

terminates (determined without regard to any extension thereof); or

(2) December 31, 2008.

(B) *Treatment of plans with both collectively bargained and non-collectively bargained employees.* If a collective bargaining agreement applies to some, but not all, of the plan participants, the definition of whether the plan is considered a collectively bargained plan for purposes of this paragraph (g)(1)(ii) is made in the same manner as the definition of whether a plan is collectively bargained under section 436(f)(3).

(2) *Regulatory effective/applicability date.* This section is effective and applicable for plan years beginning on or after January 1, 2011.

(3) *Statutory transition rules—(i) General rule.* Pursuant to section 401(a)(35)(H), in the case of the portion of an account to which paragraph (c) of this section applies and that consists of employer securities acquired in a plan year beginning before January 1, 2007, the requirements of paragraph (c) of this section only apply to the applicable percentage of such securities.

(ii) *Applicable percentage—(A) Phase-in percentage.* For purposes of this paragraph (g)(3), the applicable percentage is determined as follows—

Plan year to which paragraph (c) of this section applies:	The applicable percentage is:
1st	33
2nd	66
3rd and following	100

(B) *Special rule.* For a plan for which the special effective date under section 901(c)(3) of PPA '06 applies, the applicable percentage under this paragraph (g)(3)(ii) is determined without regard to the delayed effective date in section 901(c)(3)(A) and (B) of PPA '06.

(iii) *Nonapplication for participants age 55 with three years of service.* Paragraph (g)(3)(i) of this section does not apply to an individual who is a participant who attained age 55 and had completed at least three years of service (as defined in paragraph (c)(3) of this section) before the first day of the first plan year beginning after December 31, 2005.

(iv) *Separate application by class of securities.* This paragraph (g)(3) applies

separately with respect to each class of securities.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved: May 5, 2010.

Michael F. Mundaca,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2010-11924 Filed 5-18-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9483]

RIN 1545-BH65

Qualified Nonpersonal Use Vehicles

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to qualified nonpersonal use vehicles as defined in section 274(i). Qualified nonpersonal use vehicles are excepted from the substantiation requirements of section 274(d)(4) that apply to listed property as defined in section 280F(d)(4). These final regulations add clearly marked public safety officer vehicles as a new type of qualified nonpersonal use vehicle. These final regulations affect employers that provide their employees with qualified nonpersonal use vehicles and the employees who use such vehicles.

DATES: Effective Date: These regulations are effective on *May 19, 2010*.

Applicability Date: These regulations apply to uses of clearly marked public safety officer vehicles occurring after *May 19, 2010*.

FOR FURTHER INFORMATION CONTACT: Don Parkinson at (202) 622-6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final Income Tax Regulations under section 274(i) added by section 2(b) of Public Law 99-44 (May 24, 1985), which provides a definition of qualified nonpersonal use vehicle. Temporary Regulation § 1.274-5T(k), identifying categories of qualified nonpersonal use vehicles and Temporary Regulation § 1.274-5T(l), providing for definitions of the terms “automobile,” “vehicle,” “employer,” “employee,” and “personal use” were

issued in 1985. (TD 8061 1982-5 CB 93 (1985)). A notice of proposed rulemaking was issued by cross-reference to Temporary Regulation § 1.274-5T(k). (LR-145-84, 50 FR 46088, 1985-2 CB 809 (1985)).

On June 9, 2008, proposed regulations (REG-106897-08) were published in the **Federal Register** (73 FR 32500). The proposed regulations incorporated the text of § 1.274-5T(k) and added clearly marked public safety officer vehicles as a new type of qualified nonpersonal use vehicle, listed along with clearly marked police and fire vehicles at § 1.274-5(k)(2)(ii)(A). A definition of clearly marked public safety officer vehicles was added to the provision defining clearly marked police and fire vehicles at § 1.274-5(k)(3), and an example illustrating application of the rules to a public safety officer vehicle was added at § 1.274-5(k)(8) *Example 3*. The proposed regulations incorporated the text of § 1.274-5T(l) with no changes. The corresponding provisions of the proposed regulations in LR-145-84 were withdrawn on June 8, 2008.

Written public comments on the proposed regulations at § 1.274-5(k) and (l) were received and no hearing was requested. After consideration of all the comments, these final regulations adopt the provisions of the proposed regulations with an amendment to *Example 3* and the provision of a new *Example 4* in § 1.274-5(k)(8) which are intended to assist taxpayers in determining whether individual employees meet the definition of public safety officer. The temporary regulations at § 1.274-5T(k) and (l) are withdrawn concurrently with the publication of these final regulations in the **Federal Register**. The remaining temporary regulations at § 1.274-5T are unaffected by this Treasury decision.

