the IM240 test. Consequently, the AVR SIP is not applicable to current programs as submitted.

This revision is not required by the Act. Therefore, this proposed disapproval action does not impose sanctions for failure to meet Act requirements.

The EPA is soliciting public comment on the proposed action discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rule making procedure by submitting written comments to the EPA Regional office listed in the **Addresses** section of this document.

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

The Regional Administrator's decision to approve or disapprove the AVR SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Act, as amended, and EPA regulations in 40 CFR part 51.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

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

The EPA's proposed disapproval of the State request under sections 110 and 301, and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this proposed disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, the EPA certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements, nor does it impose any new Federal requirements.

C. Unfunded Mandates Act

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

The EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action does not impose new requirements. Accordingly, no additional costs to State, local, or tribal governments, or private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Volatile organic compounds.

Dated: December 10, 1997.

Lynda F. Carroll,

Acting Deputy Regional Administrator, Region VI.

[FR Doc. 97–33222 Filed 12–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–004–BU; FRL–5937–5]

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: Proposed rule.

SUMMARY: On May 22, 1995, EPA redesignated the San Francisco Bay Area (Bay Area) from moderate nonattainment for the federal 1-hour ozone standard to attainment (60 FR 27028). The redesignation became effective on June 21, 1995. Two days later, the Bay Area experienced its first violation of the federal 1-hour ozone standard as an attainment area. There have been a total of 43 exceedances and 17 violations of the standard since redesignation. The Clean Air Act (CAA or Act) provides that EPA may at any time notify the Governor that available air quality information indicates that the designation of an area within the State should be revised. EPA must consider the response from the Governor as well as public comment on the proposed redesignation before finalizing its action.

On August 21, 1997, EPA sent a letter to the Governor of California notifying him of the Agency's intent to redesignate the Bay Area from attainment to nonattainment of the federal 1-hour ozone standard. In today's action, EPA is proposing to redesignate the Bay Area as a nonattainment area for ozone.

DATES: Comments on this proposed action must be received in writing by February 17, 1998. Comments should be addressed to the contact listed below.

ADDRESSES: EPA's technical support document and other supporting documentation for the proposal are contained in the docket for this rulemaking. A copy of this document and the technical support document are also available in the air programs section of EPA Region IX's website, http://www.epa.gov/region09. The docket is available for inspection during normal business hours at EPA Region IX, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. (415) 744-1288.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1288.

SUPPLEMENTARY INFORMATION:

I. Background

A. Original Designation

The Bay Area was originally designated under section 107 of the 1977 CAA as nonattainment for ozone on March 3, 1978 (40 CFR 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). Following the 1990 amendments to the Act, the area was classified by operation

of law, under section 181(a), as a ''moderate'' nonattainment area. (56 FR 56694, November 6, 1991).

B. Redesignation to Attainment

On November 12, 1993, after three years without any violations of the federal ozone standard according to quality assured ambient air quality data from the official monitoring network [1] of the Bay Area Air Quality Management District (Bay Area, District, or BAAQMD), the California Air Resources Board (CARB) submitted to EPA for approval a maintenance plan and a request to redesignate the Bay Area ozone nonattainment area to attainment. On September 28, 1994, EPA proposed to approve the State of California's submittal (59 FR 49361). On May 22, 1995, EPA published the final rule redesignating the Bay Area to attainment for ozone (60 FR 27028). The redesignation to attainment became effective on June 21, 1995.

C. Violations of the Ozone Standard After Redesignation

Despite implementation of most of the measures in the Bay Area's maintenance plan, the Bay Area's monitoring network [2] has recorded 46 exceedances (43 since the redesignation to attainment in June 1995) and 17 violations of the federal 1-hour ozone standard over the 3-year period 1994–1996.[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 ppm. A violation of the standard occurs when the expected number of days per calendar year with maximum hourly average ozone concentrations above 0.12 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 lists both the exceedances and the 3-year average number of days over the 1-hour ozone standard for each SLAMS monitoring site in the Bay Area for the period 1994–1996.

