judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a 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.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements. I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Area designations, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, National parks, Reporting and recordkeeping, Ozone, Volatile organic compounds, and Wilderness areas.

Dated: February 22, 1995.

Jane N. Saginaw,

Regional Administrator (6A).

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2275 is amended by adding paragraph (e) to read as follows:

§ 52.2275 Control strategy and regulations: Ozone.

* * * * *

(e) Approval—The Texas Natural Resource Conservation Commission (TNRCC) submitted an ozone redesignation request and maintenance plan on July 27, 1994, requesting that the Victoria County ozone nonattainment area be redesignated to attainment for ozone. Both the redesignation request and maintenance plan were adopted by TNRCC in Commission Order No. 94–29 on July 27, 1994. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Texas Ozone State Implementation Plan for Victoria County. The EPA approved the request for redesignation to attainment with respect to ozone for Victoria County on May 8, 1995.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7871q.

2. In Section 81.344, the attainment status designation table for ozone is amended by revising the entry for Victoria County under "Designated Area" to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE

Designated area	Designation date	Classification	
		Type	Date type
Victoria Area, Victoria County.	May 8, 1995.	Attainment.	
*	*	*	* *

* * * * *

[FR Doc. 95–5347 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[MI21–04–6753, MI18–03–6754; FRL–5160–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On July 21, 1994 the USEPA published a proposal to approve the 1990 base year emission inventory, basic vehicle inspection and maintenance (I/M) and the redesignation to attainment and associated section 175A maintenance plan for the ozone National Ambient Air Quality Standard (NAAQS) for the seven-county Detroit-Ann Arbor, Michigan area as a State Implementation Plan (SIP) revisions. The 30-day comment period concluded on August 22, 1994. A total of 72 comment letters were received in response to the July 21, 1994 proposal, 62 favorable, 9 adverse and 1 request to extend the comment period. On September 8, 1994, however, the USEPA published a correction document and 15-day extension of the comment period as a result of the inadvertent omission of a number of lines from the July 21, 1994 proposal. The reopened comment period concluded on September 23, 1994. An additional 25 comment letters were received in response to the September 8, 1994, extension of public comment period regarding the July 21, 1994 proposal approval, 2 favorable, 22 adverse and 1 informational. This final rule summarizes all comments and USEPA's responses, and finalizes the approval of the 1990 base year emission inventory, and basic I/M, and the redesignation to attainment for ozone and associated section 175A maintenance plan for the Detroit-Ann Arbor area.

EFFECTIVE DATE: This action will be effective April 6, 1995.

ADDRESSES: Copies of the SIP revisions, public comments and USEPA's responses are available for inspection at the following address: (It is recommended that you telephone Jacqueline Nwia at (312) 886–6081 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Regulation Development Section (AT–18J), Air Toxics and Radiation Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6081.

SUPPLEMENTARY INFORMATION:

I. Background Information

The 1990 base year emission inventory, basic I/M, and redesignation

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request and maintenance plan discussed in this rule were submitted on January 5, 1993 (with revisions on November 15, 1993), November 15, 1994 and November 12, 1994, respectively, by the Michigan Department of Natural Resources (MDNR) for the Detroit-Ann Arbor moderate ozone nonattainment area. The Detroit-Ann Arbor area consists of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne counties. On July 21, 1994, (59 FR 37190) the USEPA published a proposal to approve the 1990 base year emission inventory, basic I/M, and redesignation request and associated section 175A maintenance plan as revisions to the Michigan ozone SIP. On September 8, 1994 (59 FR 46479 and 46380), the USEPA published a correction notice and 15-day extension of the comment period as a result of the inadvertent omission of a number of lines from the July 21, 1994 proposal. Adverse comments were received regarding the proposed rule. The final rule contained in this **Federal Register** addresses the comments which were received during the public comment periods and announces USEPA's final action regarding the 1990 base year emission inventory, basic I/M, and redesignation and section 175A maintenance plan for the Detroit-Ann Arbor area. A more detailed discussion in response to each comment is contained in the USEPA's Technical Support Document (TSD), dated February 3, 1995 from Jacqueline Nwia to the Docket, entitled "Response to Comments on the July 21, 1994 Proposal to Approve the 1990 Base Year Emission Inventory, Basic I/M, and Redesignation to Attainment for Ozone and Section 175A Maintenance Plan for the Detroit-Ann Arbor Area," which is available from the Region 5 office listed above.

II. Public Comments and USEPA Responses and Final Rulemaking Actions

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A. 1990 Base Year Emission Inventory

I. Public Comments and USEPA Responses

The following discussion summarizes and responds to the comments received regarding the 1990 base year emission inventory.

Comment

Two commentors note an error in the 1990 base year emission inventory portion of the proposed action. One of these commentors notes that the total tons of volatile organic compounds (VOC) per summer weekday emitted from non-road mobile sources is listed as 531.03 for this source category. The correct number submitted by MDNR is 111.67.

USEPA Response

The USEPA acknowledges this error. The VOC emissions per summer weekday from the non-road mobile source category in the July 21, 1994 proposal (p. 37192) will be changed to reflect the number submitted by MDNR, 111.67. In addition, the total tons of VOC per summer weekday in the same table will be changed to 971.92. The Daily VOC Emissions table is changed and appears as follows:

DAILY VOC EMISSIONS FROM ALL SOURCES—TONS/SUMMER WEEKDAY

Ozone nonattainment area	Point source emissions	Area source emissions	On-road mobile source emissions	Non-road mobile source emmissions	Biogenic emissions	Total emissions
Detroit/Ann Arbor	167.08	252.27	327.00	111.67	113.90	971.92

II. Final Rulemaking Action

The USEPA approves the ozone emission inventory SIP submitted to the USEPA for the Detroit-Ann Arbor area as meeting the section 182(a)(1) requirements of the Clean Air Act (Act) for emission inventories.

B. Inspection and Maintenance

I. Public Comments and USEPA Responses

The following discussion summarizes and responds to the comments received regarding Inspection and Maintenance.

Comment

One commentor suggests that the USEPA's redesignation decision should be explicitly conditioned upon the requirement for the Michigan Department of Transportation to implement enhanced I/M 240 as a contingency measure. At a bare minimum, the maintenance plan should include the BAR 90 emissions test with visual anti-tampering check for all cars newer than 1975 with no Medicaid waiver.

USEPA Response

The Act requires that nonattainment areas classified as moderate adopt and submit as a SIP revision provisions for implementation of a basic I/M program. See sections 182(a)(2)(B)(i) and (b)(4). Since the Detroit-Ann Arbor area was classified as moderate nonattainment for ozone, the Act requires an I/M program that meets the basic I/M performance standard. The Detroit-Ann Arbor area has implemented an I/M program since 1986, as required by the pre-1990 Act. The area, therefore, must provide for upgrades to the current I/M program to the level of a basic I/M program. Under recent revisions to the national I/M rule (January 5, 1995, 60 FR 1735), however, areas that have requested redesignation to attainment, and are otherwise eligible to obtain approval of the request, may defer adoption and implementation of otherwise applicable requirements established in the originally promulgated I/M rule [1]. The State was required to submit and has submitted, as a contingency measure within the section 175A maintenance plan a commitment, legislative authority and an enforceable schedule for adoption and implementation of a basic I/M program. The contingency plan is described in detail in a subsequent USEPA response within this **Federal Register**.

Comment

One commentor requests that the USEPA delay approval of the redesignation request until Michigan's Joint Committee on Administrative Rules completes its review of the I/M legislation and the USEPA confirms that the essential elements listed at 59 FR

[1] I/M rule was promulgated on November 5, 1992, 57 FR 52950.

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37193–94 regarding basic I/M, upon which redesignation approval relies, are still in place.

USEPA Response

The USEPA cannot delay approval of the redesignation, since Michigan has submitted the elements required and necessary to establish basic I/M as a contingency measure in the section 175A maintenance plan as provided for by the revisions to the national I/M rule. As presented in the July 21, 1994 proposal, the State submittal contains the essential elements listed at 59 FR 37193–94. Basic I/M; if implemented as a contingency measure, may be implemented in Wayne, Oakland, and Macomb counties and expanded to Washtenaw county.

Comment

One commentor is concerned that expanding upgraded [2] basic I/M to Washtenaw, St. Clair, Livingston and Monroe counties is subject to potential legislative veto after the need for contingency measures is triggered. The commentor states that because Michigan's legislature can unilaterally rescind the provisions to extend basic I/M programs to Washtenaw, St. Clair, Livingston and Monroe counties (1993 Mich. Pub. Act 232 § 8(2)(c) & (d)), Michigan's provisions do not appear to meet even the relaxed standards proposed in the June 28, 1994 revisions to the national I/M rule, 59 FR 33237, as being fully self-implementing and enforceable under all circumstances. Therefore, Michigan's basic I/M SIP is not complete or approvable. Consequently, the Detroit-Ann Arbor area is not eligible for redesignation.

USEPA Response

Sections 8(2)(c) and (d) of Michigan's Enrolled House Bill 5016 only apply if the redesignation request is disapproved and basic I/M must be implemented in the entire 7-county Detroit-Ann Arbor area (Wayne, Oakland, Macomb, Washtenaw, St. Clair, Livingston, and Monroe counties). The 45-day notification period in section 8(2)(d) of Michigan Enrolled House Bill 5016 is only applicable, as described in section 8(2)(c), if the redesignation is not approved and the State must implement basic I/M to meet the section 182(b) requirements. Clearly, the 45-day notification period is not applicable for implementation of I/M as a contingency measure. It is important to acknowledge that only notification to the legislature is required, and that no affirmative action on the part of the legislature is necessary to allow the program to be implemented. In addition, States at any time are able to amend existing rules and/or regulations for any required program as a matter of State law. This ability is not a reason for disapproval of any State submittal because such unilateral State action would not affect the Federal enforceability of the version of the State law or regulation the USEPA had approved into the SIP. The I/M legislation for the Detroit-Ann Arbor area satisfies the requirements of the revisions to the national I/M rule.

Sections 8(2)(a) and (b) of the legislation apply if the area is redesignated, and basic I/M is implemented as a contingency measure or as a condition for approval of the redesignation request. In particular, section 8(2)(a) provides that basic I/M may be implemented as a contingency measure in Wayne, Oakland and Macomb county and also expanded to Washtenaw county, if necessary. Together, the basic I/M submittal and redesignation request and the section 175A maintenance plan for the Detroit-Ann Arbor area (1) provide for the adoption of implementing regulations for a basic I/M program, meeting the national basic I/M requirements without further legislation, (2) provide for the implementation of basic I/M upgrades as a contingency measure in the maintenance plan upon redesignation, (3) contain, as a contingency measure within the maintenance plan, a commitment by the Governor to adopt regulations to implement I/M in response to a specified triggering event, and (4) contain a commitment including an enforceable schedule for adoption and implementation of a basic I/M program, as provided in the revisions to the national I/M rule. The revisions to the I/M rule do not, however, require that the basic I/M SIP be fully self-implementing. Consequently, contrary to the commentor's statement, the basic I/M SIP is complete and approvable and the Detroit-Ann Arbor area is eligible for redesignation.

Comment

One commentor states that the USEPA cannot redesignate the Detroit-Ann Arbor area because Michigan's basic I/M SIP submission does not even satisfy the requirements of the USEPA's unlawful policy. In particular, the commentor argues that since the legislature could at any time amend the legislative authority, the USEPA should require the State to submit adopted regulations with a basic I/M SIP. The commentor further argues that Michigan did not submit a sufficiently specific and enforceable schedule for adoption and implementation of a basic I/M program upon a specified triggering event. The commentor also notes that if the State has not adopted the regulations necessary to implement the contingency measure, such measure will not correct any violation promptly as required by the Act and USEPA guidance.

USEPA Response

The commentor states that the 45-day notice provided in the legislation prior to implementation of a required I/M program ensures that the legislature can repeal the legislative authority before it takes effect. This commentor's interpretation of Michigan's Enrolled House Bill 5016 is incorrect. The 45-day notification period in section 8(2)(d) of Michigan Enrolled House Bill 5016 is only applicable under the scenario described in section 8(2)(c), if the redesignation is not approved and the State must implement basic I/M to meet the section 182(b) requirements. Thus, as discussed earlier, the 45-day notification period is not applicable for implementation of I/M as a contingency measure.

