Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction; and Rule 21(a), pertaining to the masthead light unbroken arc of visibility over an arc of the horizon of 225 degrees and visibility from right ahead to abaft the beam of 22.5 degrees, without interfering with its special function as a naval guided missile destroyer. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Four of 706.2 is amended by:

a. Adding the following vessel to paragraph 15:

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * *	*	* *
USS FITZGERALD.	DDG 62	1.90 meters.

b. Adding the following vessel to Paragraph 16:

Vessel	Number	Obstruction angle relative ship's headings
* * *	*	* *
USS FITZGERALD.	DDG 62	102.32 thru 112.50 degree.

3. Table Five of 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sect. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. (3)(a)	Percentage horizontal separation attained
* * * *		*	*	*	*
USS FITZGERALD	DDG 62	X	X	X	20.4
* * * *		*	*	*	*

Dated: December 7, 1994.

H.E. Grant,

Rear Admiral, JAGC, U.S. Navy Judge Advocate General.

[FR Doc. 95–1011 Filed 1–13–95; 8:45 am]

BILLING CODE 3810–AE–P–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI19–03–6755; FRL–5134–9]

Approval and Promulgation of Air Quality Implementation Plan; Michigan; Wayne County Particulate Matter Nonattainment Area

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: In this action USEPA is approving the State Implementation Plan (SIP) submitted by the State of Michigan for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM). The SIP was initially submitted by the Michigan Department of Natural Resources (MDNR) on June 11, 1993 with revisions submitted on April 7, 1994 and October 14, 1994. On June 15, 1994 the USEPA published a Notice of Proposed Rulemaking (NPR) to disapprove the June 11, 1993 and April 7, 1994 submittals (see 59 FR 30742). The State's October 14, 1994 SIP revision adequately addresses the deficiencies which had been the basis for the proposed disapproval of the previous submittals. Therefore, USEPA is withdrawing the proposed disapproval and is now approving the State submittal as meeting the Federal requirements for an approvable nonattainment area PM SIP for Wayne County, Michigan.

EFFECTIVE DATE: This final rule will become effective on February 16, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: (It is recommended that you telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development

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Section, Air Toxics and Radiation Branch (AT-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, (312) 353-8328.

SUPPLEMENTARY INFORMATION:

I. Background

Section 189 of the Clean Air Act (Act), 42 U.S.C. 7513(a), requires that States containing initial moderate PM nonattainment areas submit to USEPA by November 15, 1991 among other things, a plan and demonstration that the plan will provide for attainment of the PM NAAQS as expeditiously as practicable but no later than December 31, 1994. To satisfy this requirement, on June 11, 1994 the State submitted a proposed SIP revision which consisted primarily of 31 consent orders between the State and PM sources. The April 7, 1994 submittal consisted of a revised order for the Marblehead Lime Company, River Rouge, Michigan which superseded the portion of the June 11, 1993 SIP submittal applicable to the Marblehead Lime, River Rouge facility. The air quality dispersion modeling conducted by the State to demonstrate attainment was based upon control measures, limitations, and conditions contained in these orders.

The air quality planning requirements for moderate PM nonattainment areas are set out in subparts 1 and 4 of Title I of the Act. The USEPA has issued a "General Preamble" describing USEPA's preliminary views on how USEPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

In the June 15, 1994 NPR, USEPA proposed to disapprove in its entirety the SIP revision submitted by the State because USEPA found unapprovable provisions in each of the 31 consent orders submitted for approval into the Michigan SIP, however, the USEPA also noted that it would change the proposed disapproval to final approval if the State were to remove the unacceptable language in paragraph 11, or replace it with a previously approved version, remove paragraph 12 in each of the 31 consent orders, and submit revised consent orders to USEPA. The State subsequently revised paragraph 11, removed paragraph 12 of the consent orders and submitted the revised orders for approval into the Michigan SIP on October 14, 1994.

II. This Action

Section 110(k) of the Act, 42 U.S.C. 7410(k), sets out provisions governing USEPA's review of SIP submittals. In this action, USEPA is withdrawing its proposed disapproval published in the June 15, 1994 NPR (59 FR 30742) and is, instead, fully approving the attainment plan for the Wayne County PM nonattainment area.

Discussion of how the State met the Act's requirements for part D nonattainment area SIPs providing for attainment and maintenance of the PM NAAQS is included in the June 15, 1994 NPR and the November 24, 1993 technical support document (TSD) and will not be repeated here. The revised consent orders do not alter the attainment demonstration submitted on June 11, 1993. No public comments were received on USEPA's review of this portion of the submittal. The comments submitted only address the proposed disapproval of the consent orders. The following sections discuss the basis for USEPA's proposed disapproval, comments received, and USEPA's response to comments.