TABLE 1.—AVERAGE NUMBER OF EXCEEDANCES FOR THE OZONE SLAMS NETWORK 1994–1996

Monitoring site	Observed values greater than standard	Average number of exceedances per year
Livermore	17	5.7
Oakland	0	0.0
San Leandro	3	1.0
Fremont	2	0.7
Hayward	2	0.7
Concord	4	1.3
Richmond	0	0.0
Bethel Island	2	0.7
Pittsburg	0	0.0
San Rafael	0	0.0
Napa	1	0.3
San Francisco	0	0.0
Redwood City	1	0.3
Gilroy	1	0.3
San Jose (4th Street)	1	0.3
Los Gatos	5	1.7
Mountain View	0	0.0
San Jose (W. San Carlos)	0	0.0
San Jose (Piedmont)	3	1.0
San Martin	2	0.7
Fairfield	1	0.3
Vallejo	1	0.3
Santa Rosa	0	0.0
Sonoma	0	0.0

Source: AIRS/AQS.

D. Petitions to the Administrator

EPA has received two 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 requested that EPA withdraw the 1995 redesignation action, or alternatively redesignate the area to nonattainment. The Sierra Club also requested that EPA issue a section 110(k)(5) SIP call based on the inadequacy of the current SIP.[4] 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) also requested that EPA withdraw the 1995 redesignation to attainment, or alternatively redesignate the area to nonattainment and issue a SIP call.

E. 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). EPA notified the Governor of California by letter dated August 21, 1997, that EPA believes that, based on air quality data, the Bay Area should be redesignated to nonattainment.[5] The

[1] There were no monitored violations of the federal ozone standard at the District's official State and Local Air Monitoring Station (SLAMS) network monitors. There were, however, two violations at special purpose monitors (SPMs) that were established for research purposes. EPA was aware of these violations at the time it redesignated the area to attainment. However, EPA excluded these data because the monitors were not part of the official monitoring network and were not intended to monitor ambient air quality for federal compliance purposes. For policy reasons, EPA did not want to discourage the Bay Area, or other areas, from establishing monitors for research purposes. EPA has since determined that all quality assured data that meet the requirements of 40 CFR 58.14, with the exception of fine particulate matter data (PM–2.5), must be considered for any regulatory purpose, including an ozone redesignation action. (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, to Air Division Directors, EPA Regions I-X) While EPA has determined that the SPMs data should have been considered in the 1995 redesignation action, the Agency is not basing today's proposed action on these data. Today's action is based on the 17 violations recorded during 1995 and 1996.

[2] Air quality in the Bay Area is monitored by the District's State and Local Air Monitoring Station (SLAMS) network, which comprises 24 monitoring stations. All data must be quality assured.

[3] As required by section 175A of the Act, the Bay Area maintenance plan contains contingency measures that should be designed to correct any violation of the standard occurring after redesignation to attainment. The Bay Area maintenance plan contains six equipment-specific NOx controls and several improvements to the federally mandated Basic Inspection and Maintenance Program (I/M). While the District is continuing to implement the contingency measures in its maintenance plan, the remaining emission reductions to be gained from these measures total 1.2 tons per day in NOx reductions and almost no reductions of Volatile Organic Compounds (VOCs).

[4] A SIP call is a determination under section 110(k)(5) of the Clean Air Act that the SIP is inadequate and must be revised.

[5] This letter is available to the public as part of the docket for this rulemaking action. While EPA indicated in this letter that the Bay Area would be classified as ''moderate,'' the Agency has determined that a moderate classification is not necessary under subpart 1 of the Act. (See discussion at II.A.) Furthermore, the planning requirement to prepare a modeling plan for the 8-hour ozone standard will no longer be required as the District is already engaged in such an exercise with the California Air Resources Board and downwind air districts.

Governor must respond to this letter by December 19, 1997.

F. Proposed Action

In today's document, EPA proposes 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 three year period 1994–1996. Today's action further proposes to require the Bay Area to develop and submit a SIP revision designed to demonstrate attainment of the 1-hour ozone NAAQS by November 15, 1999. Finally, today's action proposes an amendment to 40 CFR parts 52 and 81 to reflect the change in designation. These actions are proposed in accordance with sections 107(d), 110, and 172 of the CAA.