The USEPA further responds that Michigan has submitted as part of the 175A maintenance plan an enforceable schedule for adoption and implementation of basic I/M as a contingency measure. Section 6.8.3 of the State's submittal indicates that adoption and implementation schedules for contingency measures would be consistent with those specified in the Act and any corresponding regulations and submitted as part of the technical urban airshed modeling (UAM) analysis. The I/M redesignation rule provides the relevant adoption and implementation schedules. If the Governor chooses I/M to be implemented as the contingency measure, under the schedule of the I/M redesignation rule Michigan incorporated by reference, the State would need to adopt I/M within one year of the trigger date. Michigan's submittal defined the trigger date as the

[2] The Act requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B)(i) requires States to submit SIP revisions for any ozone nonattainment area which has been classified as marginal, pursuant to section 181(a) of the Act, with an existing I/M program that was part of a SIP prior to enactment of the Act or any area that was required by the Act, as amended in 1977, to have an I/M program, to bring the program up to the level required in pre-1990 USEPA guidance, or to what had been committed to previously in the SIP, whichever was more stringent. Areas classified as moderate and worse were also subject to this requirement to improve programs to this level. The Detroit-Ann Arbor area, a moderate ozone nonattainment area, had in effect an I/M program pursuant to the 1977 Act. The area, therefore, was required to improve its existing I/M program to meet the basic I/M program requirements.

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date that the State certifies to the USEPA that the air quality data are quality assured, which will be no later than 30 days after an ambient air quality violation is monitored. Pursuant to the I/M redesignation rule, the trigger date is the date no later than when the USEPA notifies the State of a violation. As long as the trigger date as defined by Michigan occurs prior to the date the USEPA notifies the State of a violation, Michigan's timeframe for implementing I/M as a contingency measure is consistent with the I/M redesignation rule. Because it often takes several months for the USEPA to obtain the data and confirm a violation, it is unlikely that the trigger date as defined by Michigan will be later than that defined in the I/M redesignation rule. However, if the USEPA does notify the State of a violation prior to the State certifying to the USEPA that the ambient air quality data assure a violation, then the trigger date will be the date of the USEPA notification to the State, consistent with the I/M redesignation rule. The basic I/M program, if selected as a contingency measure, must be implemented within 24 months of the trigger date, or 12 months after the adoption of implementing regulations. This schedule is consistent with the I/M redesignation rule, which is the applicable regulation for purposes of establishing an adoption and implementation schedule. This schedule is specific and enforceable since it will be incorporated into the SIP as part of the section 175A maintenance plan. The section 175A(d) requirement for contingency provisions is that they must promptly correct a violation of the NAAQS. The USEPA believes that the schedule provided for implementation of a basic I/M program within the Detroit-Ann Arbor area's section 175A maintenance plan is sufficient to address this requirement in light of the logistics of adopting and implementing a basic I/M program.

The commentor also indicated that the Michigan submittal does not satisfy the USEPA's requirement of a "specified and enforceable schedule" because it does not include a timetable of steps necessary to get the required regulations adopted. As discussed above, because Michigan incorporated by reference the timetable of the I/M redesignation rule, adoption of I/M regulations is specified to occur within one year of the trigger date. The only other interim step necessary to get the required regulations adopted is the proposal of draft regulations. Although the Michigan submittal did not specify a date for the proposal, the State's commitment to a date for promulgation of the final rule implies that the draft regulations will be proposed on a date no later than that necessary to provide for notice and comment and a hearing on the draft regulations. Because Michigan's submittal specified a timetable to get the final regulations adopted, the Michigan submittal has met the requirement to provide a specified and enforceable schedule.

A commentor also suggested that a determination that actual emissions from mobile sources actually exceed those predicted in the emission inventories should also be included as a triggering event. This is neither a requirement of the Act nor of USEPA policy, although it has been suggested as a possible triggering event in guidance, and States are encouraged to use it.

Comment

One commentor challenges the adequacy of Michigan's demonstration that its I/M program did not contribute to Southeast Michigan's attainment, and urged reconsideration of the proposed elimination of the program after 1995.

USEPA Response

Michigan did not claim that the current I/M program did not contribute to the Detroit-Ann Arbor's attainment, nor did it claim credit for the emission reductions achieved as a result of the program within the attainment demonstration. Furthermore, neither the State nor the USEPA has proposed or suggested that the current I/M program be eliminated after 1995. In fact, the State must continue to implement its current I/M program as well as all other SIP control measures that were contained in the SIP prior to the submittal of a complete redesignation request. The September Shapiro[3] memorandum reviews and reinforces the USEPA's policy on SIP relaxations, particularly in the context of redesignation. The memorandum notes that the USEPA's general policy is that a State may not relax the adopted and implemented SIP for an area upon the area's redesignation to attainment unless an appropriate demonstration, based on computer modeling, is approved by the USEPA. Existing control strategies must continue to be implemented in order to maintain the standard. Although section 175A recognizes that SIP measures may be moved to the contingency plan upon redesignation, such a SIP revision may be approved only if the State can adequately demonstrate that such action will not interfere with maintenance of the standard. A demonstration for an area redesignated to attainment for ozone would entail submittal of an attainment modeling demonstration with the USEPA's current Guideline on Air Quality Models, showing that the control measure is not needed to maintain the ozone NAAQS. Also, see memorandum from Gerald A. Emison, April 6, 1987, entitled Ozone Redesignation Policy.

Comment

One commentor states that the USEPA's policy of approving a basic I/M SIP revision that does not include adopted regulations is unlawful.

USEPA Response

The USEPA's specific response to these comments is published in the USEPA's final rulemaking on the revisions to the national I/M rule. See January 5, 1995, 60 FR 1735. In that rulemaking, the commentor also submitted similar remarks and the USEPA's responses to those comments appear in the docket for that rulemaking. It is appropriate for the USEPA to rely on the final I/M rule revisions in taking today's final action, and this rulemaking is not the appropriate forum in which to challenge the validity of the I/M rule revisions.

II. Final Rulemaking Action

The USEPA approves the basic I/M program submitted to the USEPA for the Detroit-Ann Arbor area as meeting the revised national I/M rule (January 5, 1995, 60 FR 1735) for areas redesignated from nonattainment to attainment, consequently satisfying the requirements of section 182(a)(2)(B)(i) of the Act.

C. Redesignation

I. Public Comments and USEPA Responses

The following discussion summarizes and responds to the comments received regarding the redesignation of the Detroit-Ann Arbor area to attainment for ozone.

Comment

One commentor notes that if an expeditious review and approval of MDNR's request had occurred prior to the 1994 ozone season, then any ozone violation thereafter would have prompted the implementation of a contingency measure from the maintenance plan to correct the air quality problem.

[3] September 17, 1993 memorandum from Michael H. Shapiro, entitled SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS on or after November 15, 1992.

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USEPA Response

The Act authorizes the USEPA up to 18 months from submittal to act on a State's request to redesignate. See section 107(d)(3)(D). The process for redesignating areas to attainment is a complex one which is designed not only to identify areas which currently have clean air, but also to assure that clean air will be maintained in the future. There are many statutory requirements which must be satisfied before the redesignation request can be processed, including review and approval of all revisions to the SIP for programs whose deadlines came due prior to submittal of the redesignation request to the USEPA. See September Calcagni [4] memorandum and September Shapiro. Before the USEPA could finally redesignate the area to attainment, all remaining items had to be finally approved, including: (1) the State regulations for Reasonable Available Control Technology (RACT) for VOC,[5] (2) the section 182(f) oxides of nitrogen (NO_X) RACT exemption petition, and 3) revisions to the national motor vehicle I/M rule. The USEPA could not redesignate the Detroit-Ann Arbor area until these actions were finalized. Because all these actions were finalized, the Federal action on the redesignation can be completed. Furthermore, if a violation had occurred during the pendency of the USEPA's review of the ozone redesignation request, the USEPA could not approve the request since the area would not have remained in attainment. As a consequence, further control measures would have been required under the Act.

In any case, the commentor's concern is moot, since no violations of the ozone NAAQS occurred during the 1994 ozone season.

Comment

One commentor suggests that redesignation requests should be Table I decisions to ensure national consistency.

USEPA Response

An October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, revised the SIP tables initially published in the **Federal Register** on January 19, 1989 (54 FR 2214). The USEPA revised these tables in conjunction with the Office of Management and Budget (OMB). The revisions classified all redesignation, except those for total suspended particulate, as Table 2 actions. These actions require the Regional Administrator's decisions and concurrence, but provide a 40-day opportunity for Headquarters review before concurrence by the Regional Administrator. The 40-day Headquarters review is intended to function as a check for national consistency and the USEPA believes that this system provides adequate assurances of consistency.

Comment

One commentor notes that the USEPA's proposed redesignation relies on data from 1993 which was not included in Michigan's November 12, 1993 request, and was not subject to public comment. Further, there is an inconsistency between the years offered by Michigan as a basis for redesignation 1990–92 and the years selected by the USEPA as the basis for considering and actually proposing the redesignation (1991–1993). Therefore, Michigan's redesignation request was not "complete" on November 12, 1993.

USEPA Response

As stated in the proposed rulemaking, Michigan submitted ambient data for 1990–1992 in its November 12, 1993 submission, but did not submit 1993 ozone data because it was not completely quality-assured at the time the request was being developed. Under the guidance of the USEPA, the State submitted the 3 most recent consecutive years of complete air monitoring data (1990–1992), with the understanding that shortly thereafter, the 1993 ozone season data would be available in AIRS for the USEPA to review. The 1993 ozone data was considered by the USEPA and was subject to public comment as a result of the July 21, 1994 proposed rulemaking. Regardless of which years of data are used, 1990–1992 or 1991–1993, Michigan has demonstrated attainment of the ozone NAAQS in the Detroit-Ann Arbor area by providing monitoring data with no violations. Completeness of a SIP submittal is based on the criteria established in 40 CFR part 51, appendix V. Using these, the USEPA found the November 12, 1993 submittal complete in a letter to Michigan dated January 7, 1994. The use of 1993 ozone season data that was not completely quality-assured at the time of the November 12, 1993 submission does not alter the conclusion that the submission, which the USEPA found complete was based on 3 consecutive years of air monitoring data.

Comment

One commentator alleges that USEPA's notice of proposed approval of the redesignation is a product of undue haste since the action was incomplete and failed to give adequate notice of plans for verification of continued attainment. The action skips portions of paragraph (b) Demonstration of Maintenance and paragraph (C) Verification of Continued Attainment on pages 37198–37199. In addition, three paragraphs on page 37198 duplicate text on page 37197.

USEPA Response

The omission of paragraph (B) and (C) and duplicated text is acknowledged. Unfortunately, the Office of Federal Register, inadvertently excluded a number of lines from these two sections of the action. For this reason, the comment period on the July 21, 1994, redesignation was reopened on September 8, 1994, (59 FR 46479 and 46380) for 15 days in order to provide the public an opportunity to appropriately comment on it.

Comment

One commentor requested additional time for reviewing and providing comments on the proposed redesignation due to insufficient time to comment on such a complex proposal.

USEPA Response

As discussed above, the comment period was extended for the redesignation and section 175A maintenance plan in order to give the public sufficient time to review and to submit comments. The correction document and extension of public comment period action were published on September 8, 1994. The USEPA does not believe that any additional extension of time is necessary as an adequate comment period has already been provided.

Comment

One commentor requested a formal USEPA public hearing on the redesignation.

USEPA Response

Under the Act, States can submit proposed implementation plans (and revisions) to the USEPA for approval only after they have afforded interested parties "reasonable notice and public hearing * * *." See Section 110(a)(1) and (a)(2). The State held a public hearing on the proposed redesignation to attainment for ozone and revision to

[4] September 4, 1992 memorandum from John Calcagni, entitled *Procedures for Processing Requests to Redesignate Areas to Attainment.*

[5] The VOC RACT rules were approved in a final rulemaking published on September 7, 1994 in the **Federal Register** (59 FR 46213 and 46182).

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the Michigan SIP, i.e., maintenance plan, on October 22, 1993. There are no provisions, however, requiring the USEPA to hold its own hearings. The USEPA is required to provide the opportunity for public comment. The USEPA announced opportunities on July 21, 1994 and September 8, 1994 for the public to submit comments. The USEPA believes those opportunities represent a more than ample opportunity for public input and comment on this redesignation.

Comment

One commentor states that the air quality in the area has been poor and has gotten worse in the past 10 years. Offensive odors are apparent when it is slightly overcast or during the night when a local incinerator is burning.

USEPA Response

This redesignation pertains to solely to ozone, and would not affect offensive odors from an incinerator, regardless of whether these odors are evident during slightly overcast skies or at night. Redesignating the area to attainment for ozone would neither solve nor contribute to the problem. The incinerator must continue to operate existing control equipment in compliance with its own applicable permits, rules and regulations. Ambient monitoring data from 1990 through 1994 demonstrates that the area is attaining the ozone NAAQS. This evidences that the air quality has improved at least since the period 1987–1989, the years of air quality data which were used to designate the area nonattainment for ozone.

