current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on June 14, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

****Effective August 15, 1996*

Bartow, FL, Bartow Muni, VOR/DME or GPS RWY 9L, Amdt 1A Cancelled
Bartow, FL, Bartow Muni, VOR/DME RWY 9L, Amdt 1A
Lake Providence, LA, Byerley, NDB or GPS RWY 17, Amdt 1 Cancelled
Lake Providence, LA, Byerley, NDB RWY 17, Amdt 1
Marksville, LA, Marksville Muni, NDB or GPS RWY 4, Amdt 1A Cancelled
Marksville, LA, Marksville Muni, NDB RWY 4, Amdt 1A
Mansfield, MA, Mansfield Muni, NDB or GPS RWY 32, Amdt 4 Cancelled
Mansfield, MA, Mansfield Muni, NDB RWY 32, Amdt 4
Willmar, MN, Willmar Muni-John L. Rice Field, VOR or GPS RWY 10, Amdt 1A Cancelled
Willmar, MN, Willmar Muni-John L. Rice Field, VOR RWY 10, Amdt 1A
Imperial, NE, Imperial Muni, NDB or GPS RWY 31, Amdt 2 Cancelled
Imperial, NE, Imperial Muni, NDB RWY 31, Amdt 2
Portsmouth, NH, Pease International Tradeport, VOR or TACAN or GPS RWY 16, Amdt 1A Cancelled
Portsmouth, NH, Pease International Tradeport, VOR or TACAN RWY 16, Amdt 1A
Trenton, NJ, Mercer County, VOR/DME RNAV or GPS RWY 16, Amdt 4 Cancelled
Trenton, NJ, Mercer County, VOR/DME RNAV RWY 16, Amdt 4
Trenton, NJ, Mercer County, VOR/DME RNAV or GPS RWY 34, Amdt 5 Cancelled
Trenton, NJ, Mercer County, VOR/DME RNAV RWY 34, Amdt 5
North Kingstown, RI, Quonset State, VOR or GPS RWY 34, Orig Cancelled
North Kingstown, RI, Quonset State, VOR RWY 34, Orig.
Hondo, TX, Hondo Muni, VOR or GPS RWY 17L, Orig Cancelled
Hondo, TX, Hondo Muni, VOR RWY 17L, Orig.

[FR Doc. 96–15914 Filed 6–20–96; 8:45 am]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MI43–03–7258; FRL–5525–4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 2, 1996 the Environmental Protection Agency (EPA) published a proposal to approve the redesignation to attainment and associated section 175A maintenance plan for the ozone National Ambient Air Quality Standard (NAAQS) for the two-county Grand Rapids, Michigan area as a State Implementation Plan (SIP) revision. The 30-day comment period concluded on May 2, 1996. A total of 1 comment letter was received in response to the April 2, 1996 proposal. On May 1, 1996, the EPA published a 14-day partial extension of the comment period on the redesignation request and section 175A maintenance plan, limited to the State's April 11, 1996 revision to the section 175A maintenance plan which was not available in EPA's docket prior to April 15, 1996. The reopened comment period concluded on May 16, 1996. One additional comment letter was received in response to the May 1, 1996, extension of public comment period. This final rule summarizes all comments and EPA's responses, and finalizes the approval of the redesignation to attainment for ozone and associated section 175A maintenance plan for the Grand Rapids area.

EFFECTIVE DATE: This action will be effective June 21, 1996.