II. Applicable Plan Requirements

A. Clean Air Act Provisions

The classifications and attainment dates for areas classified nonattainment under the 1990 amendments to the Act are contained in section 181(a). The provisions for new designations to nonattainment are found in subsection (b)(1). This subsection provides that areas that were attainment or unclassifiable at the time of the 1990 amendments and are subsequently redesignated to nonattainment are to be classified according to the table in section 181(a)(1). This language contains no reference to areas that were designated nonattainment as a result of the 1990 amendments.

For areas that were designated attainment or unclassifiable following the 1990 amendments, this section further provides that such areas are subject to the same requirements of section 110 and subparts 1 and 2 of the Act as areas designated nonattainment pursuant to the 1990 amendments. In addition, these areas are given an extension of all fixed date deadlines equal to the length of time between November 15, 1990, and the date the area is redesignated.

Although section 181(b)(1) deals with designations to nonattainment occurring after the initial round of classifications under the 1990 amendments, it does not address areas, such as the Bay Area, that were designated nonattainment under the amendments, redesignated to attainment, and that subsequently fall out of attainment and are redesignated back to nonattainment. Because this provision does not, on its face, apply to areas like the Bay Area, EPA believes that it has discretion to determine whether such areas should fall under subpart 2 of the Act when they are redesignated to nonattainment, or should only be subject to the more general provisions of subpart 1.

EPA believes the latter is the appropriate result for a number of reasons. First, the plain language of section 181(b)(1) of the statute applies only to areas designated attainment under section 107(d)(4) and excludes areas like the Bay Area. Second, it is logical to grant the generous extension of deadlines to areas that have never been nonattainment and must devise their first nonattainment area SIPs. Conversely, an area that was previously designated as nonattainment has already done much of this work and should not need this lengthy time period to complete its planning process. Moreover, areas such as the Bay Area generally will have already implemented the section 181 requirements applicable to their previous classification (moderate, serious, severe or extreme). Assuming that these requirements continue to be implemented, placing the area back into the section 181 scheme would do little to bring the area back into attainment. On the other hand, placing the area under section 172 provides the flexibility for the area to identify a new mix of measures that, when combined with those already implemented under section 181, will bring the area back into attainment. 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. See sections 172(a)(1)(C) and (a)(2)(D). For these reasons, EPA believes the best interpretation of the Act is that it intentionally excludes areas like the Bay Area from section 181 and places them under section 172.

B. Section 172 Requirements

General nonattainment plan requirements are contained in section 172(c). Section 172(b) requires the Bay Area plan to meet the ''applicable'' requirements of section 172(c). For reasons set forth below, we believe that some of the section 172(c) requirements have already been satisfied and therefore need not be part of the plan revisions the Bay Area would be required to submit under this proposed action. A table containing the proposed submittals and submittal dates is located at the end of section II.D. below.

Section 172(c)(1) requires that the plan provide for implementation of all reasonably available control measures (RACM) as expeditiously as practicable, including emission reductions from existing sources through adoption of reasonably available control technology (RACT). This provision is applicable to the Bay Area only to the extent that it has not already been complied with. EPA believes that the Bay Area implemented all VOC RACT and most, if not all, oxides of nitrogen (NO_X) RACT measures prior to being redesignated to attainment in 1995.[6] 60 FR 27028.

As required by section 172(c)(1), the plan must provide for attainment. Generally, new modeling is required in order to demonstrate that a plan will indeed provide for attainment. During the stakeholder process that preceded the Agency's decision to propose redesignation EPA heard two points made fairly consistently by all those involved. First, all parties agreed on the importance of a new field study and modeling effort in order to better understand the ozone problem in the Bay Area, as well as its effects on downwind areas. Second, the parties agreed that it would be impossible to conduct a new field study and modeling effort for a short term plan, particularly in light of the fact that the Bay Area will be required to undertake such an effort for the new 8-hour standard if designated nonattainment for the 8-hour standard.