Summary of Comments and Explanation of Provisions

Section 274(d) provides that a taxpayer is not allowed a deduction or credit for certain expenses unless the expenses are substantiated. These substantiation requirements apply to expenses incurred in the use of any listed property (defined in section 280F(d)(4)), which includes any passenger automobile and any other property used as a means of transportation. Section 274(d) does not apply to any qualified nonpersonal use vehicle as defined in section 274(i). Both business and personal use of a vehicle that meets the criteria to be a qualified nonpersonal use vehicle under section 274(i) will also qualify as a working condition fringe benefit that is excluded from the recipient's income

under section 132(d). Thus, if an employer provides an employee with a qualified nonpersonal use vehicle, the employee does not need to keep records of how the vehicle is used, and both the business and the personal use of the vehicle will be excluded from the employee's income as a working condition fringe benefit under section 132(d).

Section 274(i) provides that a qualified nonpersonal use vehicle is any vehicle which by reason of its nature is not likely to be used more than a de minimis amount for personal purposes. The legislative history to section 274(i) provided a list of qualified nonpersonal use vehicles and identified a number of examples of qualified nonpersonal use vehicles such as school buses, qualified specialized utility repair trucks, and qualified moving vans. The legislative history indicated that Congress wanted the Commissioner to expand the list to include other vehicles appropriate for listing because by their nature it is highly unlikely that they will be used more than a very minimal amount for personal purposes. H.R. Rep. No. 99-34, at 11 (1985).

Passenger automobiles such as sedans and sport utility vehicles are generally not exempt from taxation as qualified nonpersonal use vehicles because by design they can easily be used for personal purposes. However, unmarked law enforcement vehicles and clearly marked police and fire vehicles are included in the list of qualified nonpersonal use vehicles set forth in the legislative history to section 274(i) and incorporated into these final regulations.

Under prior rules, clearly marked vehicles provided to Federal, State and local government workers who respond to emergency situations did not satisfy the current regulations governing qualified nonpersonal use vehicles if the individual workers were not employed by either the fire department or police department. These final regulations, consistent with the proposed regulations, add clearly marked public safety officer vehicles to the list of qualified nonpersonal use vehicles so that emergency responders who are not employed by either the fire department or police department receive the same treatment as those who work for the police or fire department.

A clearly marked public safety officer vehicle is a vehicle owned or leased by a governmental unit or any agency or instrumentality thereof, that is required to be used for commuting by a public safety officer as defined in section 402(l)(4)(C) who, when not on a regular shift, is on call at all times, provided

that any personal use (other than commuting) of the vehicle outside the limit of the public safety officer's obligation to respond to an emergency is prohibited by such governmental unit. A public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a public safety officer vehicle.

Section 402(l)(4)(C) provides that the term "public safety officer" shall have the same meaning given such term by the Omnibus Crime Control and Safe Streets Act of 1968, as codified at 42 U.S.C. 3796b(9)(A). The definition of public safety officer is part of the Public Safety Officer's Benefits Act which was enacted as part L of Title I of the Omnibus Crime Control and Safe Streets Act of 1968. 42 U.S.C. 3796b(9)(A) defines public safety officer as "an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or as a member of a rescue squad or ambulance crew."

Some commenters suggested eliminating some of the requirements pertaining to qualified nonpersonal use vehicles. In particular, commenters suggested elimination of the requirement that the vehicle be clearly marked, or the requirement that the individual be on call at all times, or the requirement that the vehicle be specially equipped.

Qualified nonpersonal use vehicles were exempted from the substantiation and recordkeeping requirements imposed under section 274(d) and minimal personal use of such vehicles was excluded from income because the nature of the vehicles prevents more than a de minimis amount of personal use. If an individual is not on call at all times, personal use may be more than de minimis. If the vehicle is not required to be specially equipped or clearly marked, the vehicle will function easily as a personal use vehicle and is not readily distinguishable from vehicles routinely used for personal purposes. Thus, these suggested changes were not adopted because they conflict with the underlying goal and purpose of the statute.