Comment

A number of commentors urge the USEPA to reconsider the NAAQS for ground level ozone. One commentor notes that Canada's ozone standard' is 82 parts per billion (ppb) while the United States' (U.S.) is 125 ppb.[6] This disparity in limits continues to be debated in the U.S. courts with the American Lung Association and others, who contend that the U.S. must lower its limit to 82 ppb, or lower, for health based reasons. Another commentor states that the current ozone NAAQS is not protective of the public health, and should be made more stringent to comply with the Congressional mandate to protect public health with an "adequate margin of safety."

[6] This is equivalent to 0.125 parts per million (ppm). This is the reference used by the commentor, presumably, to illustrate the difference between the Canadian objective and U.S. standard.

USEPA Response

The USEPA is currently in the process of reevaluating the ozone NAAQS and expects to make a final decision in mid-1997. Until any change is made, however, the USEPA is bound to implement the provisions of the Act as they relate to the current standard, including those relating to designations and redesignation.

Comment

One commentor notes that MDNR has taken the position that the measured concentration must exceed 125 ppb before a legally actionable exceedance that contributes to a 3 year running average on the number of days with exceedances is triggered. As a result, MDNR has not included as excursions days with maximum numbers that actually do exceed the published standard of 0.12 ppm.

USEPA Response

Published guidance (Guideline for the Interpretation of Ozone Air Quality Standards, January 1979, EPA–450/4–79–003), which is part of the ozone standard by reference in 40 CFR part 50, appendix H, notes that the stated level of the standard is determined by defining the number of significant figures to be used in comparison with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and therefore, 0.125 ppm is the smallest three-decimal concentration value in excess of the level of the standard. Therefore, MDNR is following USEPA national guidance.

Comment

The commentor objects to the USEPA's proposed disapproval of the redesignation request if a monitored violation of the ozone NAAQS occurs prior to final USEPA action on the redesignation. The commentor notes further that since the area has reached attainment of the NAAQS and has requested redesignation, a requirement to implement contingency measures to correct the problem would be sound policy in the event of a violation during 1994.

USEPA Response

Section 107(d)(3)(E) of the Act establishes five criteria which must be satisfied in order for the USEPA to redesignate an area from nonattainment to attainment. One of these criteria is that the Administrator determine that the area has attained the NAAQS. See section 107(d)(3)(E)(i). This requirement clearly prohibits the Administrator from redesignating areas that have not attained the NAAQS. If a violation had occurred prior to the USEPA's final action, the Detroit-Ann Arbor area would no longer have been in attainment and the USEPA could not redesignate the area to attainment. Furthermore, only a final rulemaking action can change an area's designation under 40 CFR part 81. Despite the July 21, 1994 proposal, the area must continue to meet this criterion until final rulemaking is published. As a result, the USEPA must consider air quality data that is collected until the date of final rulemaking and revision of the area's nonattainment status under 40 CFR part 81.

In addition, the USEPA's September Calcagni memorandum, page 5, states that Regions should advise States of the practical planning consequences if the USEPA disapproves the redesignation request or if the request is invalidated because of violations recorded during USEPA's review. This policy has been followed in disapproving the Richmond, Virginia redesignation, which was disapproved due to violations of the ozone NAAQS occurring prior to final action on a proposed approval of the redesignation (May 3, 1994, 59 FR 22757).

With respect to a requirement to implement contingency measures in the event of a violation prior to final approval of a redesignation, the USEPA notes that the Detroit-Ann Arbor area, like any other nonattainment area, is subject to the contingency measure requirements of section 172(c)(9) until the area is redesignated to attainment.

In any case, the commentor's concern is moot, since no violations of the ozone NAAQS occurred during the 1994 ozone season.

Comment

Several commentors request that the Detroit-Ann Arbor area be denied redesignation to attainment until it is clearly shown, using 1994 data, that the area is in attainment. Other commentors noted that although the Detroit-Ann Arbor area experienced only one ozone exceedance from 1991 to 1993 or 1990 to 1992, it experienced at least three ozone exceedances in 1994 alone. Commentors provided specific monitored ozone values recorded at Detroit-Ann Arbor area monitors during the 1994 ozone season. The following ozone concentrations from Detroit-Ann Arbor area monitors were provided: 133 ppb at the Algonac monitor, 142 ppb at the New Haven monitor, 145 ppb at the Warren monitor, 178 ppb at the Port Huron monitor, and 127 ppb at the Oak Park monitor.

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USEPA Response

As discussed above, the USEPA could not approve the redesignation if a violation occurred during the USEPA's review of the request. Consequently, while the July 21, 1994 action proposed to approve the redesignation, it also proposed, in the alternative, to disapprove the redesignation if violations of the ozone NAAQS occur before the USEPA took final action on the redesignation.

Title 40 CFR part 50.9 establishes the ozone NAAQS, measured according to appendix D, as 0.12 ppm (235 micrograms per cubic meter (ug/m3)). The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm (235 ug/m3) is equal to or less than 1 as determined by 40 CFR part 50 appendix H. Further discussion of these procedures and associated examples are contained in the document Guideline for Interpretation of Ozone Air Quality Standards, January 1979, EPA–450/4–79–003. Simply, the number of exceedances at a monitoring site would be recorded for each calendar year and then averaged over the past 3 calendar years to determine if this average is less than or equal to 1. The net result is that each monitor in an area is allowed to record 3.0 expected exceedances in a 3 year period. More than 3.0 expected exceedances in a 3-year period would constitute a violation of the ozone NAAQS. As explained in the July 21, 1994 proposed rulemaking (59 FR 37190), the Detroit-Ann Arbor area has attained the ozone NAAQS during the 1990–1992 and 1991–1993 periods. The 1994 ozone season has concluded and while there have been some recorded ozone exceedances in the Detroit-Ann Arbor area, they do not (in consideration with 1992 and 1993 data) constitute a violation of the ozone standard. Consequently, the Detroit-Ann Arbor area continues to attain the ozone standard at this time. The USEPA has considered all air quality data collected prior to final rulemaking on the redesignation request.

Comment

One commentor questions whether actual attainment and maintenance of the standard was achieved and suggests that paper demonstrations of attainment and maintenance should *not* be given more weight in decisionmaking when compared to actual adverse air quality monitoring data showing unhealthy concentrations of ozone, or data that is marginally so.

USEPA Response

The USEPA notes that it has not given "paper" (or more properly, analytical) demonstrations of attainment more weight than ambient monitoring data. As discussed above, the ambient air quality monitoring data for the Detroit-Ann Arbor area demonstrates attainment of the ozone NAAQS over the time periods of 1990–1992, 1991–1993, and 1992–1994. Furthermore, continued maintenance of the ozone NAAQS will be determined by continued ambient monitoring.

Comment

One commentor asserted that the USEPA cannot redesignate the Detroit-Ann Arbor area because the USEPA must determine the relevant applicable requirements at the time of approval of an area's redesignation request and the State must satisfy them. According to the commentor, section 175A(c) of the Act requires that all requirements of subpart D remain in force until an area is redesignated. The commentor argued that the USEPA's interpretation of section 107(d)(3)(E), pursuant to which the USEPA determines whether an area seeking redesignation has met the Act requirements applicable prior to or at the time of the submission of a redesignation request, is inconsistent with section 175A(c). Specifically, the commentor argued that the Act prohibits the redesignation of the Detroit-Ann Arbor area because the area has not submitted by November 15, 1993, an approvable SIP revision providing for 15 percent VOC reductions, nor satisfied the basic I/M and New Source Review (NSR) requirements that came due prior to the submission of the redesignation request. Moreover, the commentor claimed that the USEPA's interpretation encourages States to delay implementation of the Act since delay in implementing requirements that come due after the submission of a redesignation request would not affect the approvability of the request.

USEPA Response

The USEPA has interpreted section 107(d)(3)(E) to mean that the section 110 and part D provisions that are required to be fully approved in order for a redesignation to be approved are those which came due prior to or at the time of the submittal of a complete redesignation request. At the same time, however, the USEPA has maintained that States continue to be statutorily obligated to meet any SIP requirements that come due after the submission of the redesignation request before the USEPA takes final action to redesignate an area. As a consequence, the USEPA has also followed a policy of issuing findings of failure to submit if a State that has submitted a redesignation request fails to comply with a SIP submittal requirement that comes due after the submission of a redesignation request. See September and October Calcagni[7] memorandums, September Shapiro memorandum, and the memorandum dated January 7, 1994, from John S. Seitz to Regional Air Division Directors, entitled "Procedures for SIP Elements Due November 15, 1993." The USEPA believes that its approach is both reasonable and harmonizes the pertinent provisions of the Act in a workable manner that is consistent with the language and intent of the Act. Moreover, the USEPA believes that the interpretation advocated by the commentor would be unworkable and make it virtually impossible for areas to be redesignated to attainment.

The pertinent provisions of the Act are as follows. Section 107(d)(3)(E)(v) of the Act provides that a State must have met "all requirements applicable to the area under section 110 and part D" in order to be redesignated. Furthermore, section 107(d)(3)(E)(ii) provides that the USEPA must have fully approved the SIP for the area seeking redesignation. Finally, section 175A(c) provides that the requirements of part D remain in force and effect for an area until such time as it is redesignated.

The USEPA believes that it is both logical and reasonable to interpret section 107(d)(3)(E)(ii) and (v) so that, for purposes of the evaluation of a redesignation request, the only requirements that are "applicable" and for which the SIP must be fully approved before the USEPA may approve the redesignation request are those that came due prior to or at the time of the submission of a complete redesignation request.

The first reason that it is reasonable to determine the approvability of a redesignation request on the basis of compliance with only Act requirements applicable prior to or at the time of the submission of the request is that holding the State to a continuing obligation to comply with subsequent requirements coming due after the submission of the request for purposes of the redesignation would make it impossible in many instances for the USEPA to act on redesignation requests in accordance with the 18-month deadline mandated

[7] October 28, 1992 memorandum from John Calcagni entitled *SIP Actions Submitted in Response to Clean Air Act Deadlines.*

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by Congress for such actions in section 107(d)(3)(C). This is because each Act requirement coming due during the pendency of the USEPA's review of a redesignation request carries with it a necessary implication that the USEPA must also fully approve the SIP submission made to satisfy that requirements in order for the area to be redesignated. Otherwise, the area would fail to satisfy the redesignation requirement of section 107(d)(3)(E)(ii) to have a fully-approved SIP. As Congress limited the USEPA to an 18-month period to take final action on complete redesignation requests, Congress could not have intended that, for those requests to be approved, States make additional SIP submissions that would require the USEPA to undertake action that would necessarily delay action on the redesignation request beyond the 18-month time frame. (The delay would occur due to the time needed for the USEPA to take action regarding the determinations as to whether to find those SIP submissions complete and to approve or disapprove them. Congress accorded the USEPA up to 18 months from the submission of a SIP revision to take such action. *See* section 110(k).)

Another reason that the USEPA's interpretation is reasonable is that the fundamental premise for a request to redesignate a nonattainment area to attainment is that the area has attained the relevant NAAQS. Thus, an area for which a redesignation request has been submitted should have already attained the NAAQS as a result of the satisfaction of Act requirements that came due prior to the submission of the request, and it is reasonable to view the only requirements applicable for purposes of evaluating the redesignation request as those that had already come due since those requirements were the ones that presumably led to attainment of the NAAQS—which is the primary purpose of title I of the Act. To require that a State continue to satisfy requirements coming due during the pendency of the USEPA's review of a complete redesignation request in order to have the redesignation approved would require the State to do more than was needed to attain the NAAQS.

The USEPA's interpretation by no means eliminates the obligation of States to comply with requirements coming due after the submission of a redesignation request. Rather, it simply means that areas may be redesignated even though the State may not have complied with those requirements. As the USEPA's policy makes clear, in accordance with the requirements of section 175A(c), the statutory obligation of the States to fulfill those requirements remains in effect until the USEPA takes final action to redesignate an area to attainment. Thus, the USEPA's policy is to issue findings of failure to submit if a State fails to submit a SIP revision to fulfill such a requirement, thereby triggering a clock that will result in the imposition of mandatory sanctions, under section 179 of the Act, 18 months after the issuance of the finding unless the USEPA approves the redesignation request prior to the expiration of the sanctions clock.