ADDRESSES: Copies of the SIP revisions, public comments and EPA'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 (AR–18J), Air Programs 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 redesignation request and maintenance plan for the Grand Rapids and Muskegon moderate ozone nonattainment areas discussed in this rule were submitted on March 9, 1995 and May 1, 1995 (with a revision on April 11, 1996), by the Michigan Department of Environmental Quality (MDEQ). However, the April 2, 1996 proposal and this final rule address only the Grand Rapids area, which consists of Kent and Ottawa Counties. On April 2, 1996, (61 FR 14522) the EPA published a proposal to approve the redesignation request and associated section 175A maintenance plan as a revision to the Michigan ozone SIP. On May 1, 1996 (61 FR 19233), the EPA published a partial 14-day extension of the comment period on the redesignation request and section 175A maintenance plan, limited to the State's April 11, 1996 revision to the section 175A maintenance plan, which was not available in EPA's docket prior to April 15, 1996. The reopened comment period concluded on May 16, 1996. 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 EPA's final action regarding the redesignation and section 175A maintenance plan for the Grand Rapids

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area. A more detailed discussion in response to each comment is contained in the EPA's Technical Support Document (TSD), dated XXX, 1995 from Jacqueline Nwia to the Docket, entitled "Response to Comments on the April 2, 1996 Proposal to Approve the Redesignation to Attainment for Ozone and Section 175A Maintenance Plan for the Grand Rapids Area," which is available from the Region 5 office listed above.

II. Public Comments and EPA Responses and Final Rulemaking Actions

The following discussion summarizes and responds to the comments received regarding the redesignation of the Grand Rapids area to attainment for ozone.

Comment: The commentor requested additional time to review and provide comments on the proposed redesignation because: the proposal was contingent on Michigan's submittal of a revision to the section 175A maintenance plan which was not available for public review until April 15, 1996; the proposed action concerns the public health of many of the requestor's members; and the proposed action incorporates new guidance and policy which have broad implications throughout the Lake Michigan basin and beyond. The commentor requested a minimum of 30 days beyond the date of Michigan's most recent submittal or May 15, 1996.

Response: EPA extended the public comment period only for those portions of the redesignation and section 175A maintenance plan pertaining to Michigan's April 11, 1996 maintenance plan SIP that did not become available in EPA's docket until April 15, 1996. The 14-day extension concluded on May 16, 1996. The EPA believes this provides the commentor with an adequate opportunity to review and submit comments on the subject of this rulemaking action.

Comment: The commentor notes that the proposed redesignation violates the specific and general intent of Congress in specifying requirements for redesignation. The commentor elaborates by stating that the proposed approval violates redesignation requirements of the Clean Air Act Amendments of 1990 (Act) by lowering the threshold for redesignation of these areas by reinterpretation of longstanding redesignation guidance and granting of waivers and exemptions of applicable statutory requirements. The waivers granted to the Grand Rapids area include: waiver from adoption of volatile organic compounds (VOC) reasonably available control technology (RACT) rules; waiver of the reasonable further progress (RFP) requirement; waiver of the part D New Source Review (NSR) requirement and waiver from the adoption of conformity rules.

Response: At the outset, EPA rejects the contention that its actions violate the redesignation requirements of the Act. The EPA has not granted the Grand Rapids area "waivers," or "exemptions" from, nor reinterpreted longstanding guidance pertaining to, RFP requirements or conformity. The EPA did propose an exception to current policy regarding the need to adopt certain VOC RACT rules prior to redesignation and applied the October 14, 1994 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation entitled "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," [1] regarding the requirements for part D NSR.

With respect to the RFP requirement, on July 20, 1995, the EPA made a determination regarding the applicability of certain RFP and attainment demonstration requirements. This final rule determined that since the Grand Rapids area had demonstrated attainment of the ozone standard, a factual determination based on 3 years of complete quality assured monitoring data, certain provisions of the Act, whose explicit purpose is to achieve attainment of the standard, do not require SIP revisions to be made by the State for so long as the area continues to attain the standard. Those provisions include RFP, the section 172(c)(9) contingency measures and attainment demonstration. The EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995,[2] EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner as EPA had previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172).