In response to public input, EPA is proposing to require an assessment, employing available modeling information, of the level of emission reductions needed to attain the 1-hour ozone NAAQS. The assessment should take into account the meteorological conditions and ambient concentrations associated with the ozone violations in 1995 and 1996, and should be based on likely control measures for reducing VOC and NO_x emissions. This work may include previous photochemical modeling that was based on Bay Area's 1989 field study, the 1990 modeling analysis done for the San Joaquin Valley, modeling conducted for Bay Area's SIP attainment demonstration

[6] The Bay Area requested and received a NO_x waiver pursuant to section 182(f) of the Act. 60 FR 27028, May 22, 1995. The waiver was based on 3 years of clean ambient air quality data showing that ozone attainment was achieved without application of the section 182(f) NO_x control requirements. Since the waivers only apply to nonattainment areas, they remain in effect only during the period before redesignation of the area to attainment under section 107(d)(3). Thus, when the Bay Area's redesignation to attainment became effective on June 21, 1995, precursor emissions, like NO_x, were addressed, as appropriate, under terms of the Bay Area maintenance plan. It is clear, upon final redesignation of the Bay Area to nonattainment based on subsequent violations of the ozone NAAQS, that the basis for granting the original NO_x waiver no longer exists.

that was based on the Empirical Kinetic Modeling Approach [EKMA], and any other work that will lend insight into the nature of the ozone problem in the Bay Area. It may be appropriate to form a committee made up of representatives with technical modeling expertise from the BAAQMD, CARB, and EPA to review the analysis. EPA recommends that the committee also include technical staff from downwind districts. EPA is proposing that this assessment be submitted on May 1, 1998.

Section 172(c)(2) contains the requirement for reasonable further progress (RFP). RFP is defined as ''such annual incremental reductions in emissions * * * as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment * * * by the applicable date.'' Section 171(1). Because EPA is not proposing to require submission of adopted measures until September 1998, the Agency believes that the RFP requirement would be satisfied if all required emission reductions occur by 1999, the proposed attainment year.

Under section 172(c)(3) the Bay Area must submit a comprehensive, accurate, and current inventory of actual emissions from all sources. To address this requirement, EPA proposes that the Bay Area must submit a current and complete baseline annual average and summer weekday and weekend day[7] emissions inventory for VOC, NO_x, and carbon monoxide (CO). This submittal would be due on May 1, 1998.

Section 172(c)(4) requires the area to identify and quantify emissions that will be allowed from new major sources or major modifications in urban enterprise zones identified by the Administrator in consultation with the Secretary of Housing and Urban Development under section 173(a)(1)(B) of the Act. No such zones have been identified in the Bay Area nonattainment area. Thus, no submission is required for this plan. Were such zones to be identified, a growth allowance would have to be included in the SIP to ensure that emission increases from new sources in the urban enterprize zones would not interfere with attainment.

Section 172(c)(5) requires submittal of a new source review (NSR) program consistent with section 173 of the Act. While the Bay Area does have a SIP-approved NSR program, it is out of date and does not meet current statutory requirements.[8] The Bay Area has submitted a revised new source review rule designed to meet the requirements of the 1990 amendments to the Act. EPA will act on this rule and the NSR requirement in separate rulemaking. Based on the Bay Area's design value of .138 ppm, EPA believes that the NSR program should, by analogy, meet the requirements applicable to a moderate area. Thus, we are proposing that the NSR permitting requirements, applicability thresholds, and offset ratios be set at the same levels that apply to moderate ozone nonattainment areas under sections 182(a)(2)(C) and 182(b)(5).

Section 172(c)(6) requires enforceable emission limitations and other control measures, means or techniques, necessary to provide for attainment by the applicable date. We are proposing that the Bay Area submit by September 1, 1998, adopted regulations (and/or enforceable commitments to adopt and implement control measures in regulatory form by specified dates) sufficient to attain the 1-hour ozone NAAQS by November 15, 1999. Section 172(c)(6) allows the Bay Area to identify and adopt a mix of measures that best meets the needs of the area.

Section 172(c)(7) requires that nonattainment plans meet the general SIP requirements of section 110(a)(2).