Thus, if a State chooses not to submit a complete and approvable SIP revision to comply with a requirement that comes due after the submission of a redesignation request, it runs the risk it will be sanctioned in the event that the USEPA does not approve the redesignation request. For example, in the case of the Detroit-Ann Arbor area, on January 21, 1994, the USEPA started the 18-month sanctions clock for the 15 percent reduction plan required by section 182(b)(1) to be submitted by November 15, 1993 after the State had submitted its complete redesignation request for the Detroit-Ann Arbor area, by finding the area's 15 percent plan incomplete. If the USEPA were not now approving the redesignation request, the sanctions clock would continue to run and the State would continue to be subject to the risk that sanctions would be imposed. Notably, a State seeking redesignation for an area is in the same position as to the initiation of sanctions clocks for the failure to make a submittal as any other State. Thus, if Michigan had *not* submitted a redesignation request for the Detroit-Ann Arbor area and nevertheless had failed to submit a complete 15 percent plan by November 15, 1993, it would also have been subject to a finding of failure to submit and the consequent commencement of a sanctions clock.

For this reason, the USEPA disagrees with the comment's contention that the USEPA's interpretation regarding the requirements applicable for purposes of evaluating redesignation requests encourages States to delay implementation of the Act. States seeking redesignation for areas are subject to sanctions for failure to submit SIP revisions in accordance with the Act's requirements in the same way that States not seeking redesignation are. To the extent that the USEPA's interpretation results in States not adopting measures they might otherwise have had to, such a result is a consequence of the only workable interpretation of the provisions of section 107 concerning applicable requirements and that result does not justify rejecting that interpretation. This is particularly so since the only areas that benefit from this interpretation are those that have attained the ambient air quality standards and have demonstrated that they will continue to maintain them in the future.

Thus, the USEPA believes it may approve the Detroit-Ann Arbor redesignation request notwithstanding the lack of a fully approved 15 percent plan. Such action is consistent with the USEPA's national policy and is permissible under the Act. (The commentor's contentions regarding the basic I/M plans and NSR review program are dealt with as part of the responses to other comments on those programs elsewhere in this document.)

Comment

One commentor stated that the requirement of both general and transportation conformity is an important element of Michigan's attainment SIP and that the USEPA's notice has not addressed conformity in the context of the redesignation. Adverse consequences will stem from failure to continue to require conformity analyses and measures. Another commentor states that redesignation does not excuse the State from submitting a conformity SIP revision for the Detroit-Ann Arbor area or from including a motor vehicle emission budget for NO_x in the area's maintenance plan. The commentor further states that the NO_x waiver available under section 182(f), has no connection with the conformity requirements for transportation plans and programs contained in section 176(c)(2)(A) and 176(c)(1)(B).

USEPA Response

The July 21, 1994 proposal (59 FR 37190) did state that the November 24, 1993 (59 FR 62188) transportation and November 30, 1993 (59 FR 63214) general conformity rules require States to adopt transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. The proposal further explained that, although conformity is applicable in these areas, since the deadline for submittal had not come due for these rules at the time Michigan submitted a redesignation request, the approval of the redesignation is not contingent on these submittals to comply with section 107(d)(3)(E)(v). The Detroit-Ann Arbor area must comply with the section 176 conformity regulations as required by the conformity rules and the Conformity General Preamble (June 17, 1994, 59 FR

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31238)[8]. According to these rules, conformity applies to nonattainment areas as well as maintenance areas. Once redesignated, the Detroit-Ann Arbor area will be a maintenance area which will be required to conduct emission analyses to determine that the VOC and NO_X emissions remain below the motor vehicle emission budget established in the maintenance plan. Transportation and general conformity apply to maintenance areas and therefore, the Detroit-Ann Arbor area must comply with these rules. The Conformity General Preamble to the conformity regulations further clarifies this issue, particularly as it pertains to areas requesting and obtaining a section 182(f) NO_X exemption. According to the conformity rules and preamble, the Detroit-Ann Arbor area's conformity test will be to remain within the VOC and NO_X budgets established in the section 175A maintenance plan. Michigan has established a motor vehicle emission budget for NO_X in the area's maintenance plan.

The commentor's suggestion that the section 182(f) exemption has no connection to the conformity requirements for transportation plans and programs contained in section 176(c)(2)(A) and 176(c)(1)(B) was made in response to the August 10, 1994 proposal to approve the section 182(f) NO_X exemption for the Detroit-Ann Arbor area. The USEPA's response is, therefore, articulated in the final rulemaking approving the section 182(f) NO_X exemption petition for the Detroit-Ann Arbor area published elsewhere in this **Federal Register**.

Comment

One commentor states that areas are requesting exemptions from the NO_X control measures based on incomplete modeling studies (i.e. Lake Michigan and Southeast Michigan Ozone Studies) which do not accurately predict the relative contribution of mobile source emissions because the mobile source emissions inventory understates its contribution to ozone production. Furthermore, given the uncertainty of mobile source NO_X contributions to ozone and the inaccuracy of mobile source inventories, it is inappropriate to remove from the SIP any NO_X or VOC conformity analysis.

USEPA Response

Exemption from the section 182(f) NO_X requirements is provided for in sections 182(f)(1)(a) and 182(f)(3) of the Act. Michigan submitted such an exemption request on November 12, 1993 for the Detroit-Ann Arbor area based on 3 consecutive years of clean air quality monitoring data, not on a modeling study or analysis. In addition, approval of an exemption based on monitoring data will be contingent on the area's maintenance of the ozone NAAQS. As noted previously, a section 182(f) NO_X exemption will not exempt areas from compliance with the conformity regulations. The USEPA refers the commentor to the final rulemaking approving the section 182(f) NO_X exemption petition for the Detroit-Ann Arbor area published elsewhere in this **Federal Register**.

Comment

One commentor notes that there is no reasonable or adequate basis for eliminating Michigan's existing NSR program from the current SIP. Another commentor states that the USEPA cannot redesignate the Detroit-Ann Arbor area because Michigan has not met the NSR requirements under section 182(b)(5).

USEPA Response

The USEPA believes that the Detroit-Ann Arbor area may be redesignated to attainment notwithstanding the lack of a fully-approved NSR program meeting the requirements of the 1990 Act amendments and the absence of such an NSR program from the contingency plan. This view, while a departure from past policy, has been set forth by the USEPA as its new policy in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.

The USEPA believes that its decision not to insist on a fully-approved NSR program as a pre-requisite to redesignation is justifiable as an exercise of the Agency's general authority to establish de minimis exceptions to statutory requirements. See *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360–61 (D.C. Cir. 1979). Under *Alabama Power Co.* v. *Costle*, the USEPA has the authority to establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally.

In this context, the issue presented is whether the USEPA has the authority to establish an exception to the requirements of section 107(d)(3)(E) that the USEPA have fully-approved a SIP meeting all of the requirements applicable to the area under section 1 and part D of title I of the Act. Plainly the NSR provisions of section 110 an part D are requirements that were applicable to the Michigan area seeki redesignation at the time of the submission of the request for redesignation. Thus, on its face, secti 107(d)(3)(E) would seem to require th the State have submitted and the USEPA have fully-approved a part D NSR program meeting the requireme of the Act before the areas could be redesignated to attainment.

Under the USEPA's de minimis authority, however, it may establish exception to an otherwise plain statutory requirement if its fulfillmer would be of little or no environmenta value. In this context, it is necessary determine what would be achieved b insisting that there be a fully-approv part D NSR program in place prior to redesignation of the Detroit-Ann Arb area. For the following reasons, the USEPA believes that requiring the adoption and full-approval of a part NSR program prior to redesignation would not be of significant environmental value in this case.

Michigan has demonstrated that maintenance of the ozone NAAQS w occur even if the emission reduction expected to result from the part D NS program do not occur. The emission projections made by Michigan to demonstrate maintenance of the NAAQS considered growth in point source emissions (along with growth other source categories) and were premised on the assumption that the Prevention of Significant Deteriorati (PSD) program, rather than the part NSR, would be in effect, during the maintenance period. Under NSR, significant point source emissions growth would not occur. Michigan assumed that NSR would not apply redesignation to attainment, and therefore, assumed source growth factors based on projected growth in economy and in the area's populatio (It should be noted that the growth factors assumed may be overestimat under PSD, which would restrain so growth through the application of be available control techniques.) Thus, contrary to the assertion of the commentor, Michigan has demonstr that there is no need to retain the pa D NSR as an operative program in th SIP during the maintenance period i order to provide for continued maintenance of the NAAQS. (If this demonstration had not been made, would have had to have been retain in the SIP as an operative program s it would have been needed to maint the ozone standard.)

[8] On November 18, 1994 and November 29, 1994, Michigan submitted SIP revisions to comply with the Transportation and General conformity rules.

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The other purpose that requiring the full-approval of a part D NSR program might serve would be to ensure that NSR would become a contingency provision in the maintenance plan required for these areas by sections 107(d)(3)(E)(iv) and 175A(d). These provisions require that, for an area to be redesignated to attainment, it must receive full approval of a maintenance plan containing "such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area." Based on this language, it is apparent that whether an approved NSR program must be included as a contingency provision depends on whether it is a "measure" for the control of the pertinent air pollutants.

As the USEPA noted in the proposal regarding this redesignation request, the term "measure" is not defined in section 175A(d) and Congress utilized that term differently in different provisions of the Act with respect to the PSD and NSR permitting programs. For example, in section 110(a)(2)(A), Congress required that SIPs to include "enforceable emission limitations and other control measures, means, or techniques* * *as may be necessary or appropriate to meet the applicable requirements of the Act." In section 110(a)(2)(C), Congress required that SIPs include "a program to provide for the enforcement of the *measures* described in subparagraph (A), *and* regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D." (Emphasis added.) If the term measures as used in section 110(a)(2) (A) and (C) had been intended to include PSD and NSR there would have been no point to requiring that SIPs include both measures *and* preconstruction review under parts C and D (PSD or NSR). Unless "measures" referred to something other than preconstruction review under parts C and D, the reference to preconstruction review programs in section 110(a)(2)(C) would be rendered mere surplusage. Thus, in section 110(a)(2) (A) and (C), it is apparent that Congress distinguished "measures" from preconstruction review. On the other hand, in other provisions of the Act, such as section 161, Congress appeared to include PSD within the scope of the term "measures."

The USEPA believes that the fact that Congress used the undefined term "measure" differently in different sections of the Act is germane. This indicates that the term is susceptible to more than one interpretation and that the USEPA has the discretion to interpret it in a reasonable manner in the context of section 175A. Inasmuch as Congress itself has used the term in a manner that excluded PSD and NSR from its scope, the USEPA believes it is reasonable to interpret "measure," as used in section 175A(d), not to include NSR. That this is a reasonable interpretation is further supported by the fact that PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR.[9] This distinguishes NSR from other required programs under the Act, such as inspection and maintenance and RACT programs, which have no corollary for attainment areas. Moreover, the USEPA believes that those other required programs are clearly within the scope of the term "measure."[10]

The USEPA's logic in treating part D NSR in this manner does not mean that other applicable part D requirements, including those that have been previously met and previously relied upon in demonstrating attainment, could be eliminated without an analysis demonstrating that maintenance would be protected. As noted above, Michigan has demonstrated that maintenance would be protected with PSD in effect, rather than part D NSR. Thus, the USEPA is not permitting part D NSR to be removed without a demonstration that maintenance of the standard will be achieved. Moreover, the USEPA has not amended its policy with respect to the conversion of other SIP elements to contingency provisions, which is that they may be converted to contingency provisions only upon a showing that maintenance will be achieved without them being in effect. Finally, as noted above, the USEPA believes that the NSR requirement differs from other requirements, and does not believe that the rationale for the NSR exception extends to other required programs.

As the USEPA has recently changed its policy, the position taken in this action is consistent with the USEPA's current national policy. That policy permits redesignation to proceed without otherwise required NSR programs having been fully approved and converted to contingency provisions provided that the area demonstrates, as has been done in this case, that maintenance will be achieved with the application of PSD rather than part D NSR.

Comment

One commentor suggests that the USEPA's rulemaking is an effort to permit Michigan to avoid including the 15 percent Rate-of-Progress (ROP) measures, required of moderate nonattainment areas in the SIP. It is essential to have elements of the 15 percent ROP plan available as contingency measure in the attainment plan. It is not clear that the current rulemaking procedure will allow that to happen.

USEPA Response

As explained above, under the USEPA's interpretation of section 107, an area need not meet all section 110 and part D requirements that become applicable after the submittal of a complete redesignation request in order to have the request approved. Therefore, the 15 percent ROP plan, which was not due to be submitted until November 15, 1993, after the submission of the redesignation request, is not required to be fully approved into the SIP before redesignating the area to attainment. Similarly the section 175A contingency plan need not include all measures that

[9] The U.S. EPA is not suggesting that NSR and PSD are equivalent, but merely that they are the same type of program. The PSD program is a requirement in attainment areas and designed to allow new source permitting, yet contains adequate provisions to protect the NAAQS. If any information including preconstruction monitoring, indicates that an area is not continuing to meet the NAAQS after redesignation to attainment, 40 CFR 51 appendix S (Interpretive Offset Rule) or a 40 CFR 51.165(b) program would apply. The USEPA believes that in any area that is designated or redesignated as attainment under section 107, but experiences violations of the NAAQS, these provisions should be interpreted as requiring major new or modified sources to obtain VOC emission offsets of at least a 1:1 ratio, and as presuming that 1:1 NO_x offsets are necessary. See October 14, 1994 memorandum from Mary Nichols entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.