EPA has explained at length in other notices, including the July 20, 1995 determination of attainment regarding the Grand Rapids area (60 FR 37366), its rationale for the reasonableness of that interpretation of the Act and incorporates those explanations by reference here. *See* Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio, 61 FR 20458 (May 7, 1996); Determination of Attainment of Ozone Standard for Salt Lake and Davis Counties, Utah, 60 FR 36723 (July 18, 1995). EPA emphasizes that it has not suspended or granted the Grand Rapids area an exemption from any applicable requirements. Rather, EPA has interpreted the requirements of sections 182(b)(1)(A)(I) and 172(c)(9) as not being applicable once an area has attained the standard, as long as it continues to do so. This is not a waiver of requirements that by their terms clearly apply; it is a determination that certain requirements are written so as to be operative only if the area is not attaining the standard.

The May 1995 Seitz memorandum was clear about the consequences of the policy for redesignations. First, it made plain that a determination of attainment is not tantamount to a redesignation of an area to attainment. Attainment is only one of the criteria set forth in section 107(d)(3)(E). To be redesignated, the State must satisfy all of the criteria of section 107(d)(3)(E), including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions, and the requirements that the area have a fully-approved SIP which meets all of the applicable section 110 and part D requirements, and a fully approved maintenance plan.

Upon a determination of attainment, however, the section 182(b)(1)(A)(I) requirements of RFP and attainment plans, and the section 172(c)(9) requirement of contingency plans are no longer considered applicable requirements under section 107(d)(3)(E). They would no longer be included among those measures whose approval is part of the requirement of having a fully approved SIP.

EPA is not diluting the redesignation requirements of section 107(d). What EPA has done is make a determination that since the area is attaining the standard, which is a factual determination, certain provisions of the

[1] Hereinafter referred to as "October 1994 Nichols memorandum."

[2] Hereinafter referred to as "May 1995 Seitz memorandum."

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Act, whose express purpose is to achieve attainment of the standard, do not require SIP revisions to be made by the State for so long as the area continues to attain the standard. This has long been EPA's policy with respect to the section 172(c)(9) contingency measures and section 172(c)(2) RFP requirement. *See* general preamble at 57 FR 13498. EPA has also made determinations regarding section 182(f) NO_X waivers at or before the redesignation of an area and therefore not required NO_X RACT submissions to approve such redesignations. *See* the Bay Area redesignation at 59 FR 49361 and Detroit-Ann Arbor redesignation at 60 FR 12459.

EPA's statutory analysis was explained in detail in the July 20, 1995 final rulemaking and in the May 1995 Seitz memorandum. To the extent here pertinent, such portions of that notice, including the responses to comments, are incorporated herein by reference.

Thus, EPA disagrees with the commentors' view that EPA is not complying with all the redesignation requirements of section 107(d)(3)(E). EPA has interpreted SIP submission requirements of section 182(b)(1) regarding reasonable further progress and attainment demonstration plans, and of section 172(c)(9) regarding contingency measures to be implemented in the event an area fails to make reasonable further progress or attain the standard by the attainment date, not to apply for so long as the area continues to attain the standard. Since they are not applicable, fulfillment of these requirements is not necessary to meet the redesignation criteria of section 107(d)(3)(E).

The commentor challenges EPA's authority to determine certain SIP requirements inapplicable, and then bootstraps that argument to complain that since Grand Rapids has not met these requirements, the redesignation request only partially fulfills section 107(d)(E)(v). The commentor argues that this is because the State has not met all "applicable" requirements under section 110 and part D; but the requirements it points to are the very ones that EPA has determined are *in*applicable.

EPA rejects this kind of circular argument. Since EPA has determined that the statute does not require certain submissions so long as the area is in attainment, those inapplicable requirements cannot serve as the basis for concluding that the redesignation request is defective. Under the criteria of section 107(d)(E)(3) itself, a State need only meet all *applicable* requirements, and have a fully approved plan that contains all *required* elements. Thus EPA's interpretation is fully consistent with the criteria of section 107(d)(3). Since EPA has determined that the 15 percent, attainment demonstration, and section 172(c)(9) contingency plan requirements are not applicable to Grand Rapids, and has found the SIP to be fully approvable without them, the Grand Rapids area has fairly met the criteria of section 107(d)(3). Certainly EPA, after determining that these requirements are inapplicable, could not in good faith conclude that the redesignation request is defective because it fails to meet them.