Section 172(c)(8) allows the District to apply to the Administrator to use equivalent modeling, emission inventory, and planning procedures.

Under section 172(c)(9), a plan must contain contingency measures that go into effect if the area fails to make RFP or fails to attain the standard. The Bay Area plan will need to contain contingency measures that go into effect if the area is unable to attain the 1-hour ozone NAAQS by the attainment date. As discussed above, the short attainment period for the Bay Area means that failure to make RFP and failure to attain are equivalent.

C. Applicable Attainment Date

Section 172(a)(2) governs attainment dates for nonattainment areas that fall under section 172. This section provides that the attainment date for an area designated nonattainment shall be as expeditiously as practicable, but no later than 5 years from the date the area is designated nonattainment. Thus, the Administrator may set the attainment date at any point up to 5 years based on an assessment of what is ''as expeditiously as practicable.''

Because the Bay Area's emissions appear to be on a downward trend based on currently available information,[9] and because the area was attaining the standard as recently as 1994, EPA believes that the Bay Area should be able to identify and implement measures that will bring it back into attainment fairly quickly. Thus, EPA is proposing to set the Bay Area's attainment deadline as November 15, 1999. This is the date by which the area would have had to attain if it had been bumped up to a ''serious'' classification rather than being redesignated to attainment. As discussed above, the Bay Area recorded 43 exceedances and 17 violations of the standard from June 21, 1995 (the date on which the area was redesignated to attainment) and November 15, 1996, the attainment deadline for moderate ozone nonattainment areas. These violations far exceed those recorded during the same time frame by other moderate ozone nonattainment areas which EPA is proposing to bump up to serious for failure to attain by November 15, 1996.

EPA proposes to make the determination as to whether the area has attained based on monitoring data from the years 1997, 1998 and 1999. During this time frame, EPA will be reviewing 1997–1999 monitoring data for the entire country to determine whether areas are violating the new NAAQS. Areas that violate the 8-hour standard but attain the 1-hour standard prior to designation under the new standard will be eligible for classification as a ''transitional'' area when designated nonattainment for the new 8-hour NAAQS.[10] If the Bay Area attains the 1-hour standard by 1999 and meets the requirements for transitional areas, it may take advantage of this status and avoid certain enumerated requirements under the new NAAQS.

In the event that the Bay Area does not meet the 1999 attainment date, it may, in the future, be eligible for up to two 1-year extensions of this date if it were to meet the requirements of section 172(a)(2)(C).

EPA is particularly interested in receiving public comment on the proposed November 15, 1999 attainment deadline. The Agency has received preliminary input from the District indicating that it believes a later date should be chosen. EPA solicits comment from all interested parties on this issue.

D. Schedule for Plan Submissions

The schedule for plan submissions is governed by section 172(b). This section

[7] EPA Guidance Document #EPA–450–4–91–014, entitled ''Preparation of Emissions for CO and Ozone Precursors for Air Quality Modeling,'' Volume II, May 1991.

[8] See 54 FR 11866 (March 19, 1982).

[9] ''Bay Area Emission Inventory Projections: 1980–2002,'' provided by the Bay Area to EPA May 1997.

[10] 62 FR 38426, July 18, 1997.

provides that the Administrator must establish a schedule for each area to submit a plan or plan revision that meets the applicable requirements of sections 172(c) and 110(a)(2). The schedule must, at a minimum, require submission of the attainment plan no later than three years after designation to nonattainment. EPA is proposing two separate submittal dates for elements of the Bay Area plan that are designed to achieve the November 15, 1999 attainment date. These submittals will be due on May 1, 1998 and September 1, 1998. The contents of these submittals are discussed in section II.B. above.

