction per dollar spent) investments.

C. Voluntary Measures

EPA encourages the State, District and co-lead agencies to explore innovative approaches to achieving their air quality goals. One possible area for innovation is the mobile source arena. Mobile sources emit 75% of the total NO_X emissions and 58% of the total VOC emissions in the Bay Area (Bay Area 1997 Clean Air Plan, Volume 1, p. 7). Though there have been great strides in reducing vehicle emission rates, transportation emissions continue to be a problem due to large increases in vehicle miles travelled (VMT). Regulatory agencies and others are therefore developing voluntary mobile source strategies that promote changes in local transportation sector activity levels and changes in in-use vehicle and engine fleet composition to complement regulatory programs.

Voluntary mobile source control measures have the potential to contribute to, in a cost-effective manner, emission reductions needed for attainment of the NAAQS. EPA believes, therefore, that SIP credit is appropriate for voluntary mobile source emission reduction programs (VMEPs) where we have confidence that the measures can achieve emission reductions. Consistent with that belief, EPA issued its October 23, 1997 ''Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Programs'' (signed by Richard Wilson, Acting Assistant Administrator for Air and Radiation). The guidance lays out the terms and conditions for establishing and implementing VMEPs and the guidelines for SIP approval. In light of the innovative nature of voluntary measures and EPA's inexperience with quantifying their emission reductions, EPA's guidance limits the amount of emission reductions allowed for VMEPs in a SIP to 3% of the total projected future year emission reductions required to attain the appropriate NAAQS. In addition, the guidance requires that a state or local agency track on an annual basis the resulting emissions effect of the voluntary measure and also commit to remedy any shortfall if the VMEP does not achieve projected emission reductions.

The BAAQMD and co-lead agencies may wish to take advantage of the flexibility provided by EPA's voluntary mobile source measures policy as they develop their SIP control strategies in response to the redesignation. EPA encourages the three co-lead agencies to work with the business and environmental communities that may have an interest in developing or participating in such innovative strategies, as stakeholder involvement is a critical factor in building community acceptance and ultimate success. For example, the Silicon Valley Manufacturing Group has worked with businesses to develop the ECOPASS program; this is an employer-sponsored alternative commute program that is designed to get employees out of their cars and onto public transit. Another example is the BAAQMD's ''Spare-the-Air'' Program, a public education campaign that encourages citizens to refrain from or reduce activities that produce emissions of ozone precursors. The program currently enjoys the participation of 475 businesses and is continuing to grow with the help of the Bay Area business community. EPA applauds BAAQMD and the business community for successfully implementing these innovative and important programs. The BAAQMD has not yet submitted to EPA its plan for quantifying and tracking the impacts of these programs on an on-going basis, and therefore EPA has not yet evaluated how the District will ensure that the criteria presented in the VMEP guidance will be met. However, EPA is currently consulting with the BAAQMD regarding quantification and tracking of emissions associated with these programs and will continue to work with the District to clarify the VMEP policy. We encourage the District and its co-lead agencies to consider and pursue other innovative approaches as they evaluate measures needed to attain the ozone standard.

D. Enhanced Inspection and Maintenance

While the Bay Area has both the flexibility and the responsibility to determine the appropriate mix of control measures that are needed to attain the federal 1-hour ozone standard, EPA believes that emission reductions from implementation of an enhanced inspection and maintenance program would make a substantial contribution to attainment in the Bay Area. The California Bureau of Automotive Repair has indicated that implementation of the California Smog Check 2 program (California's enhanced I/M program) would result in an incremental benefit of 12 tons per day VOC and 14 tons per day NO_X. EPA is hopeful that Bay Area leaders will work together to pursue authorization and expeditious implementation of an enhanced I/M program. Furthermore, implementation of an enhanced I/M program in the Bay Area would address some of the equity concerns raised by Bay Area's downwind neighbors who are impacted by pollution from the Bay Area and are required under federal and State law to implement an enhanced I/M program. EPA does not believe, however, that enhanced I/M is the complete answer to Bay Area's ozone nonattainment problem. EPA believes that the BAAQMD should evaluate measures aimed at both the stationary and mobile source sectors that will work together to achieve healthy air in the Bay Area.