Thus EPA concludes that, where it has made a determination of attainment that results in the suspension of requirements, it may rely on that determination and its consequences in considering the approvability of a redesignation request.

For the reasons stated above and elsewhere in this document, in the July 20, 1995 **Federal Register** notice (60 FR 37366) pertaining to the Grand Rapids area, in the May 1995 Seitz memorandum, in the Utah notice (60 FR 36723, July 18, 1995) and in the Cleveland-Akron-Lorain notice (May 7, 1996, 61 FR 20468), EPA does not believe that the rulemaking violates any section of the Act, nor does it dilute the redesignation requirements under section 107(d)(3)(E).

With respect to the full adoption of VOC RACT rules, it should first be noted that Michigan has submitted and EPA has approved all of the sections 182(b)(2)(B) and 182(b)(2)(C) VOC RACT requirements applicable to the Grand Rapids area on September 7, 1994 (59 FR 46182) and October 23, 1995 (60 FR 54308). Therefore, the EPA assumes that the commentor is concerned about the section 182(b)(2)(A) requirement of the Act which requires States to develop VOC RACT rules for sources "covered by a CTG document issued by the Administrator between November 15, 1990, and the date of attainment" for moderate and above ozone nonattainment areas. The EPA has not granted the Grand Rapids area a "waiver" or "exemption" from this requirement either. In fact, EPA's proposed rulemaking action acknowledges the applicability of these rules in light of current EPA guidance (See "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, dated September 4, 1992),[3] since the due date for the CTG RACT rules at issue preceded the submission of the redesignation request, and consequently, generally require full adoption, submission and approval of these rules prior to approval of the redesignation request.[4]

The EPA does, however, believe that in the context of the particular circumstances of this redesignation, that it is reasonable and permissible to depart from that policy and instead accept a commitment to implement these RACT rules as contingency measures in the maintenance plan rather than require full adoption and approval of the rules prior to approval of the redesignation. The reasons justifying this departure from EPA's general policy were explained in the proposed action and are presented below.

EPA believes that several factors in combination justify allowing this exception to current EPA policy with respect to the Grand Rapids redesignation. First, the RACT rules at issue came due after the end of the ozone season in which Grand Rapids attained the standard and were not needed to bring about attainment of the ozone standard in Grand Rapids. Second, the State has demonstrated continued maintenance of the ozone standard through 2007 without the implementation of these measures. Third, the State has placed other contingency measures in the maintenance plan that would bring about far greater emission reductions than the VOC RACT rules and would therefore be substantially more effective in terms of correcting violations attributable to local emissions from the Grand Rapids area that may occur after redesignation. EPA's analysis of the emission reductions shows that the implementation of enhanced inspection and maintenance (I/M), Stage II or low Reid Vapor Pressure (RVP) (to 7.8 psi) programs would bring about greater reductions than VOC RACT rules for wood furniture coating, plastic parts coating and industrial clean-up solvents in aggregate, and substantially greater reductions than any of these RACT rules individually. Consequently, EPA believes that the other, more effective contingency measures, should and

[3] Hereinafter referred to as "September 1992 Calcagni memorandum."

[4] The EPA also notes that the Synthetic Organic Chemical Manufacturing (SOCMI) Distillation and Reactor CTG was issued on November 15, 1993, prior to the submission of the Grand Rapids redesignation request. That CTG, however, established a due date for State submittal of the SOCMI Distillation and Reactor rules of March 23, 1995 (See March 23, 1994, 59 FR 13717), a date after submission of a request to redesignation Grand Rapids to attainment. Thus, those rules are not applicable for purposes of this redesignation.