III. Basis for Proposed Disapproval

The USEPA proposed to disapprove the June 11, 1993 SIP submittal because of unapprovable language contained in two provisions found in each of the 31 consent orders. One provision (paragraph 11) allowed for the substitution of "equivalent" particulate and fugitive dust control measures. The USEPA noted that language in this provision was unacceptable because it bypassed the Act's substantive and procedural requirements for SIP revisions and went beyond the scope of the existing policy on providing for flexibility in the SIPs. The USEPA had informed MDNR that it could provide sources some flexibility by revising paragraph 11 to permit use of those measures specifically outlined by existing USEPA guidance.

The other provision (paragraph 12) allowed for termination of the order upon the issuance of an operating permit pursuant to Title V of the Act. The USEPA noted that in order for the SIP to be enforceable, consent orders must not expire. Emission limits found in Title 5 permits must be the same as those found in the SIP or within the flexibility provided for by the SIP. Should the consent order expire, the SIP would be deficient, even following the issuance of an operating permit. More details are provided in the November 24, 1993 TSD and the June 15, 1994 NPR.

IV. Public Comments/USEPA Response

A thirty day public comment period was provided to allow interested parties the opportunity to comment on USEPA's proposed action. A summary of the public comments received and USEPA's response are presented below.

Public Comment: The Wayne County Air Pollution Control Division agrees with USEPA on the second issue (expiration of consent orders) but disagrees with the first issue (equivalent control measures). The Division believes that USEPA should provide some mechanism or flexibility for the local or State agencies to recommend approval if a company proposes an alternative equivalent control measure and demonstrates that it will achieve an equivalent or better control efficiency on a particulate matter source.

USEPA Response: The USEPA's detailed response to this comment is addressed below.

Public Comment: The MDNR stated that the enclosed particulate matter consent orders have been revised to incorporate wording to address the deficient "equivalency" provisions in paragraph 11, consistent with USEPA's August 28, 1994 letter and as such should meet USEPA's conditions for approvability.

USEPA Response: The USEPA has reviewed the revised consent orders and finds that the State has adequately addressed USEPA's concerns as detailed in the November 24, 1993 TSD and the June 15, 1994 NPR. The consent orders revisions are also consistent with USEPA's August 28, 1994 letter. The revised language provides flexibility in the SIPs for altering control programs and processes, so long as the change does not result in an increase in the level of fugitive dust or particulate emissions. The alternative method must also be demonstrated to be equivalent to the approved SIP method through the use of a USEPA-approved model. Any alternative method or model would require a site-specific SIP revision. This procedure ensures that the limits are not subject to revision at the sole discretion of the State.

Public Comment: The MDNR also stated that the termination clause which previously was paragraph 12 of the original consent orders has been deleted.

USEPA Response: Deletion of this provision from the consent orders corrects the deficiency cited in the June 15, 1994 NPR.

V. Implications of This Action

The USEPA is approving the SIP initially submitted by the State of

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Michigan on June 11, 1993 with revisions submitted on April 7, 1994 and October 14, 1994. The MDNR has demonstrated that the Wayne County moderate PM nonattainment area will attain the PM NAAQS by December 31, 1994.

VI. Administrative Review

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for a revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

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

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA 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 SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (1976).

D. 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 March 20, 1995. 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 a rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and Recordkeeping requirements.

Dated: December 29, 1994.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 52.1170 [Amended]

Subpart X—Michigan

2. 52.1170 is amended by adding paragraph (c)(100) to read as follows:

* * * * *

(c) * * *

(100) On June 11, 1993 the Michigan Department of Natural Resources (MDNR) submitted a plan, with revisions submitted on April 7, 1994 and October 14, 1994 for the purpose of bringing about the attainment of the National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM) in the Wayne County moderate PM nonattainment area.

(i) Incorporation by reference.

(A) Consent Order 4–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Allied Signal, Inc., Detroit Tar Plant.

(B) Consent Order 5–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Asphalt Products Company, Plant 5A.

(C) Consent Order 6–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Clawson Concrete Company, Plant #1.

(D) Consent Order 7–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Cummings-Moore Graphite Company.

(E) Consent Order 8–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Delray Connecting Railroad Company.

(F) Consent Order 9–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Detroit Edison Company, River Rouge Plant.

(G) Consent Order 10–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Detroit Edison Company, Sibley Quarry.

(H) Consent Order 11–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the city of Detroit, Detroit Water and Sewage Department, Wastewater Treatment Plant.

(I) Consent Order 12–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Ferrous Processing and Trading Company.

(J) Consent Order 13–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Ford Motor Company, Rouge Industrial Complex.

(K) Consent Order 14–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Ford Motor Company, Vulcan Forge.