E. Mitigating Emissions Increases From Oakland Seaport and Airport Expansion Projects

The Port of Oakland is planning to expand its operations over the next several years. Dredging operations, which will provide larger vessels with access to the Port, will begin in February 2000. Emissions of CO and VOCs from dredging and related construction activities are not expected to be significant. Gas or diesel powered dredging equipment, however, emits significant quantities of NO_X; the draft EIS/EIR prepared by the U.S. Army Corps of Engineers (COE) for the port expansion estimates that total construction-related NO_X emissions, gas or diesel powered dredging equipment, would be in the range of 1500 to 1700 tons over the four-year period (2000–2004) during which dredging will occur. The COE, however, has subsequently indicated that it plans to use electric dredging equipment which would reduce the potential construction-related NO_X emissions to 330 tons over four years, or an average of 83.5 tons per year. The dredging and related construction activities performed by the COE are subject to the General Conformity regulations (40 CFR 93.150), which require federal agencies to demonstrate that emissions from federal projects conform to the approved State Implementation Plan if the emissions are above ''de minimis'' levels defined in 40 CFR 93.153. Because the Corps of Engineers will be employing electric dredging equipment in its construction activities, and limiting the number of disposal trips per year, the emissions will be below the 100 ton per year NO_X de minimis level established in the conformity regulations and a conformity determination is therefore not required. The Corps' plan to use electric dredging equipment will help to ensure cleaner air for the surrounding community and the Bay Area as a whole and contribute

to efforts to achieve attainment with the ozone standard.

Once construction of the Port expansion project is complete, operational emissions increases are projected to be significant. Because the long-term emissions from new vessels, trucks, trains, terminal operations, and employee vehicles are considered to be indirect emissions that cannot be practicably controlled by and are not under a continuing program responsibility of the COE, these activities are exempt from the conformity requirements. EPA believes however, that mitigation of these long-term emissions may be an important part of the Bay Area's strategy for attaining and maintaining not only the 1-hour ozone NAAQS, but the revised 8-hour and PM2.5 NAAQS as well. For this reason, EPA encourages the Port to work with BAAQMD and MTC to identify opportunities to mitigate long-term emission increases from the project. EPA also welcomes opportunities to share information regarding mitigation techniques that have been identified during discussions with the South Coast AQMD on ports and airports.

Plans to expand the Oakland Airport are also underway and EPA believes that the project will be subject to the General Conformity requirements. EPA believes that there are opportunities to mitigate emissions increases associated with the expansion and again welcomes the opportunity to share information resulting from discussions with the South Coast regarding reducing airport emissions.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today's action is a ''significant regulatory action'' within the meaning of the E.O., and therefore should be subject to OMB review, economic analysis, and the requirements of the E.O. See E.O. 12866, sec. 6(a)(3). The E.O. defines, in sec. 3(f), a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may meet at least one of four criteria identified in section 3(f), including,

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that the redesignation to nonattainment finalized today, as well as the establishment of SIP submittal schedules, would result in none of the effects identified in E.O. 12866 sec. 3(f). Under section 107(d)(3) of the Act, redesignations to nonattainment are based upon air quality considerations. The finding, based on air quality data, that the Bay Area is not attaining the ozone NAAQS and should be redesignated to nonattainment does not, in and of itself, impose any new requirements on any sectors of the economy. Similarly, the establishment of new SIP submittal schedules merely establishes the dates by which SIPs must be submitted, and does not adversely affect entities.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 601 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. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic 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.

A redesignation to nonattainment under section 107(d)(3), and the establishment of a SIP submittal schedule for a reclassified area, do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply makes a factual determination and to establish a schedule to require the State to submit SIP revisions, and does not directly regulate any entities. Because EPA is applying the same permitting applicability thresholds and offset ratios applicable to moderate areas, no additional sources will be subject to these requirements as a result of EPA's action. Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates ''any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more'' in any one year. A ''Federal mandate'' is defined, under section 101 of UMRA, as a provision that ''would impose an enforceable duty'' upon the private sector or State, local, or tribal governments,'' with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA ''establish[es] any regulatory requirements that might significantly or uniquely affect small governments.'' Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's ''regulatory proposals'' that contain significant Federal intergovernmental mandates. Under section 205 of UMRA, before EPA promulgates ''any rule for which a written statement is required under [UMRA sec.] 202,'' EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

EPA has concluded that this rule is not likely to result in the promulgation of any Federal mandate that may result in expenditures of $100 million or more for State, local or tribal governments in the aggregate, or for the private sector, in any one year. It is not necessary to resolve here whether a redesignation would constitute a federal mandate.