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would be implemented first even if the RACT rules were to be fully adopted prior to redesignation. The detailed analysis of these emission reduction estimates is contained in the TSD for the proposed rulemaking action dated March 20, 1996 entitled "TSD for the Request to Redesignate the Grand Rapids, Michigan Moderate Nonattainment Area to Attainment for Ozone and Proposed Revision to the Michigan Ozone SIP for a Section 175A Maintenance Plan" and TSD for this action dated XX, 1996, entitled "Response to Comments on the April 2, 1996 Proposal to Approve the Redesignation to Attainment for Ozone and Section 175A Maintenance Plan for the Grand Rapids Area."

EPA emphasizes that even under this departure from its policy regarding this action, the requirement for these RACT rules remains an applicable requirement for purposes of evaluating the redesignation request since it predated the submission of the request. The requirement, however, is met in the form of the submission and full approval of a commitment to adopt and implement these rules as contingency measures in the maintenance plan. (Under EPA's existing policy, contingency measures in maintenance plans may consist of commitments to adopt and implement measures upon a violation of the standard. See September 1992 Calcagni Memorandum.)

EPA further notes that even without this exception to its general policy, the State would have been able to have the RACT rules become a part of the contingency measures in the maintenance plan upon approval of the redesignation. That could have occurred only after or upon EPA's full approval of the adopted RACT rules, however. Thus, the only difference between EPA's general policy and the exception to that policy described in this action is that a commitment to adopt and implement the RACT rules in an expeditious manner, rather than fully-adopted RACT rules, would be among the contingency measures in the maintenance plan. In light of the combination of factors discussed above, including in particular the inclusion of other, significantly more effective, contingency measures in the maintenance plan, EPA believes that this difference has no significant environmental consequence and that it is permissible to approve the Grand Rapids redesignation on this basis. The EPA believes that this exception to its general policy is legally permissible under the statutory provisions governing redesignations. As noted above, the VOC RACT requirements remain applicable requirements under section 107 and EPA believes that their treatment in the contingency plan as commitments is consistent with the manner in which EPA has accepted other commitments to adopt and implement contingency measures in maintenance plans under section 175A.

The EPA believes that the Grand Rapids area may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program meeting the requirements of the 1990 Act amendments and the absence of such a part D NSR program from the contingency plan. This view has been set forth by the EPA as its policy in the 1994 Nichols memorandum.

The EPA believes that its decision not to insist on a fully-approved part D 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 EPA has the authority to establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no environmental value. See also *EDF* v. *EPA*, Nos. 94–1044 and 94–1062, Slip Op. at 28–29 (D.C. Cir. April 19, 1996).

Plainly, the part D NSR provisions of section 110 and part D are requirements that were applicable to the Grand Rapids area at the time of the submission of the request for redesignation. Thus, on its face, section 107(d)(3)(E) would seem to require that the State have submitted and the EPA have fully-approved a part D NSR program meeting the requirements of the Act before the areas could be redesignated to attainment.

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

The Grand Rapids area has demonstrated that maintenance of the ozone NAAQS will occur even if the emission reductions expected to result from the part D NSR program do not occur. The emission projections to demonstrate maintenance of the NAAQS considered growth in point source emissions (along with growth for other source categories) and were premised on the assumption that the Prevention of Significant Deterioration (PSD) program, rather than the part D NSR, would be in effect, during the maintenance period. Under part D NSR, significant point source emissions growth would not occur. Michigan assumed that part D NSR would not apply after redesignation to attainment and instead assumed source growth factors based on projected growth in the economy and in the area's population. (It should be noted that the growth factors assumed may be overestimates under PSD, which would restrain source growth through the application of best available control techniques.) Thus, Michigan has demonstrated that there is no need to retain the part D NSR as an operative program in the SIP during the maintenance period to provide for continued maintenance of the ozone NAAQS.

The other purpose that requiring the full-approval of a part D NSR program might serve would be to ensure that part D 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 part D NSR program must be included as a contingency provision depends on whether it is a "measure" for the control of the pertinent air pollutants.