[10] The U.S. EPA also notes that in the case of the Michigan area, all permits to install for major offset sources and major offset modifications issued by the State in the moderate nonattainment areas since November 15, 1992 have complied with the 1.15 to 1.0 offset ratio. In addition, permits to install cannot be issued under the PSD program unless the applicant can demonstrate that the increased emissions from the new or modified source will not result in a violation of the NAAQS. Michigan's Rule 702, which is part of the SIP, requires the installation of Best Available Control Technology regardless of size or location of all new and modified sources in the State. In addition, Michigan's Rule 207, also approved in the SIP, requires denial of any permit to install if operation of the equipment will interfere with attainment or maintenance of the NAAQS.

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would have been included in the 15 percent plan since those measures were not required to be included in the SIP prior to redesignation. Furthermore, some elements of the incomplete 15 percent ROP plan that Michigan did submit for the Detroit-Ann Arbor area are included in the maintenance plan and are available as contingency measures in the maintenance plan. These elements include basic I/M, Stage I expansion,[11] and Stage II vapor recovery. The USEPA believes that the menu of contingency measures is adequate and that additional contingency measures are not necessary.

As for the commentor's effort to ascribe subjective motivations to the USEPA in acting on this redesignation, the USEPA believes such contentions are simply irrelevant.

Comment

One commentor states that there can be no redesignation until Michigan submits a complete and approvable 15 percent ROP plan. The commentor alleges that since Michigan's application was not complete on November 12, 1993, all moderate area provisions including the 15 percent plan must be in place to accomplish the redesignation. The commentor notes that Stage II vapor recovery and an upgraded I/M program should be in Michigan's SIP to assure continued maintenance of the NAAQS.

USEPA Response

After the USEPA's review, on January 21, 1994, the redesignation request was found complete on the basis of the completeness criteria codified in 40 CFR part 51, appendix V. As explained above, the November 12, 1993 request was based on three complete years of clean data, and the consideration of subsequent air quality data does not alter the conclusion that that request was complete. Thus, the November 12, 1993 redesignation request is complete and, in accordance with the USEPA's policy on applicable requirements (described above), the 15 percent plan need not be submitted or approved prior to approval of the redesignation.

With respect to the commentor's assertions regarding the need for Stage II vapor recovery and an upgraded I/M program to assure maintenance, the USEPA notes that the State has provided an adequate demonstration that maintenance will occur even in the absence of those programs. The State's emissions projections underlying the maintenance demonstration are discussed in the proposal at 59 FR 37197, and the commentor has provided no evidence that those projections are erroneous. Furthermore, the USEPA notes that Stage II vapor recovery and an upgraded I/M program were not implemented in the area in the period of attainment and therefore, did not contribute to attainment of the ozone NAAQS. Stage II vapor recovery and basic I/M, however, are control measures included as contingency measures within the maintenance plan. Thus, Stage II and basic I/M may be implemented in the event a violation of the ozone NAAQS occurs during the maintenance period. The basic I/M program included in the contingency plan would upgrade and expand the current I/M program being implemented in the Detroit area. As the Detroit-Ann Arbor area has demonstrated attainment and maintenance of the ozone NAAQS without implementation of Stage II and an upgraded I/M program those measures may be made part of the contingency plan without implementation until such time as a violation of the ozone NAAQS warrants their implementation. The State, however, must continue to implement all programs currently in place in the Detroit-Ann Arbor area including the existing I/M program.

Comment

Several commentors suggested that meteorological conditions observed in Michigan and Canada were not conducive to ozone formation. These meteorological conditions, coupled with a general reduction of emissions in the Detroit-Ann Arbor area resulting from an economic downturn, resulted in the attainment claimed by the Detroit-Ann Arbor area. The commentors believe that the attainment claimed by Michigan is not based on real reductions of ozone precursor gases (NO_X and VOC).

USEPA Response

Section 107(d)(3)(E)(iii) requires that, for the USEPA to approve a redesignation, it must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions. The September Calcagni memorandum, at page 4, clarifies this requirement by stating that "[a]ttainment resulting from temporary reductions in emission rates (e.g., reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions." As discussed in the July 21, 1994 **Federal Register** notice, the State of Michigan has demonstrated that permanent and enforceable emission reductions are responsible for the rece improvement in air quality. This demonstration was accomplished through an estimate of the reductions (from the year that was used to determine the design value for designation and classification) of VOC and NO_X achieved through Federal measures such as the Federal Motor Vehicle Control Program (FMVCP) and fuel volatility rules implemented from 1988–1993, as suggested by the September Calcagni memorandum. Th total reductions achieved from 1988 t 1993 were 226 tons of VOC and 45 ton of NO_X per day. These emission reductions were primarily the result o the FMVCP and RVP reductions from 11.0 pounds per square inch (psi) in 1988, to 9.5 in 1990 and finally, to 9.0 in 1993. The State only claimed credi for emission reductions achieved as a result of implementation of these federally enforceable control measure These emission reductions claimed by Michigan are conservative since they not account for emission reductions resulting from other control measures and programs implemented during th time period such as the current I/M program and VOC RACT. The State, therefore, adequately demonstrated th the improvement in air quality is due permanent and enforceable emission reductions of 226 tons VOC and 45 to of NO_X per day as a result of implementing the federally enforceab FMVCP and RVP reductions.

With respect to the issue of unusua favorable meteorology, the commento have not supplied and the USEPA is n aware of data demonstrating that the meteorological conditions in the Detr Ann Arbor area in 1990 and subseque years were unusually favorable with respect to the impact on ozone formation. The USEPA examined the average meteorological parameters of maximum monthly temperatures, monthly precipitation, and days with temperatures greater than 90 degrees Fahrenheit for the periods of April through September, 1991 through 199 with the 9-year (1982–1990) averages these parameters. The 1991–1993 averages for these parameters agreed with those for the 9-year averages wit only minor differences. Based on averaged parameters, it can be concluded that the 1991–1993 period was typically conducive to ozone formation. Further, the USEPA notes that the Detroit-Ann Arbor area has b in attainment for three consecutive three-year periods (1990–1992, 1991–

[11] The expanded applicability of Stage I to county boundaries of each nonattainment area classified as moderate and above.

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1993, and 1992–1994), and that this, along with the fact that real emission reductions have occurred, indicates that attainment is not due to unusually favorable, temporary meteorological conditions.

Comment

A few commentors noted that "Ozone Action!" days were declared on selected bad meteorology days, with extensive media publicity asking the public to reduce activities having the potential to emit ozone precursors. It is entirely possible that the voluntary reduction program had an effect in the summer of 1994 to reduce potential ozone excursions. The existence of the voluntary program should be considered in evaluating the summer 1994 data. In addition, one commentor stated that this is an attempt to deny industry's responsibility to reduce emissions by shifting the burden onto private households though these "Ozone Action!" days.

USEPA Response

Attainment has been demonstrated for 1990–1992, and 1991–1993, and an attainment level of emissions identified at which time no such voluntary program was being implemented in the Detroit-Ann Arbor area. Michigan has also demonstrated through emission projections that the precursor emissions will remain below the attainment year levels thorough the year 2005 without accounting for any emission reductions that may have resulted from implementation of a voluntary program. With respect to any possible impact of a voluntary emission reduction program on 1994 emissions, the USEPA notes that the commentor has not provided and the USEPA has no basis for attempting to assess the impact of such program on emission and monitored air quality levels. Thus, the USEPA has no basis for any determination regarding the impact of the program, and does not believe that speculation regarding such impacts provides a basis for disapproving the redesignation.

Comment

One commentor states that emission control programs mandated by the Act cannot be converted to contingency measures, that the Act does not authorize conversion of required emission reduction programs to contingency measures and that section 175A(d) imposes a mandatory duty on an area that is redesignated to continue the emission control programs the area adopted prior to redesignation. The commentor further elaborates by stating that "the SIP implementation requirement is included in the section discussing contingency provisions because contingency provisions automatically become effective if an area fails to implement the applicable SIP requirements. Inclusion of the provision in section 175A(d) does not by any stretch of statutory interpretation authorize converting a control measure that must be complied with now to a contingency measure that only need be complied with at some later date, if ever." The commentor also contended that allowing the conversion of mandatory control programs to contingency measures is bad policy since the public will suffer harmful exposure during the time necessary to implement the program after the event triggering the contingency measures occurs. According to the commentor, the delay would be exacerbated due to the USEPA's failure to require adopted regulations for the programs.

USEPA Response

The Act contains many requirements that States adopt certain measures specifically for nonattainment areas. Those requirements do not by their own terms continue to apply to an area after it has been redesignated to attainment. Moreover, nothing in section 175A itself suggests that these requirements must continue to be met in redesignated areas. Section 175A(d) is specifically and clearly applicable to contingency provisions and their inclusion in a section 175A maintenance plan. Section 175A(d) establishes that SIP revisions submitted under 175A must contain contingency provisions, as may be necessary, to assure that the State will promptly correct any violation of the ozone NAAQS that occurs after redesignation to attainment. It further requires that these contingency provisions include a requirement for the State to implement all measures with respect to the control of ozone that were in the nonattainment SIP before the area was redesignated. This provision clearly demonstrates that section 175A(d) contemplates that there may be fully adopted but unimplemented control measures in the SIP prior to redesignation that will be shifted into the maintenance plan as contingency measures. Nothing in section 175A suggests that the measures that may be shifted into the contingency plan do not include programs mandated by the Act when the area was designated nonattainment. As section 175A(a) requires adoption and implementation of measures to ensure maintenance, it indicates that measures may not be converted to contingency provisions unless the State demonstrates that the standard will be maintained in the absence of the implementation of such measures.

The USEPA disagrees with the commentor's assertion that its policy regarding the conversion of emission control programs mandated by the Act to contingency measures is bad policy due to delays that could occur. Programs required to be adopted and submitted to the USEPA prior to the submission of a redesignation request will already have been adopted and may be implemented with minimal delay in the event contingency measures are triggered. Such measures satisfy the requirement of section 175A(d) that the contingency provisions "promptly correct any violation of the standard which occurs after redesignation."

With respect to the commentor's specific assertions that the USEPA should require upgrades to basic I/M and NSR programs to be fully adopted by the State and approved by the USEPA prior to redesignation, the USEPA notes first that it does not interpret the Act to require Michigan to adopt the I/M upgrades fully now if it otherwise qualifies for redesignation to attainment. Rather, as evidenced in the USEPA's final I/M rule revisions, described above and in the proposal, Michigan is required only to adopt the upgrades as a contingency measure in order to meet the requirements for basic I/M in section 182(a)(2)(B)(i) and (b)(4). Michigan has done that. Under its submittal, Michigan must implement basic I/M 18 months from the date the Governor decides to implement the program as a contingency measure and Michigan's contingency plan contains other control measures which would result in near term emission reductions that will be more effective towards correcting a violation of the NAAQS than a NSR program, such as Stage I or Stage II vapor recovery.

The commentor also suggests that since the current ozone NAAQS is not sufficiently protective of public health the USEPA should not be concerned with over control. In response, as previously discussed, the USEPA is currently reviewing the ozone NAAQS. Unless and until the NAAQS is revised, the USEPA is to make judgements on the basis of the current NAAQS, e.g., determine whether a maintenance plan assures maintenance of the current ozone NAAQS.

Comment

One commentor noted that Stage II vapor recovery was expected to account for at least 22.5 tons per day (TPD) or 17 percent of the 15 percent ROP plan, that mobile sources account for 50

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percent of air toxic emissions, and that refueling automobiles is the most significant source of benzene exposure for the average person. As proposed, the redesignation would finally eliminate Stage II vapor recovery from the SIP. An improved I/M program was expected to account for reductions of 61.6 TPD or nearly half of the 15 percent ROP. The commentor adds that these 15 percent ROP measures may be contingency measures in the maintenance plan, rather than immediately required at any point in the future. Nevertheless, any such transfer of a maintenance measure in the SIP to a contingency measure, to be required only if certain triggering events occurred, must be accompanied by a demonstration that the SIP measures are no longer necessary for maintenance. Any proposed transfer and demonstration of justification of the transfer must be subject to public notice and comment, as required by the Act.

USEPA Response

Air toxic emissions or benzene exposure are not relevant to this rulemaking since it pertains to an ozone redesignation. Moreover, this redesignation in no way exempts the area from the air toxics requirements of section 112 or other provisions of the Act.