A number of comments were made urging that various specific types of workers be included within the definition "public safety officer." For example, commenters suggested the definition of public safety officer should be expanded to include employees who respond to local disasters such as flash floods, pipeline ruptures, hazardous material accidents, bridge collapses, and mining accidents. Additionally commenters suggested that child

protective service workers, emergency management personnel, and members of Incident Management Teams which are part of the Department of Homeland Security's National Incident Management System should all be included in the definition of public safety officer.

The determination of the status of an individual as a public safety officer is made pursuant to a facts and circumstances analysis based on an evaluation of the relevant criteria in the Public Safety Officers' Benefits Act of 1978 and its regulations (PSOB Regulations, 28 CFR part 32). The PSOB regulations set forth criteria to be used in determining whether individual workers are public safety officers. For example, the PSOB Regulations at 28 CFR 32.3 define "rescue squad or ambulance crew" as follows: "a squad or crew whose members are rescue workers, ambulance drivers, paramedics, health-care responders, emergency medical technicians, or other similar workers who—

(1) Are trained in rescue activity or the provision of emergency medical services; and

(2) As such members, have the legal authority and responsibility to—

- (i) Engage in rescue activity; or
- (ii) Provide emergency medical services.

Rescue activity means search or rescue assistance in locating or extracting from danger persons lost, missing, or in imminent danger of serious bodily harm.

Emergency medical services means—

- (1) Provision of first-response emergency medical care (other than in a permanent medical-care facility); or
- (2) Transportation of persons in medical distress (or under emergency conditions) to medical-care facilities.

As a general rule, the determination of the status of an individual as a rescue squad or ambulance crew member is based on whether that individual is trained to engage in rescue activity or to provide emergency medical services and whether that individual has legal authority and legal responsibility to engage in rescue activity or provide emergency medical services.

Thus, an individual's job title is not determinative of his or her status as a public safety officer. Instead, the determination is made based on the facts and circumstances of the individual's employment, including their training, legal authority and legal responsibility. *Example 3* has been modified and an *Example 4* has been added to clarify this analysis using the criteria in the PSOB Regulations.

Moreover, these final regulations have not been amended to add additional job titles to the definition of public safety officer as suggested by commenters because an employee's job title is not determinative of their status as a public safety officer.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not require a collection of information and do not impose any new or different requirements on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Council for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Don M. Parkinson, Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.132-5 paragraph (h) is revised to read as follows:

§ 1.132-5 Working condition fringes.

* * * * *

(h) *Qualified nonpersonal use vehicles*—(1) *In general.* Except as provided in paragraph (h)(2) of this

section, 100 percent of the value of the use of a qualified nonpersonal use vehicle (as described in § 1.274-5(k)) is excluded from gross income as a working condition fringe, provided that, in the case of a vehicle described in § 1.274-5(k)(3) through (8), the use of the vehicle conforms to the requirements of paragraphs (k)(3) through (8).

(2) *Shared usage of qualified nonpersonal use vehicles.* In general, a working condition fringe under this paragraph (h) is available to the driver and all passengers of a qualified nonpersonal use vehicle. However, a working condition fringe under this paragraph (h) is available only with respect to the driver and not with respect to any passengers of a qualified nonpersonal use vehicle described in § 1.274-5(k)(2)(ii)(L) or (P).

* * * * *

■ **Par. 3.** Section 1.274-5 paragraphs (k) and (l) and the last sentence of paragraph (m) are revised to read as follows:

§ 1.274-5 Substantiation requirements.

* * * * *

(k) *Exceptions for qualified nonpersonal use vehicles*—(1) *In general.* The substantiation requirements of section 274(d) and this section do not apply to any qualified nonpersonal use vehicle (as defined in paragraph (k)(2) of this section).

(2) *Qualified nonpersonal use vehicle*—(i) *In general.* For purposes of section 274(d) and this section, the term *qualified nonpersonal use vehicle* means any vehicle which, by reason of its nature (that is, design), is not likely to be used more than a de minimis amount for personal purposes.

(ii) *List of vehicles.* Vehicles which are qualified nonpersonal use vehicles include the following:

(A) Clearly marked police, fire, and public safety officer vehicles (as defined and to the extent provided in paragraph (k)(3) of this section).

(B) Ambulances used as such or hearses used as such.

(C) Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds.

(D) Bucket trucks (cherry pickers).

(E) Cement mixers.

(F) Combines.

(G) Cranes and derricks.

(H) Delivery trucks with seating only for the driver, or only for the driver plus a folding jump seat.