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 part C PSD and part D NSR permitting programs. For example, in section 110(a)(2)(A), Congress required that SIPs 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

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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 sections 110(a)(2) (A) and (C) had been intended to include part C PSD and part D 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 sections 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 EPA 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 EPA 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 part C PSD and part D NSR from its scope, the EPA believes it is reasonable to interpret "measure," as used in section 175A(d), not to include part D 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.[5] This distinguishes part D 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 EPA believes that those other required programs are clearly within the scope of the term "measure."[6]

The EPA'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 EPA is not permitting part D NSR to be removed without a demonstration that maintenance of the standard will be achieved. Moreover, the EPA 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 EPA believes that the part D NSR requirement differs from other requirements, and does not believe that the rationale for the part D NSR exception extends to other required programs.

As noted above, this change in policy was detailed in the October 1994 Nichols memorandum [7]. The position taken in this action is consistent with the EPA's current national policy detailed in the October 1994 Nichols memorandum. That policy permits redesignation to proceed without otherwise required part D 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.

The EPA has not "waived" the requirement for adoption and implementation of conformity regulations. Rather, EPA has determined that those requirements will continue to apply after the area is redesignated, and therefore need not be fulfilled as a condition of redesignation. The State of Michigan, in fact, has submitted transportation and general conformity SIP revisions on November 24, 1994 and November 29, 1994, respectively. The issue is full approval of these rules prior to redesignation. As presented in the April 2, 1996 (61 FR 14522) proposal, the EPA believes that it is reasonable to interpret the conformity requirement as not being applicable for purpose of redesignation under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continue to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While a redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, the EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

For the reasons just discussed, the EPA believes that the ozone redesignation request for the Grand Rapids area may be approved notwithstanding the lack of fully approved State transportation and general conformity rules. This policy was also exercised in the Tampa, Florida and Cleveland-Akron-Lorain ozone redesignations finalized on

[5] The EPA is not suggesting that part D NSR and prevention of significant (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 EPA 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 oxides of nitrogen (NO_X) offsets are necessary. See October 1994 Nichols memorandum.

[6] The 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.

[7] Which has been applied in other areas such as Detroit, Michigan, Preble, Columbiana, Clinton, Youngstown, Columbus, Canton, Cleveland, Toledo and Dayton, Ohio.

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December 7, 1995 (60 FR 52748) and May 7, 1996 (61 FR 20458), respectively.

According to the Federal transportation and general conformity rules, conformity applies to nonattainment areas as well as maintenance areas. Once redesignated, the Grand Rapids area will be a maintenance area and 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. 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. Michigan has established a motor vehicle emission budget for NO_X in the area's maintenance plan.

Comment: The commentor notes that between December 1, 1990 and June 1, 1995, EPA has redesignated 54 areas from nonattainment to attainment. Several of these redesignated areas, such as Kansas City, Kansas/Missouri, Detroit, Michigan, San Francisco, California, Charlotte, North Carolina; Huntington-Ashland, West Virginia/ Kentucky violated the ozone standard after redesignation. The commentor states that the EPA's "permissive" SIP revision requirements for these areas made future violations inevitable and ensure that inadequate contingency measures are adopted. The commentor also notes that the Grand Rapids and Muskegon areas observed 5 exceedances each after receiving a determination of attainment.

Response: To date the EPA has redesignated a total of 41 areas [8] to attainment for ozone. Of these areas, only 4, Detroit, Michigan, Memphis, Tennessee, San Francisco, California, and Kansas City, Kansas-Missouri, subsequently violated monitored violations of the ozone standard. EPA believes that this, in fact, demonstrates that for the vast majority of instances the redesignation policy is appropriate since most of the redesignated areas have not violated the ozone NAAQS to date. Furthermore, the Act and Congress contemplated that such events may occur and therefore, required that the Administrator fully approve a maintenance plan for the area consistent with the requirements of section 175A before the area can be redesignated to attainment. Section 107(d)(3)(E)(iv). Section 175A(d) requires that a maintenance plan contain contingency provisions deemed necessary by the Administrator to assure that the State will promptly correct a violation of the standard which occurs after the redesignation of the area to attainment. Clearly, the Act and Congress anticipated that areas redesignated to attainment may violate the NAAQS in the future and ensured that control measures to remedy the violation are available. Areas redesignated to attainment have approved maintenance plans with contingency measures that are and will be implemented in order to address the violations monitored in the area after redesignation. The maintenance plans for these areas were deemed appropriate and adequate for purposes of addressing a future violation as they were fully approved into the area's SIPs. Furthermore, if the contingency measures implemented by the State do not address future violations of the NAAQS, EPA has the authority to call for a plan revision requiring the adoption of additional control measures and/or redesignate the area to nonattainment which in turn would require the area to adopt and implement additional control measures appropriate for its classification. See sections 110(k)(5) and 107(d)(3).