Even assuming that a redesignation were considered a Federal mandate, and it were appropriate to consider both private and public sector costs, the anticipated annual costs resulting from the mandate would not exceed $100 million to the private sector, State, local

and tribal governments. In terms of the impact on the private sector, the BAAQMD has yet to determine the amount of needed reductions and the mix of VOC and NO_X measures to achieve the needed reductions. EPA used cost data developed for the July 1997 ''Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule,'' as the basis of its analysis. This data shows that the national average cost for reasonably available VOC control measures is higher than the national average cost for reasonably available NO_X control measures ($2,652 per ton per year for VOC; $1,937 per ton per year for NO_X, expressed in 1990 dollars). EPA assumes that reductions of both VOC and NO_X will be necessary to bring the Bay Area back into attainment. However, for the purpose of this analysis EPA assumed that all the needed reductions would come from VOC measures because this approach would over-estimate the actual costs. In addition, EPA assumed that VOC emissions may need to be reduced by as much as 80 tons per day (approximately 28,800 tons per year) above and beyond measures currently underway at the State and local levels. This amount of reductions is significantly greater than that assumed to be needed by the various interested parties. During the extensive stakeholder process EPA has heard that anywhere from 0 to 50 tons per day in additional reductions will be necessary. Thus, by assuming 80 tons per day for the purposes of this analysis, EPA believes that it is significantly overestimating the costs. Even by employing cost numbers and tons to be reduced that are significantly higher than what EPA believes the actual results will be, the impacts would still be less than $100 million (i.e., $76,377,600).

The cost to the State of California is the cost of developing, adopting and submitting any necessary SIP revision. Because that cost, taken in combination with private sector costs, will not exceed $100 million, this action (even assuming it is a federal mandate) is not subject to the requirements of sections 202 and 205 of UMRA (2 U.S.C. 1532 and 1535). EPA has also determined that this action would not result in regulatory requirements that might significantly or uniquely affect small governments because only the State would take any action as result of today's rule, and thus the requirements of section 203 (2 U.S.C. 1533) do not apply.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) because this is not an economically significant regulatory action as defined by E.O. 12866, and because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

E. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks.

Dated: June 25, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

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

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

2. In § 81.305, the table for California—Ozone, is amended by revising the entry for the San Francisco Bay Area to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA-OZONE

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
San Francisco—Bay Area:				
Alameda County	August 10, 1998	Nonattainment.		
Contra Costa County	do	do		
Marin County	do	do		
Napa County	do	do		
San Francisco County	do	do		
Santa Clara County	do	do		
San Mateo County	do	do		
Solano County (part)	do	do		
Sonoma County (part)	do			

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 98–18272 Filed 7–9–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300677; FRL–5797–7]

RIN 2070–AB78

Bifenthrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of bifenthrin in or on raspberries. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on raspberries. This regulation establishes maximum permissible levels for residues of bifenthrin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1999.

DATES: This regulation is effective July 10, 1998. Objections and requests for hearings must be received by EPA on or before September 8, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300677], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300677], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300677]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9356, e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the insecticide bifenthrin, in or on raspberries at 3.0 parts per million (ppm). This tolerance will expire and is revoked on December 31, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Bifenthrin on Raspberries and FFDCA Tolerances

The Applicants state that an emergency situation is present due to these pests developing resistance to available alternatives, and the low tolerance for weevil contamination in raspberries. Rejection by the processors of contaminated raspberries can lead to significant losses in revenue for the growers. EPA has authorized under FIFRA section 18 the use of bifenthrin on raspberries for control of weevils in Washington and Oregon. After having reviewed the submission, EPA concurs