(I) Dump trucks (including garbage trucks).

(J) Flatbed trucks.

(K) Forklifts.

(L) Passenger buses used as such with a capacity of at least 20 passengers.

(M) Qualified moving vans (as defined in paragraph (k)(4) of this section).

(N) Qualified specialized utility repair trucks (as defined in paragraph (k)(5) of this section).

(O) Refrigerated trucks.

(P) School buses (as defined in section 4221(d)(7)(c)).

(Q) Tractors and other special purpose farm vehicles.

(R) Unmarked vehicles used by law enforcement officers (as defined in paragraph (k)(6) of this section) if the use is officially authorized.

(S) Such other vehicles as the Commissioner may designate.

(3) *Clearly marked police, fire, or public safety officer vehicles.* A police, fire, or public safety officer vehicle is a vehicle, owned or leased by a governmental unit, or any agency or instrumentality thereof, that is required to be used for commuting by a police officer, fire fighter, or public safety officer (as defined in section 402(l)(4)(C) of this chapter) who, when not on a regular shift, is on call at all times, provided that any personal use (other than commuting) of the vehicle outside the limit of the police officer's arrest powers or the fire fighter's or public safety officer's obligation to respond to an emergency is prohibited by such governmental unit. A police, fire, or public safety officer vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a police, fire, or public safety officer vehicle. A marking on a license plate is not a clear marking for purposes of this paragraph (k).

(4) *Qualified moving van.* The term *qualified moving van* means any truck or van used by a professional moving company in the trade or business of moving household or business goods if—

(i) No personal use of the van is allowed other than for travel to and from a move site (or for de minimis personal use, such as a stop for lunch on the way between two move sites);

(ii) Personal use for travel to and from a move site is an irregular practice (that is, not more than five times a month on average); and

(iii) Personal use is limited to situations in which it is more convenient to the employer, because of the location of the employee's residence in relation to the location of the move site, for the van not to be returned to the employer's business location.

(5) *Qualified specialized utility repair truck.* The term *qualified specialized utility repair truck* means any truck (not including a van or pickup truck)

specifically designed and used to carry heavy tools, testing equipment, or parts if—

(i) The shelves, racks, or other permanent interior construction which has been installed to carry and store such heavy items is such that it is unlikely that the truck will be used more than a de minimis amount for personal purposes; and

(ii) The employer requires the employee to drive the truck home in order to be able to respond in emergency situations for purposes of restoring or maintaining electricity, gas, telephone, water, sewer, or steam utility services.

(6) *Unmarked law enforcement vehicles*—(i) *In general.* The substantiation requirements of section 274(d) and this section do not apply to officially authorized uses of an unmarked vehicle by a “law enforcement officer”. To qualify for this exception, any personal use must be authorized by the Federal, State, county, or local governmental agency or department that owns or leases the vehicle and employs the officer, and must be incident to law-enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation. Use of an unmarked vehicle for vacation or recreation trips cannot qualify as an authorized use.

(ii) *Law enforcement officer.* The term *law enforcement officer* means an individual who is employed on a full-time basis by a governmental unit that is responsible for the prevention or investigation of crime involving injury to persons or property (including apprehension or detention of persons for such crimes), who is authorized by law to carry firearms, execute search warrants, and to make arrests (other than merely a citizen’s arrest), and who regularly carries firearms (except when it is not possible to do so because of the requirements of undercover work). The term “law enforcement officer” may include an arson investigator if the investigator otherwise meets the requirements of this paragraph (k)(6)(ii), but does not include Internal Revenue Service special agents.

(7) *Trucks and vans.* The substantiation requirements of section 274(d) and this section apply generally to any pickup truck or van, unless the truck or van has been specially modified with the result that it is not likely to be used more than a de minimis amount for personal purposes. For example, a van that has only a front bench for seating, in which permanent shelving that fills most of the cargo area has been installed, that constantly carries

merchandise or equipment, and that has been specially painted with advertising or the company’s name, is a vehicle not likely to be used more than a de minimis amount for personal purposes.