With respect to the adequacy of the maintenance plan for Grand Rapids, the EPA would like to note that all aspects of the maintenance plan were reviewed and deemed appropriate. The commentor does not provide any specific arguments to support the comment.

For clarification purposes, the number of exceedances cited by the commentor is the total number of exceedances monitored in the Grand Rapids area and Muskegon area. The Grand Rapids area monitored one exceedance at each of the three monitors located within the two-county area in 1995. Taken into account with the previous two years, 1994 and 1993, the Grand Rapids area continues to demonstrate attainment of the ozone NAAQS with a number of expected exceedances less than or equal to 1.0.

Comment: The commentor states that the April 2, 1996 proposal jeopardizes the efforts currently being undertaken by the Ozone Transport Assessment Group (OTAG).

Response: The commentor's statement is unsupported. In the April 2, 1996 proposal, the EPA specifically stated that the redesignation of the Grand Rapids area to attainment in no way removes the State's obligation to get further reductions in emissions to address the broader transport phenomenon currently being investigated as part of the OTAG process. The issue of transported ozone and ozone precursors is being addressed by the OTAG which is composed of industry, environmental groups and Federal, State and local governments from the eastern part of the United States. The Lake Michigan States of Illinois, Indiana, Wisconsin and Michigan are all participating, at some level, in the OTAG process (Phase I/ Phase II attainment demonstrations as provided for in the March 2, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, entitled "Ozone Attainment Demonstrations"). Phase II of this analysis will assess the need for regional control strategies and refine local control strategies. Phase II will also provide the States and EPA the opportunity to determine appropriate regional strategies to resolve transport issues including any impacts the Grand Rapids area may have on ozone concentrations in its downwind areas. The EPA has the authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the Act to require emission reductions where appropriate based on the results of this effort or any other relevant information.

Comment: The commentor stated that exempting ozone nonattainment areas from compliance with part D NSR regulations presents special problems since PSD and preconstruction review rules "do not fully address how emissions of ozone precursors should be treated to assure that major new or modified sources do not cause or contribute to a NAAQS violation." In addition, the commentor contends that the *Alabama Power Co.* v. *Costle* [9] court cautioned that "to exempt de minimis situations from a statutory command is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design."

Response: EPA emphasizes that contrary to the commentor's contention, ozone nonattainment areas are not exempt from compliance with part D NSR regulations. The October 1994 Nichols memorandum suggests that areas that are otherwise eligible for redesignation need not have a fully approved part D NSR program as a prerequisite to redesignation since the part C PSD program would apply once the area has been redesignated to attainment. The part D NSR program

[8] This includes 28 classified and 13 nonclassified areas. The 28 classified areas include the Ohio portion of the Youngstown-Warren-Sharon area.

[9] EPA's policy to redesignate areas notwithstanding the absence of fully adopted and approved part D NSR SIP is based, in part, on EPA's authority to establish de minimis exceptions to statutory requirements when the requirement would be of trivial or no value environmentally under the *Alabama Power Co.* v. *Costle* court decision.

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requirements apply to the area until the area is redesignated to attainment.