Since the area was able to demonstrate maintenance through an emissions projection analysis showing that future VOC and NO_x emissions will remain below the attainment year level of emissions (the level of emissions sufficient to attain the NAAQS), the USEPA concludes that currently required and future mandated control programs (e.g., FMVCP) are sufficient to provide for attainment and maintenance of the NAAQS. However, contingency measures in the maintenance plan are required in accordance with section 175A(d). The maintenance plan for the Detroit-Ann Arbor area contains contingency measures which would be implemented when triggered by a violation of the ozone NAAQS. USEPA guidance allows the transfer of SIP measures which came due prior to submittal of a complete redesignation request to the maintenance plan as contingency measures if the area demonstrates attainment without implementation of these measures and therefore, are unnecessary for attainment. The State has adequately demonstrated that maintenance will occur in the absence of the implementation of the measures cited by the commentor. Finally, the demonstration for the transfer was subject to public notice and comment during Michigan's public comment period and hearing, as well as the USEPA's comment period, as required by the Act.

Comment

One commentor notes that to be effective at restoring air quality when a post-redesignation violation occurs, contingency measures must include measures in the 15 percent ROP plan. In elaborating, the commentor notes that a contingency plan which lacks a program for enhanced I/M, Stage II and conformity is an empty box with no benefits. The precedent of "grandparenting" in moderate areas by allowing redesignation without requiring inclusion of the attainment plan's 15 percent plan as a contingency measure in the maintenance plan is a dangerous precedent for Region 5 to set. It has the potential to result in the gutting of the Act nationwide by a seemingly innocuous rulemaking at the Regional level.

It is unclear that the verification and tracking measures described at 59 FR 37199 (July 21, 1994) will ever actually trigger the requirement to implement the contingency plan.

USEPA Response

The contingency plan contains, as contingency measures, all of the unimplemented SIP control measures that were required prior to submittal of the complete redesignation request, including basic I/M, Stage II, Stage I expansion, and NO_x RACT. As noted in the proposal, Stage II is no longer a required measure due to the USEPA's promulgation of on-board vapor recovery requirements. In addition, the State has also included 7.8 RVP [12] and intensified degreasing for degreasing operations [13] as contingency measures. The USEPA does not believe that this contingency plan is an "empty box with no benefits" instead that the contingency measures in the plan would provide very real benefits in terms of potential emission reductions that the USEPA believes are adequate to deal with potential future violations. The area is not required to include all measures from its 15 percent plan in its contingency plan since the 15 percent plan was not an applicable requirement at the time the State submitted a complete redesignation request.

[12] Lower RVP to 7.8 psi may only be implemented as a contingency measure if the State submits and the USEPA finds, under section 211(c)(4)(C) of the Act, that the lower RVP requirement is necessary for the area to achieve the ozone NAAQS.

[13] Intensified RACT for degreasing operations would entail requiring more stringent controls than are currently specified in Michigan Rules 611, 612, 613, and 614.

In addition, Region 5 is not setting a precedent of "grandparenting" of the 1 percent ROP requirement as contingency measures in the maintenance plan. This is consistent with national policy that has already been established and has been discuss above. See September Calcagni and September Shapiro memorandums.

Regarding transportation conformity once redesignated, the Detroit-Ann Arbor area will be a maintenance area and, therefore, required to conduct emission analyses to determine wheth the VOC and NO_x emissions remain below the motor vehicle emission budget established in the maintenanc plan. The July 21, 1994 proposal (59 F 37190) does address conformity with respect to the redesignation on p. 371 The proposal further discusses that, although conformity is applicable in these areas, since the deadline for submittal had not come due for these rules, the approval of the redesignatio is not contingent on these submittals t comply with section 107(d)(3)(E)(v). However, transportation and general conformity apply to maintenance area and therefore, the Detroit-Ann Arbor area must comply with these rules on redesignated to attainment. The June 1994 Conformity General Preamble (5 FR 31238) to the conformity regulatio further clarifies this issue. According the conformity rules and preamble, th Detroit-Ann Arbor area's conformity t will be to remain within the VOC and NO_x budgets established in the sectio 175A maintenance plan.

The July 21, 1994 notice does descr a tracking plan for updating the emission inventory. As discussed, the redesignation request commits Michi to conduct periodic inventories every years, provides a schedule for these submittals, and lists the types of facto used in projecting the emission inventories. The State notes that if th factors change substantially, the State would reproject emissions for the maintenance period to determine whether apparent increases in emissi are due to changes in calculation techniques or actual emissions. Although these periodic emission inventories are not a mechanism to trigger implementation of contingenc measures, if the periodic inventories exceed the attainment level of emissi in the maintenance plan, the USEPA may issue a SIP call to the area under section 110(k)(5) on the basis that the State made inadequate assumptions i projecting the inventory used to demonstrate maintenance. In this eve the USEPA may require the State to correct the projection inventory and, increases are projected, propose and

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ultimately implement maintenance measure(s) to lower the emissions to a level at or below the attainment year level. Since USEPA policy only suggests that level of emissions be included as a triggering mechanism or method of monitoring the area emissions, States are provided the flexibility not to include such a triggering mechanism.

The Detroit-Ann Arbor area's contingency plan contains one trigger, a monitored air quality violation of the ozone NAAQS, as defined in 40 CFR section 50.9. The trigger date will be the date that the State certifies to the USEPA that the air quality data are quality-assured, and no later than 30 days after an ambient air quality violation is monitored. Once the trigger is confirmed, the State will implement one or more appropriate contingency measures based on a technical analysis using a UAM analysis. The Governor will select the contingency measures within 6 months of the trigger. The control measures which may be used as contingency measures within the maintenance plan are I/M upgrades, NO_X RACT, Stage I expansion, Stage II, RVP reduction to 7.8 psi and intensified RACT for degreasing operations. As explained in the proposal, the USEPA believes that these measures are adequate to restore air quality in the event of a post-redesignation violation.

Comment

The commentor notes that the Detroit-Ann Arbor area is the fastest growing business area in Michigan, and that "if regulations are not implemented now, it will take years for companies to comply with new regulations added later." [sic] Local industry should have to implement common-sense, cost-effective, pollution-control measures to protect the people in the area.

USEPA Response

The area is currently implementing numerous emission control measures and will continue to do so even after redesignation to attainment for ozone. While the area may be growing, the State has considered the impacts of growth not just in mobile sources, but also industrial sources of ozone precursors in its maintenance plan. The State has adequately shown that permanent and enforceable controls will continue to more than offset the impact of any such growth through the maintenance period as its projections indicate that emissions will decrease during the maintenance period. In the event, the area is redesignated and happens to record a violation of the ozone NAAQS, however, the section 175A maintenance plan specifies control measures which would be implemented as contingency measures in accordance with the schedules specified in the July 21, 1994 and this final rule.

Comment

One commentor notes that the maintenance plan and contingency measures are not likely to protect maintenance of the NAAQS for ozone, because the timeline for implementing corrective measures is too protracted, providing too little protection, too late.

USEPA Response

For clarification, the contingency measures are intended to provide for maintenance by addressing a violation of the ozone NAAQS; maintenance measures serve to provide for maintenance of the NAAQS. The contingency measure implementation schedules were derived from the Act and applicable State and Federal regulations. As explained in the proposal and this final action, the schedule established for the implementation of contingency measures provides for the implementation of such measures as soon as within one year of a violation. Also, as explained in the proposal, the USEPA believes that this schedule satisfies the criterion of section 175A regarding the need for contingency measures to promptly correct violations of the standard occurring during the maintenance period.

Comment

One commentor alleges that the maintenance demonstration relies on fleet turnover with new cars required to have on-board canisters and perhaps enhanced fuel efficiency to create reductions of VOC emissions sufficient to compensate for the steady growth of VMT [14] and keep Southeast Michigan in attainment. With an average time for fleet turnover of 10 to 15 years, those measures will have little effect on maintenance of attainment in the near term.

USEPA Response

The State is not relying on on-board canisters in its emission projections through the maintenance period. The maintenance demonstration through emission projections must demonstrate that the emissions will not exceed the attainment year inventory. See General Preamble (April 16, 1992, 57 FR 13498) and September Calcagni memorandum. Michigan has demonstrated that, by considering the effects of permanent and enforceable control programs (not including the on-board vapor recovery rule), as well as, growth in the area (including VMT growth), through the year 2005 emissions will remain below the attainment year inventory. See 59 FR 37190, tables on p. 37198. Neither the Act nor USEPA guidance specifies or suggests that the State achieve other emission reductions during the maintenance period. The USEPA reviewed the projection inventory methodologies and found them to be appropriate. Furthermore, transportation conformity provides another emission management mechanism. The transportation conformity rules (November 24, 1993, 58 FR 62188) and General Preamble (June 17, 1994, 59 FR 31238) apply to nonattainment and maintenance areas. The General preamble clarifies that conformity analyses must demonstrate that VOC and NO_X emissions will remain within the motor vehicle emission budget as approved in a section 175A maintenance plan.

Comment

One commentor states that an ozone precursor, NO_X, can scavenge ozone. For this reason, NO_X controls can actually increase ozone levels in metropolitan areas while beneficially affecting downwind areas. The lack of NO_X controls in the Metropolitan Detroit area would help in attaining the 120 ppb ozone standard but this approach would have no net benefit downwind (southwestern Ontario). The commentor concludes that both NO_X and VOC must be controlled. Another commentor notes that there is too little information about the interaction between VOC and NO_X to justify granting an exemption from NO_X controls.

USEPA Response

Section 182(f)(1)(A) of the Act allows the Administrator to exempt an area outside an ozone transport region from the section 182(f) NO_X requirements, if the USEPA determines that "additional reductions of [NO_X] would not contribute to attainment" of the ozone NAAQS in the relevant area. It is clear that if an area has demonstrated attainment of the ozone NAAQS with 3 consecutive complete years of air quality monitoring data, additional NO_X reductions would not contribute to attainment, since the area has already attained. Therefore, a State may submit a petition for a section 182(f) exemption based on air quality monitoring data showing attainment of the ozone NAAQS. The USEPA's approval of such

[14] VMT is the number of miles traveled by vehicles of various types, preferably for each link of the highway system.

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an exemption is granted on a contingent basis, i.e., the exemption would only be valid as long as attainment of the ozone NAAQS continues. If prior to final action to redesignate the area to attainment the USEPA determines that a violation of the NAAQS occurred, the section 182(f) exemption would no longer apply, as of the date of such a determination. See December 1993 guidance document Guideline for Determining the Applicability of NO_X Requirements under Section 182(f), and the May 27, 1994 memorandum from John Seitz, Section 182(f) NO_X Exemptions—Revised Process and Criteria. In addition, the May 27, 1994 Seitz memorandum, page 3, n. 7, states that while NO_X reductions in areas that request and are granted a section 182(f) exemption may not contribute to attainment, they may contribute to maintenance and must be addressed in the maintenance plan required for redesignation. The Detroit-Ann Arbor area submitted a section 182(f) NO_X exemption on November 12, 1994 based on 3 consecutive years of monitoring data demonstrating attainment of the ozone NAAQS. The Detroit-Ann Arbor area submitted the appropriate NO_X documentation in their redesignation maintenance plan. By doing so, the State has demonstrated a commitment to control NO_X if it is deemed necessary to maintain the ozone standard. The USEPA approved the section 182(f) NO_X exemption petition for the Detroit-Ann Arbor area in a final USEPA action published elsewhere in this **Federal Register**.

With respect to the aspects of the comments relating to the effects of NO_X controls or the lack of NO_X controls on ambient air in Canada, the USEPA refers the reader to the responses to the comments set forth below.

In addition, the redesignation request establishes VOC and NO_X emission budgets, establishing emission levels adequate to attain the ozone NAAQS. The State has also demonstrated through emission projections that the area's emissions will remain below the attainment year inventory through the year 2005. Consequently, the State has demonstrated that NO_X levels will not exceed current levels through the maintenance period.

In response to the commentors note that there is too little information about the interaction between VOC and NO_X to justify granting an exemption from NO_X controls, the USEPA refers the commentor to the NO_X/VOC Study released by the USEPA on July 31, 1993. Congress provided that USEPA decisions on personal petitions for NO_X exemptions under section 182(f)(3) be triggered by publication of this 185B report. Consequently, the USEPA believes that this provides evidence that Congress appears to have believed the results of the 185B study would supply sufficient information for the Agency to grant section 182(f) exemptions. The USEPA refers the commentor to the final rulemaking approving the section 182(f) NO_X exemption petition for the Detroit-Ann Arbor area published elsewhere in this **Federal Register**.