(8) *Examples.* The following examples illustrate the provisions of paragraph (k)(3) and (6) of this section:

Example 1. Detective C, who is a “law enforcement officer” employed by a state police department, headquartered in City M, is provided with an unmarked vehicle (equipped with radio communication) for use during off-duty hours because C must be able to communicate with headquarters and be available for duty at any time (for example, to report to a surveillance or crime site). The police department generally has officially authorized personal use of the vehicle by C but has prohibited use of the vehicle for recreational purposes or for personal purposes outside the state. Thus, C’s use of the vehicle for commuting between headquarters or a surveillance site and home and for personal errands is authorized personal use as described in paragraph (k)(6)(i) of this section. With respect to these authorized uses the vehicle is not subject to the substantiation requirements of section 274(d) and the value of these uses is not included in C’s gross income.

Example 2. Detective T is a “law enforcement officer” employed by City M. T is authorized to make arrests only within M’s city limits. T, along with all other officers of the force, is ordinarily on duty for eight hours each work day and on call during the other sixteen hours. T is provided with the use of a clearly marked police vehicle in which T is required to commute to his home in City M. The police department’s official policy regarding marked police vehicles prohibits its personal use (other than commuting) of the vehicles outside the city limits. When not using the vehicle on the job, T uses the vehicle only for commuting, personal errands on the way between work and home, and personal errands within City M. All use of the vehicle by T conforms to the requirements of paragraph (k)(3) of this section. Therefore, the value of that use is excluded from T’s gross income as a working condition fringe and the vehicle is not subject to the substantiation requirements of section 274(d).

Example 3. Director C is employed by City M as the director of the City’s rescue squad and is provided with a vehicle for use in responding to emergencies. Director C is trained in rescue activity and has the legal authority and legal responsibility to engage in rescue activity. The city’s rescue squad is not a part of City M’s police or fire departments. The director’s vehicle is a sedan which is painted with insignia and words identifying the vehicle as being owned by the City’s rescue squad. C, when not on a regular shift, is on call at all times. The City’s official policy regarding clearly marked public safety officer vehicles prohibits personal use (other than for commuting) of the vehicle outside of the limits of the public safety officer’s obligation to respond to an emergency. When not using the vehicle to respond to emergencies, City M authorizes C

to use the vehicle only for commuting, personal errands on the way between work and home, and personal errands within the limits of C’s obligation to respond to emergencies. With respect to these authorized uses, the vehicle is not subject to the substantiation requirements of section 274(d) and the value of these uses is not includable in C’s gross income.

Example 4. Coroner D is employed by County N to investigate and determine the cause, time, and manner of certain deaths occurring in the County. Coroner D also safeguards the property of the deceased, notifies the next of kin, conducts inquests, and arranges for the burial of indigent persons. D is provided with a vehicle for use by County N. The vehicle is to be used in County N business and for commuting. Personal use other than for commuting purposes is forbidden. D is trained in rescue activity but has no legal authority or legal responsibility to engage in rescue activity. D’s vehicle is a sedan which is painted with insignia and words identifying it as a County N vehicle. D, when not on a regular shift, is on call at all times. D does not satisfy the criteria of a public safety officer under 28 CFR 32.3 (2008). Thus, D’s vehicle cannot qualify as a clearly marked public safety officer vehicle. Accordingly, business use of the vehicle is subject to the substantiation requirements of section 274(d), and the value of any personal use of the vehicle, such as commuting, is includable in D’s gross income.

(l) *Definitions.* For purposes of section 274(d) and this section, the terms *automobile* and *vehicle* have the same meanings as prescribed in § 1.61–21(d)(1)(ii) and (e)(2), respectively. Also, for purposes of section 274(d) and this section, the terms *employer*, *employee* and *personal use* have the same meanings as prescribed in § 1.274–6T(e).

(m) * * * However, paragraph (j)(3) of this section applies to expenses paid or incurred after September 30, 2002, and paragraph (k) applies to clearly marked public safety officer vehicles, as defined in § 1.274–5(k)(3), only with respect to uses occurring after May 19, 2010.

■ **Par. 4.** Section 1.274–5T is amended by revising paragraphs (k) and (l) to read as follows:

§ 1.274–5T Substantiation requirements (temporary).

* * * * *
(k) and (l) [Reserved]. For further guidance, see § 1.274–5(k) and (l).
* * * * *

■ **Par. 5.** Section 1.280F–6 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 1.280F–6 Special rules and definitions.

* * * * *
(b) * * *
(2) * * *

(ii) *Exception.* The term “listed property” does not include any vehicle

that is a qualified nonpersonal use vehicle as defined in section 274(i) and § 1.274-5(k).