(L) Consent Order 15–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Edward C. Levy Company, Detroit Lime Company.

(M) Consent Order 16–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Edward C. Levy Company, Plant #1.

(N) Consent Order 17–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Edward C. Levy Company, Plant #3.

(O) Consent Order 18–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Edward C. Levy Company, Plant #6.

(P) Consent Order 19–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Edward C. Levy Company, Plant 4 and 5.

(Q) Consent Order 20–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Edward C. Levy Company, Plant Scrap Up-Grade Facility.

(R) Consent Order 21–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Marblehead Lime, Brennan Avenue Plant.

(S) Consent Order 22–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Marblehead Lime, River Rouge Plant.

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(T) Consent Order 23–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the McLouth Steel Company, Trenton Plant.

(U) Consent Order 24–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Michigan Foundation Company, Cement Plant.

(V) Consent Order 25–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Michigan Foundation Company, Sibley Quarry.

(W) Consent Order 26–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Morton International, Inc., Morton Salt Division.

(X) Consent Order 27–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the National Steel Corporation, Great Lakes Division.

(Y) Consent Order 28–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the National Steel Corporation, Transportation and Materials Handling Division.

(Z) Consent Order 29–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Peerless Metals Powders, Incorporated.

(AA) Consent Order 30–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Rouge Steel Company.

(BB) Consent Order 31–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Keywell Corporation.

(CC) Consent Order 32–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the St. Marys Cement Company.

(DD) Consent Order 33–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the United States Gypsum Company.

(EE) Consent Order 34–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Wyandotte Municipal Power Plant.

[FR Doc. 95–1067 Filed 1–13–95; 8:45 am]

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40 CFR Part 81

[VA37–1–6812a; FRL–5139–8]

Clean Air Act Promulgation of Reclassification of Ozone Nonattainment Areas in Virginia, and Attainment Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action reclassifies the Norfolk-Virginia Beach-Newport News (Hampton Roads), VA ozone nonattainment area from marginal nonattainment to moderate nonattainment. This action also determines that the Sussex, DE; Allentown-Bethlehem-Easton, PA–NJ; Altoona, PA; Erie, PA; Harrisburg-Lebanon-Carlisle, PA; Johnstown, PA; Lancaster, PA; Scranton-Wilkes-Barre, PA; Youngstown-Warren-Sharon, PA–OH; York, PA; and Greenbrier, WV ozone nonattainment areas classified as marginal have attained the ozone air quality standard by the November 15, 1993 attainment date. In addition, this action determines that the Kent and Queen Anne's Counties, MD marginal ozone nonattainment area attained the ozone standard by November 1994. These actions are based on monitored air quality readings for ozone during the years 1991–1994. This is not a redesignation action for these marginal areas for which air quality monitoring data indicates attainment of the standard. The Clean Air Act requires that a separate redesignation request be submitted by the appropriate states to EPA. Finally, this document sets forth the method which EPA will use throughout the country henceforth to notify the public that areas have attained an air quality standard. EPA is taking no action in this document regarding the Smyth County, VA nonattainment area.

DATES: This action will be effective March 20, 1995, unless notice is received by February 16, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 597–9337, at the EPA Regional office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements and EPA Actions Concerning Designation and Classification

Section 107(d)(4) of the Clean Air Act (the Act) required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQSs) have been set. Section 181(a)(1) (table 1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of **Federal Register** documents, EPA completed this designation and classification process. See 56 FR 58694 (November 6, 1991); 57 FR 56762 (Nov. 30, 1992); and 59 FR 18967 (April 21, 1994). By these documents, EPA designated and classified all areas of the country for ozone.

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. For areas classified Marginal through Extreme, the attainment dates range from November 15, 1993 through November 15, 2010. A discussion of the attainment dates is found in the General Preamble, 57 FR 13498 (April 16, 1992).

The Sussex, DE; Kent and Queen Anne's Counties, MD; Allentown-Bethlehem-Easton, PA–NJ; Altoona, PA; Erie, PA; Harrisburg-Lebanon-Carlisle, PA; Johnstown, PA; Lancaster, PA; Scranton-Wilkes-Barre, PA; Youngstown-Warren-Sharon, PA–OH; York, PA; Norfolk-Virginia Beach-Newport News (Hampton Roads), VA; Smyth County, VA (portion of White Top Mountain); and Greenbrier, WV areas were designated nonattainment and classified marginal for ozone pursuant to 56 FR 56694 (November 6, 1991). By this classification, their attainment date became November 15, 1993.

B. Clean Air Act Requirements and EPA Actions Concerning Reclassification

Section 181(b)(2)(A) requires the Administrator, shortly after the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. This provision states:

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