SCHEDULE OF SUBMITTAL OF REVISIONS TO THE STATE IMPLEMENTATION PLAN FOR OZONE FOR THE SAN FRANCISCO BAY AREA

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. 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 proposal 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, § 6(a)(3). The E.O. defines, in § 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 proposed today, as well as the establishment of SIP submittal schedules, would result in none of the effects identified in E.O. 12866 § 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. 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. 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 proposes to make a factual determination and to establish a schedule to require the State to submit SIP revisions, and does not propose to directly regulate any entities. Because EPA is proposing to apply 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 proposed 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), Public Law 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 proposed 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 questionable whether a redesignation would constitute a federal mandate in any case. The obligation for the state to revise its State Implementation Plan that arises out of a redesignation is not legally enforceable and at most is a condition for continued receipt of federal highway funds. Therefore, it does not appear that such an action creates any enforceable duty within the meaning of section 421(5)(a)(i) of UMRA (2 U.S.C. 658(5)(a)(i)), and if it does the duty would appear to fall within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

Even if a redesignation were considered a Federal mandate, the anticipated costs resulting from the mandate would not exceed $100 million to either the private sector or state, local and tribal governments. Redesignation of an area to nonattainment does not, in itself, impose any mandates or costs on the private sector, and thus, there is no private sector mandate within the meaning of section 421(7) of UMRA (2 U.S.C. 658(7)). The only cost resulting from the redesignation itself is the cost to the State of California of developing, adopting and submitting any necessary SIP revision. Because that cost will not exceed $100 million, this proposal (if it is a federal mandate at all) 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 proposal 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.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

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

Dated: December 11, 1997.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 97–33225 Filed 12–18–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE36

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period on Proposed Endangered Status for Three Aquatic Snails, and Proposed Threatened Status for Three Aquatic Snails in the Mobile River Basin of Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of a public hearing on the proposed endangered status for the cylindrical lioplax (*Lioplax cyclostomaformis*), flat pebblesnail (*Lepyrium showalteri*), and plicate rocksnail (*Leptoxis plicata*); and the proposed threatened status for the painted rocksnail (*Leptoxis taeniata*), round rocksnail (*Leptoxis ampla*), and lacy elimia (*Elimia crenatella*). The Service also announces the reopening of the comment period for these actions. The public hearing and the reopening of the comment period will allow additional comments on this proposal to be submitted from all interested parties.

DATES: The public hearing will be held from 7 to 10 p.m. on Tuesday, January 13, 1998, in Birmingham, Alabama. The comment period now closes on January 23, 1998. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Dwight Beeson Hall Auditorium on the campus of Samford University, 800 Lakeshore Drive, Birmingham, Alabama 35229. Written comments and materials concerning the proposal may be submitted at the hearing or sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield (see **ADDRESSES** section), 601/965–4900, extension 25.

SUPPLEMENTARY INFORMATION:

Background

The six aquatic snail species are endemic to portions of the Mobile River Basin, Alabama. The cylindrical lioplax, flat pebblesnail, and round rocksnail are found in the Cahaba River drainage; the lacy elimia and painted rocksnail are in the Coosa River drainage; and the plicate rocksnail is in the Black Warrior River drainage. All six species have disappeared from 90 percent or more of their historic range. Known populations are restricted to small portions of stream drainages. The past decline of the snails is attributed to impoundment, habitat fragmentation, and water quality degradation. Current threats include the gradual and cumulative effects of sedimentation and nutrification originating from nonpoint sources on the snails' localized and isolated stream refugia.

On October 17, 1997, the Service published a rule proposing endangered status for the cylindrical lioplax, flat pebblesnail, and plicate rocksnail; and threatened status for the painted rocksnail, round rocksnail, and lacy elimia in the **Federal Register** (62 FR 54020–54028. Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. A public hearing request by Gorham & Waldrep, P.C., was received within the allotted time period. The Service has scheduled a public hearing in Birmingham, Alabama on Tuesday, January 13, 1998, at Samford University's Dwight Beeson Hall Auditorium from 7:00 to 10:00 p.m.

Oral and written comments will be accepted and treated equally. Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials submitted at the hearing or mailed to the Service. Legal notices announcing the date, time, and location of the hearing are being published in newspapers concurrently with this **Federal Register** notice. The comment period on the proposal was initially closed on December 16, 1997. To accommodate the hearing, the public comment period is reopened upon publication of this notice. Written comments may now be submitted until January 23, 1998, to the Service office in the **ADDRESSES** section.