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: May 5, 2010.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2010-11767 Filed 5-18-10; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2009-0269; FRL-9152-6]

Approval and Promulgation of Implementation Plans; State of California; Legal Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to clarify the contents of the applicable implementation plan for the State of California under the Clean Air Act. Specifically, EPA is taking final action to clarify that the statutory provisions submitted by California and approved by EPA in 1972 supporting the State's legal authority chapter of the original implementation plan were superseded by a subsequent approval by EPA in 1980 of California's revision to the legal authority chapter of the plan. EPA is taking this action to clarify the status in the California plan of the statutory provisions submitted and approved in 1972.

DATES: *Effective Date:* This rule is effective on June 18, 2010.

ADDRESSES: EPA has established docket number EPA-R09-OAR-2009-0269 for this action. The index to the docket is available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, Chief, Permits Office

(AIR-3), U.S. Environmental Protection Agency, Region IX, (415) 972-3974; rios.gerardo@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Proposed Action

On January 29, 2010 (75 FR 4742), under the Clean Air Act (CAA or "Act"), we proposed to clarify that the statutory provisions submitted by California in 1972 supporting the State's legal authority chapter of the original implementation plan were superseded by a subsequent approval by EPA in 1980 of a revision to California's legal authority chapter of the plan.

In support of our proposed action, we provided a detailed account of the regulatory context in which the original California State implementation plan (SIP) was submitted and approved by EPA. We also described in detail the contents of the original California SIP, which consisted of 13 parts, the first part ("State General Plan") of which included a chapter 7 ("Legal Considerations"), referred to herein as the "legal authority" chapter. The original SIP also included an appendix (entitled "Appendix II: State Statutes and other Legal Documents Pertinent to Air Pollution Control in California") to the legal authority chapter. The legal authority chapter included many citations to individual sections within the California Health & Safety Code (CH&SC) and other California codes, as well as citations to (then) recently approved legislation, and attorney general opinions as support for the assurance that adequate legal authority exists in the State to meet CAA and EPA SIP requirements.

As described in the proposal, the appendix to the legal authority chapter in the plan (herein, "appendix II") included the specific sections of California code and other legal documents cited in chapter 7, but also included many sections of California code that were not cited specifically in chapter 7. Our proposed rule describes in detail the contents of appendix II and its 14 categories of statutory and other legal documents.

In May 1972, we approved in part and disapproved in part the original California SIP. See 37 FR 10842 (May 31, 1972) and 40 CFR 52.220(b). EPA's approval included both chapter 7 and the statutory and other documents

contained in appendix II as described above.

As explained in our proposed rule, in response to EPA's request and in response to the Clean Air Act Amendments of 1977, California undertook a comprehensive update to the California SIP. On March 16, 1979, the California Air Resources Board (ARB) submitted a revision to the legal authority chapter of the SIP, entitled "Chapter 3—Legal Authority, Revision to State of California Implementation Plan for the Attainment and Maintenance of Ambient Air Quality Standards (December 1978)," (also referred to herein as "Chapter 3—Legal Authority" or the "revised legal authority" chapter). Much like the original legal authority chapter, the revised legal authority chapter provides an overview of air pollution control in California. While the general topics covered in the revised legal authority chapter were similar to those covered in the original legal authority chapter, the discussion is completely re-organized and updated to reflect, among other things, recodifications of statutory provisions. Also, like the legal authority chapter in the original SIP, the revised legal authority chapter includes numerous citations to individual sections of the CH&SC (which had been re-numbered and re-codified since the time of the original SIP), certain citations to other California codes and other legal documents. However, unlike the legal authority chapter in the original SIP, the revised legal authority chapter, as submitted in 1979, did not include physical copies of the actual statutory provisions nor the other documents cited in the chapter. Instead, the 1979 SIP revision simply incorporates by reference the 1978 edition of *California Air Pollution Control Laws* as "appendix 3-A" to the chapter. Later in 1979, we proposed approval of the revised SIP "Chapter 3—Legal Authority" as an update and clarification of the 1972 SIP. See 44 FR 38912 (July 3, 1979). The following year, we took final action, effective September 10, 1980, to approve the revised legal authority chapter. See 45 FR 53136 (August 11, 1980) and 40 CFR 52.220(c)(48). Since that time, EPA has not approved any other revision to the chapter that addresses legal authority in the California SIP.

Based upon our review of the relevant provisions of the original California SIP and the related 1979 SIP revision, and the corresponding EPA approval actions, we proposed to clarify the contents of the SIP to reflect our determination that the statutory provisions and other legal documents