Nonetheless, as demonstrated by the emission projections for the 10-year maintenance plan submitted by Michigan, continuing reductions in NO_X emissions are expected (primarily from mobile sources as a result of FMVCP). Also, additional NO_X emission reductions are expected from implementation of the NO_X controls required by title IV of the Act. Designation status of an area is irrelevant in the applicability of title IV requirements; consequently, subject sources in the Detroit-Ann Arbor area will be required to comply with these requirements.

Comment

One commentor notes that the action of proposed redesignation is a product of undue haste and that the final decision on redesignation should await data from Canada's study of ozone levels at its receptors which are downwind of Southeast Michigan. A number of other commentors suggested that the USEPA respond to concerns expressed by Ontario and Canada prior to making any decision. Another commentor suggests that the USEPA obtain and assess ambient ozone levels prior to proceeding with the redesignation.

USEPA Response

The USEPA has received comments and information from a number of Canadian interests. All comments from commentors in Canada have been considered as the USEPA made a final decision on this action, and are addressed within this final rulemaking. As explained below, the USEPA does not believe that these comments warrant a deferral of final action on this redesignation.

Comment

One commentor states that between 60 percent-80 percent of toxic air pollutants in Windsor's ambient air are transported from the City of Detroit and other U.S. areas northwest of Windsor. Another commentor suggests that the technology needed to reduce ozone closely parallels the technology needed to abate toxic air pollutants in the region. By designating the area as attainment, the region will no longer b required to include ozone reduction technology in the State of Michigan's SIP under the Act. This could eliminat further technological improvements th would not only reduce ozone levels bu also contribute to the abatement of toxi air pollution. Since the Governments o the United States and Canada, in their Reference to the International Joint Commission (IJC), have emphasized th the IJC address the impacts of toxic air pollution problems in the region, the IJ cannot support any move that would result in less stringent controls which have direct impact on minimization of ozone levels and reduction of toxic chemical emissions. Consequently, the commentor strongly disagrees with the proposed USEPA redesignation and recommends against it. The commento believes that the control requirements the Act for this area should be implemented.

USEPA Response

This redesignation is for ozone. Toxi air pollutants are not relevant to the issue of whether an area should be redesignated due to its attainment of th ozone NAAQS. Separate from this redesignation, the State is required to meet other requirements of the Act specifically to control air toxics emissions. The ozone redesignation would not exempt the area from implementing section 112 of the Act, which is intended to address the contr of hazardous air pollutants. Rules promulgated pursuant to section 112 a applicable to sources regardless of an area's attainment status.

In addition, sources of ozone precursors in the Detroit-Ann Arbor ar must continue to implement all contro equipment and/or measures in accordance with applicable rules, regulations and permits. Consequently the redesignation would not result in less stringent controls than are current being implemented in the Detroit-Ann Arbor area.

Comment

One commentor notes that Canada and Ontario are assembling data from Canadian monitoring stations which a directly relevant to the decision as to whether the Detroit-Ann Arbor area is currently meeting the prescribed Act requirements with respect to ozone. Th commentor states that this information and other points will be provided to th Department of State on October 17, 1994. (On October 17, 1994 a documer entitled Canada/Ontario Technical Component of the Canadian Comment on the Michigan/Ann Arbor Ozone Redesignation Request was submitted.

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This document was prepared by Environment Canada and the Ontario Ministry of the Environment and Energy). The commentor expects that this information would be considered in any final decision. A copy of the September 23, 1994 letter from the IJC to Warren Christopher, Secretary of State, was attached. Another commentor claims that the Canadians in Southern Ontario are affected by some of the worst smog episodes in Canada. Many commentors state that much, if not all, of the ground level ozone in Southern and Southeastern Ontario is a result of transboundary movement of ozone and NO_X from the U.S. to Canada. Michigan is a significant source of the ozone and NO_X coming from the U.S. A number of commentors provided monitoring data from monitors located in Southwestern Ontario and the Detroit-Ann Arbor area and assert that high ozone levels recorded in the Detroit-Ann Arbor area correspond directly with high ozone levels which exceed Ontario's ozone standard. Some commentors noted that high levels of ozone in Ontario may be the cause of increased respiratory problems. Another commentor noted that a recent study in southern Ontario indicates that hospital admissions for respiratory problems has increased due to ozone and acidic air pollution. This situation is occurring at ozone levels well below the 125 ppb averaged over one hour. Another commentor suggests that being another sovereign nation and not a neighboring State, Canada is denied protection available to downwind States adversely affected by emissions from upwind neighbors within the U.S. Another commentor notes the damaging effect of ozone on agricultural crops.

USEPA Response

The USEPA has considered the October 17, 1994 submittal referred to and all other information provided by the Canadian Government and other commentors on these issues.

The following provides a synopsis of the USEPA's review of the October 17, 1994 document submitted by Environment Canada and the Ontario Ministry of the Environment and Energy. The document contains, among other elements, some ozone monitoring data. However, the ozone monitoring data was inadequate for the USEPA to assess whether a violation of the U.S. ozone NAAQS occurred in Canada. Consequently, on November 1, 3 and 24, and December 14 and 19, 1994 the USEPA obtained clarifying information from the Ontario Ministry of the Environment and Energy on the ozone monitoring data submitted.

In reviewing the Canadian ozone monitoring data, the USEPA examined each 3-year interval from 1990 through 1994 as well as associated wind patterns. Based on a review of the Canadian report and the clarifying information, the monitoring data demonstrates that there has not been a violation of the U.S. ozone NAAQS at the Windsor (University or South), Sarnia, Merlin, Mandaumin, London, Longwoods, or Parkhill monitors for the timeframe 1990–1992, 1991–1993, or 1992–1994. In fact, the only monitors that have recorded violations of the U.S. ozone NAAQS are the Grand Bend monitor and Tiverton monitor, which are located more than 90 miles and 140 miles away from the Detroit-Ann Arbor area, respectively. The Grand Bend monitor recorded violations of the U.S. ozone NAAQS during the timeframe 1990–1992 with a number of expected exceedances of 1.67 and during 1991–1993 of 2.0. However, for the 1992–1994 period, there was no violation of the U.S. ozone NAAQS with a number of expected exceedances at 0.33. The Tiverton monitor recorded violations of the U.S. ozone NAAQS during the timeframes 1990–1992 and 1991–1993 with a number of expected exceedance of 2.0. However, during the 1992–1994 period, there was no violation of the U.S. ozone NAAQS.[15]

In addition, the modeling submitted on October 17, 1994 is limited and insufficient for purposes of implicating the Detroit-Ann Arbor area as the cause of elevated ozone levels in Ontario[16].

The ground level wind trajectories presented in the October 17, 1994 submittal, indicate that winds into Tiverton and the Windsor area pass through a number of urbanized areas in both the U.S. and Canada (the Windsor urbanized area). The USEPA also notes that such concentration may be attributable to or fostered by ozone precursor emissions generated within Canadian borders, since Windsor itself is an urban area with an estimated metropolitan population greater than 225,000. Thus, the extent of any contribution from the Detroit-Ann Arbor area to monitored ozone levels in Ontario cannot be determined with any degree of certainty on the basis of the information presently available to the USEPA. The data provided in the October 17, 1994 submittal are inadequate to provide a basis for determining the extent to which emissions from Michigan, and more specifically, the Detroit-Ann Arbor area, are contributing to ambient ozone levels in Ontario. As a consequence, the USEPA does not believe that the presently available information provides any basis for affecting its decision regarding the redesignation of the Detroit-Ann Arbor area.

The USEPA would like to note that the governments of the United States and Canada are in the process of developing a joint study of the transboundary ozone phenomena under the U.S.-Canada Air Quality Agreement. It is envisioned that this regional ozone study will provide the scientific information necessary to understand what contributes to ozone levels in the region, as well as, what control measures would contribute to reductions in ozone levels. Should this or other studies provide a sufficient scientific basis for taking action in the future, the USEPA will decide what is an appropriate course of action. The USEPA may take appropriate action notwithstanding the redesignation of the Detroit-Ann Arbor area. Therefore, the USEPA does not believe that the contentions regarding transboundary impact currently provide a basis for delaying action on this redesignation or disapproving the redesignation. This is particularly true since approval of the redesignation is not expected to result in an increase in ozone precursor emissions and is not expected to adversely affect air quality in Canada. In fact, a decrease in both VOC and NO_X emissions from the Detroit-Ann Arbor area is expected over the 10-year maintenance period. See 59 FR 37190, July 21, 1994. It should also be noted that redesignation does not allow States to automatically remove control programs which have contributed to an area's attainment of a U.S. NAAQS for any pollutant. As discussed previously, the USEPA's general policy is that a State may not relax the adopted and implemented SIP for an area upon the area's redesignation to attainment unless an appropriate demonstration[17],

[15] The October 17, 1994 submittal and subsequent clarifying information revealed that the Tiverton monitor recorded one exceedance in 1994. The exceedance, a value of 136 ppb, was recorded on April 24, 1994 at 7:00 PM. However, based on clarifying information provided by the Ontario Ministry of the Environment and Energy, this ozone value was invalidated. The strip chart recorder registered interference (electrical or otherwise) on April 24, 1994 between the hours of 5:00 PM through 8:00 PM and for 10:00 PM. Consequently, the data for these hours was invalidated by the Ontario Ministry of the Environment and Energy.

[16] Among the inadequacies were that the submittal had limited documentation on the model input parameters. The ADOM-GESIMA model is not a USEPA guideline model as listed in the Guideline on Air Quality Models, (revised in February 1993). Further model documentation is necessary for a comparative evaluation against USEPA guideline models.

[17] Such a demonstration must show that removal of a control program will not interfere with

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based on computer modeling, is approved by the USEPA. In this case, no previously implemented control strategies are being relaxed as part of this redesignation.

The health effects of acidic air pollution are not relevant to this ozone redesignation. However, the USEPA is aware of the study referenced by the commentor and is considering this study in the process of reevaluating the ozone NAAQS.

Further, apart from title I requirements related to the cessation of the Detroit-Ann Arbor area's status as an ozone nonattainment area, the area is and will continue to be required to satisfy all Act requirements. Other control programs required by the Act will be implemented in the area, regardless of the ozone designation, such as title IV NO_X controls, section 112 toxic controls and on-board vapor recovery requirements.

Comment

One commentor notes that recent information indicates that significantly high ozone readings have been recorded in the Town of Kincardine this summer. Kincardine is halfway up the eastern shoreline of Lake Huron, and therefore, the air quality in Kincardine is, for the most part, a result of emissions from Michigan. The commentor requests that the USEPA reconsider the redesignation of the area because it will have drastic effects on the communities on the eastern shore.

USEPA Response

Kincardine is more than 100 miles northeast of the Detroit-Ann Arbor area, the subject of the redesignation to attainment for ozone. Consequently, attributing elevated ozone levels in Kincardine to the Detroit-Ann Arbor area would be a complex task. It cannot be conclusively stated that emissions emanating from the Detroit-Ann Arbor area are, "for the most part," responsible for elevated ozone concentrations recorded at a monitor more than 100 miles away. As demonstrated by the wind trajectories provided by Canada as part of the October 17, 1994 submittal, it can be seen that air parcels travel through several U.S. and Canadian urbanized areas. Again, it is noted that the U.S. and Canada are cooperatively developing a regional ozone study to investigate the transboundary ozone phenomena.

maintenance of the ozone NAAQS and would entail submittal of an attainment modeling demonstration with the USEPA's current Guideline on Air Quality Models. Also, see memorandum from Gerald A. Emison, April 6, 1987, entitled Ozone Redesignation Policy.

Comment

One commentor states that the transboundary ozone issue points to the need to manage air quality in a regional context and notes that in their meeting of July 25, 1994 in Washington, Carol Browner, Administrator of the United States Environmental Protection Agency, and Sheila Copps, Deputy Prime Minister, Minister of the Environment, Canada, agreed to cooperate in regional management of the transboundary ozone problem. The commentor suggests that the Great Lakes region provides an ideal opportunity to advance this concept.

USEPA Response

Subsequent to the Browner/Copps meeting, the U.S. and Canadian Governments have met to discuss and develop a regional pilot program to address any potential regional transboundary ozone issue. This new regional pilot effort is being developed as a priority under the U.S.-Canada Air Quality Agreement.

Comment

One commentor states that the Southeast Michigan Council of Governments has discussed the redesignation at past meetings of the Windsor Air Quality Committee, at which local committee members pointed out their concerns to no avail. All information available suggests that the request for redesignation is without scientific merit at present, and is premature at best.

USEPA Response

Ambient air monitoring data in the Detroit-Ann Arbor area demonstrates that the area is attaining the ozone NAAQS. In addition, the State has met all applicable requirements under section 107 of the Act. As previously discussed, the U.S. and Canada are cooperatively developing a regional ozone study to investigate the transboundary ozone phenomena.

Comment

One commentor notes that the March 1991 formal agreement (the March 13, 1991 U.S.-Canada Air Quality Agreement) between the U.S. and Canada called for other parties to take steps to avoid or mitigate the potential risk posed by specific actions. On this basis, it is requested that the USEPA reconsider the consequences of approving this request for southeast Michigan. Another commentor refers to the March 13, 1991 Air Quality Agreement between Canada and the U.S. with respect to the effort of the two countries to address transboundary air pollution through "cooperative and coordinated action." Alleging that ground level ozone production in the Detroit-Ann Arbor area by its movemen across the U.S.-Canada border has a significant impact on ozone production and general air quality in the Windsor Southwestern Ontario region of Canada the commentor expresses concern that the Department of State chose not to provide the Canadian Government with formal advance notice of the intention of the USEPA to act on an issue which would have a major impact on transboundary air pollution.

USEPA Response

Paragraph 1 of Article V of the March 13, 1991 U.S.-Canada Air Quality Agreement states that "Each Party shall as appropriate and as required by its laws, regulations and policies, assess those proposed actions, activities and projects within the area under its jurisdiction that, if carried out, would be likely to cause significant transboundary air pollution, including consideration of appropriate mitigation measures." Paragraph 2, specifies that parties shall notify each other of action under paragraph 1. Since the action to redesignate the Detroit-Ann Arbor area to attainment does not result in a relaxation of existing control requirements or an increase in ozone precursor emissions, the USEPA does not believe that formal notification was necessary nor that this action poses a potential risk. Canada is well aware of this redesignation at this time. Howeve in the future, the U.S. intends to notify Canada of actions similar to this action as early as possible regardless of whether notification is required under the U.S.-Canada Air Quality Agreemen In addition, the U.S. will work with Canada to address tropospheric ozone the context of the Air Quality Agreement as previously discussed.

Comment

A number of commentors believe tha the air quality in the Detroit-Ann Arbo area has not improved but deteriorated in recent years. Recent developments have been detrimental to air quality, such as the operation of a trash incinerator which emits foul smoke int the air around the clock, particularly o weekends when businesses are closed. Instead of recycling, the City of Detroit chooses to pollute southeast Michigan and Ontario's air. Multitudes of industrial plants are located on the Detroit River whose smokestacks cast gray haze over everything, even on sunny days. One commentor lists a number of local facilities which it claims causes visible emissions and

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offensive odors. Another commentor states that Wayne county ranked #1 in amount of hazardous chemicals released through air emissions (as well as #1 in "suspected" carcinogens), and was fearful for her health and future because of current air quality. Another commentor claimed breathing problems caused by outdoor air. Wayne County was accused of posing numerous pulmonary health risks for residents. Improvements in air quality are necessary for the residents' safety and health.

USEPA Response

The July 21, 1994 **Federal Register** notice proposes to redesignate the Detroit-Ann Arbor area to attainment solely for ozone. The Detroit-Ann Arbor redesignation request satisfies the section 107(d)(3)(E) requirements. Among these requirements is that the area demonstrate attainment of the ozone NAAQS. See section 107(d)(3)(E)(i). The Detroit-Ann Arbor area has demonstrated through 3 consecutive years of complete air quality data, that the area has attained the ozone NAAQS. The area is and will continue to be required to satisfy all Act requirements pertaining to the emission of hazardous air pollutants. Further, existing facilities must continue to operate existing air pollution control equipment in accordance with applicable rules, regulations and permits, and sources that are problematic in terms of posing a nuisance to area residents may be referred to the State and local environmental enforcement staff for investigation. Retaining the area's current nonattainment designation for ozone would not affect visible emissions and/or offensive odors from the existing incinerator. In addition, certain new rules and regulations will still apply to area sources even if the area is redesignated to attainment for ozone; for example, Maximum Achievable Control Technology and additional controls under section 112 (air toxics) of the Act. With respect to the commentor's contention that improvements in air quality are necessary for residents' safety and health, it should be recognized that section 109 of the Act requires that the NAAQS, which must be based on established criteria and allow an adequate margin of safety, protect the public health. Unless and until it is revised, the current ozone NAAQS provides the pertinent standard for protecting public health.

Comment

Many commentors believe that designating the area to attainment would exempt the area from stricter clean air regulations. They believe that the USEPA should require local industry to implement common-sense, cost-effective pollution control measures, more stringent automobile emission testing (current testing is not effective), and service stations to install anti-pollution devices on gasoline pumps (Stage II). The USEPA should encourage that measures be taken to ensure that no pollution problems occur in the future.

USEPA Response

Redesignating the area to attainment for ozone does not exempt the State from implementing measures necessary for attainment. Further, additional regulations such as a basic I/M program, Stage II vapor recovery, or Stage I expansion are incorporated into the area's maintenance plan as contingency measures. The contingency measures selected by the State will be implemented if a violation is experienced.

Comment

One commentor requests the USEPA to require, and to make public, an independent, third party, statistical verification of air quality and related environmental health data to support or dispute claims made by local businesses, a senator and a governor. If monitoring in the southwest section of Detroit is ongoing, then there would be no question that tougher standards are needed.

USEPA Response

The State has established air monitoring networks, sampling and analysis procedures as well as quality assurance and control procedures that satisfy USEPA guidelines. The State will continue to operate its monitoring network after redesignation. Third party statistical verification of air quality data is not required by the guidelines applicable for the purposes of this redesignation.

Comment

One commentor stated that the USEPA should not redesignate the Detroit-Ann Arbor area because it is likely that the area will soon have to be redesignated back to nonattainment. The commentor also provided various information related to increasing VOC emissions and petroleum usage.

USEPA Response

The USEPA believes that Michigan has shown that the Detroit-Ann Arbor area has attained and can continue to maintain the NAAQS for ozone. In the event that a violation of the ozone NAAQS does occur in the future, however, the maintenance plan provides for the implementation of the State's contingency measures under section 175A to promptly correct any violations of the NAAQS, as required by the Act.

With regard to the commentor's contentions concerning VOC emissions and petroleum usage, the USEPA notes that in its showing of maintenance over a 10-year period, the State has technically assessed not only the impacts of reductions due to control programs, but also increases due to growth in all potential sources of emissions. These potential sources include petroleum usage in the mobile source and industrial source sectors. The State has shown in these assessments that reductions in emissions over the maintenance period will more than offset any increases in emissions of VOC. The USEPA's decisions must be based solely on whether Michigan's submission adequately addresses the statutory requirements applicable to redesignation. The USEPA has determined that it does, and is thus approving the redesignation request. Again, in the event that violations of the ozone NAAQS occur, Michigan must promptly implement its contingency measures such that the ozone NAAQS is once again attained and maintained.

II. Final Rulemaking Action

The USEPA approves the redesignation of the Detroit-Ann Arbor, Michigan ozone area to attainment and the section 175A maintenance plan as a revision to the Michigan SIP. The State of Michigan has satisfied all of the necessary requirements of the Act. The USEPA has also approved the section 182(f) NO_x exemption for the Detroit-Ann Arbor area in an action published elsewhere in this **Federal Register** which exempts the area from the section 182(f) NO_x requirements. As a consequence of this action, the USEPA also stops the sanctions clocks that had been started as a result of the findings made on January 21, 1994, regarding the incompleteness of the 15 percent ROP plan and the section 172(c)(9) contingency plan for the Detroit-Ann Arbor area and on May 11, 1994, regarding the basic I/M plan for the area.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air.

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and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

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

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 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.

The SIP approvals under section 100 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 it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

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 May 8, 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 rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Motor vehicle pollution, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, National parks, Nitrogen oxides, Ozone, Volatile organic compounds, Wilderness areas.

Dated: February 8, 1995.

Norman R. Niedergang,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraphs (c) (101) and (102) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(101) On November 15, 1993, the State of Michigan submitted as a revision to the Michigan State Implementation Plan for ozone a State Implementation Plan for a motor vehicle inspection and maintenance program for the Detroit-Ann Arbor area. Michigan submitted House Bill No. 5016, signed by Governor John Engler on November 13, 1993.

(i) Incorporation by reference.

(A) State of Michigan House Bill No. 5016 signed by the Governor and effective on November 13, 1993.

(102) On November 12, 1993, the State of Michigan submitted as a revision to the Michigan State Implementation Plan for ozone a State Implementation Plan for a section 175A maintenance plan for the Detroit-Ann Arbor area as part of Michigan's request to redesignate the area from moderate nonattainment to attainment for ozone. Elements of the section 175A maintenance plan include a base year (1993 attainment year) emission inventory for NO_X and VOC, a demonstration of maintenance of the ozone NAAQS with projected emission inventories (including interim years) to the year 2005 for NO_X and VOC, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the ozone NAAQS (which must be confirmed by the State), Michigan will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. Appropriateness of a contingency measure will be determined by an urban airshed modeling analysis. The Governor or his designee will select the contingency measure(s) to be implemented based on the analysis and the MDNR's recommendation. The menu of contingency measures includes basic motor vehicle inspection and maintenance program upgrades, Stage I vapor recovery expansion, Stage II vapor recovery, intensified RACT for degreasing operations, NO_X RACT, and RVP reduction to 7.8 psi. Michigan submitted legislation or rules for basic I/M in House Bill No 5016, signed by Governor John Engler on November 13, 1993; Stage I and Stage II in Senate Bill 726 signed by Governor John Engler on November 13, 1993; and RVP reduction to 7.8 psi in House Bill 4898 signed by Governor John Engler on November 13, 1993.

(i) Incorporation by reference.

(A) State of Michigan House Bill No. 5016 signed by the Governor and effective on November 13, 1993.

(B) State of Michigan Senate Bill 726 signed by the Governor and effective on November 13, 1993.

(C) State of Michigan House Bill No. 4898 signed by the Governor and effective on November 13, 1993.

2. Section 52.1174 is amended by adding paragraphs (h) and (i) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(h) Approval—On January 5, 1993, the Michigan Department of Natural Resources submitted a revision to the ozone State Implementation Plan for the 1990 base year emission inventory. The inventory was submitted by the State of Michigan to satisfy Federal requirements under section 182(a)(1) of the Clean Air Act as amended in 1990, as a revision to the ozone State Implementation Plan for the Detroit-Ann Arbor moderate ozone nonattainment area. This area includes Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne counties.

(i) Approval—On November 12, 1993 the Michigan Department of Natural Resources submitted a request to redesignate the Detroit-Ann Arbor (consisting of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw and Wayne counties) ozone nonattainment area to attainment for ozone. As part of the redesignation request, the State submitted a

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maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a base year (1993 attainment year) emission inventory for NO_x and VOC, a demonstration of maintenance of the ozone NAAQS with projected emission inventories (including interim years) to the year 2005 for NO_x and VOC, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the ozone NAAQS (which must be confirmed by the State), Michigan will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. Appropriateness of a contingency measure will be determined by an urban airshed modeling analysis. The Governor or his designee will select the contingency measure(s) to be implemented based on the analysis and the MDNR's recommendation. The menu of contingency measures includes basic motor vehicle inspection and maintenance program upgrades, Stage I vapor recovery expansion, Stage II vapor recovery, intensified RACT for degreasing operations, NO_x RACT, and RVP reduction to 7.8 psi. The redesignation request and maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Michigan Ozone State Implementation Plan for the above mentioned counties.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.323 the ozone table is amended by revising the entry for the Detroit-Ann Arbor area for ozone to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE

Designated areas	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * * *				
Detroit-Ann Arbor Area:				
Livingston County	April 6, 1995	Attainment		
Macomb County	April 6, 1995	Attainment		
Monroe County	April 6, 1995	Attainment		
Oakland County	April 6, 1995	Attainmnet		
St. Clair County	April 6, 1995	Attainment		
Washtenaw County	April 6, 1995	Attainment		
Wayne County	April 6, 1995	Attainment		
* * * * * * *				

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

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BILLING CODE 6560–50–P

40 CFR Part 70

[IL001; FRL–5164–6]

Clean Air Act Final Interim Approval of Operating Permits Program; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by Illinois for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: March 7, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jennifer Buzecky, 77 West Jackson Boulevard, Permits and Grants Section AR–18J, Chicago, Illinois 60604, (312) 886–3194.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On September 30, 1994, EPA proposed interim approval of the operating permits program for Illinois. See 59 FR 49882. The EPA received public comment on the proposal, and compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this notice EPA is taking final action to promulgate interim approval of the operating permits program for Illinois.

II. Final Action and Implications

A. Analysis of State Submission

The EPA received comments from a total of four organizations. The EPA's response to these comments is summarized in this section. Comments

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