The October 1994 Nichols memorandum's statement that EPA regulations (40 CFR 51.165(b)(3) and appendix S) "do not fully address how ozone precursor emissions should be treated to ensure that major new or modified sources do not cause or contribute to an ozone NAAQS violation" is based on the difficulty in modeling the impact of emissions from specific sources on ozone formation. The policy, however, also states that for areas with preconstruction monitoring or other information that indicate that the area is not meeting the ozone standard after redesignation to attainment, Appendix S or 40 CFR 51.165(b) apply. These areas should then require major new or modified sources to obtain VOC emission offsets of at least 1:1 ratio. In addition, the PSD program allows BACT in place of LAER if the less stringent control technology can be justified based on an economic, energy and environmental impacts analysis. Consequently, the State may impose a more stringent level of control other than what may be selected as BACT in an area redesignated to attainment but not meeting the NAAQS. With these elements, the preconstruction review programs can assure that major new or modified sources achieve the statutory goals of part D NSR.

With respect to the cautions of the *Costle* court of the *Alabama Power* decision, EPA believes that the exercise of its de minimis authority in this instance is fully consistent with them. EPA is using its authority to facilitate the implementation of the statute and the legislative design behind it. EPA also notes that the D.C. Circuit, the court that decided the *Alabama Power* case, recently decided another case upholding EPA's exercise of its de minimis authority under the Act. Referring to EPA's authority to create de minimis exceptions as being inherent in the statutory scheme, the court stated that "the same deference due to an agency's reasonable interpretation of an ambiguous statute may also be due to an agency's creation of a de minimis exception." *EDF* v. *EPA*, Nos. 94–1044 and 94–1062, Slip Op. at 28–29 (D.C. Cir. April 19, 1996).

Comment: The commentor contends that the EPA cannot use the May 1995 Seitz memorandum to substitute its own criteria for redesignation over congressional instruction. The commentor rationalizes that the part D requirements are defined by the nonattainment or attainment designation of an area. The EPA, therefore, does not have the "authority to modify the operation of the Act, and substitute its own judgement for that of Congress." Furthermore, SIP requirements are joined to the classification of a nonattainment area (see sections 182 and 181).

Response: The May 1995 Seitz memorandum does not substitute EPA's criteria for congressional instruction. Instead, the May 1995 Seitz memorandum presents EPA's interpretation of the statutory language of the Act regarding RFP and related provisions as they relate to areas demonstrating attainment of the ozone NAAQS.

With respect to the commentor's statement that SIP requirements are joined to the classification of a nonattainment area, the EPA would note that the commentor is equating the designation of an area as attainment or nonattainment with the fact finding of whether an area is attaining the standard, regardless of its designation. EPA believes that these are two distinct issues. Title I of the Act, including part D, contains provisions that distinguish between the concept of attainment of a NAAQS shown through monitoring data, and an area's designation as attainment or nonattainment.

The fact that only one of the five criteria for redesignation of a nonattainment area to attainment is the determination that the area "has attained the national ambient air quality standard," demonstrates that section 107(d)(3)(E)(I) itself recognizes this distinction. Clearly, the Act anticipates there will be areas designated nonattainment that are attaining the standard, that there could be a nonattainment area that meets the air quality criterion for redesignation to attainment without satisfying the other criteria. Such an area would need to remain designated nonattainment even though it was attaining the standard.

In addition, the distinction between attaining the standard and the designation of an area as attainment or nonattainment is again demonstrated in the part D provision of section 182(f), which authorizes EPA to waive the NO_X reduction requirements that apply to ozone nonattainment areas if EPA determines that the NO_X reductions would "not contribute to attainment of the" ozone NAAQS. This provision has been applied on numerous occasions to waive NO_X emission reduction requirements for areas that have attained the standard, since such reductions in areas that have already attained the standard would not contribute to attainment. Thus, this provision clearly contemplates that areas designated nonattainment that have attained the standard may have certain specified requirements waived.

In conclusion, the Act does not equate the factual issue of whether an area is attaining the standard with the area's designation status as attainment or nonattainment. It explicitly expects situations in which areas designated nonattainment may be attaining the standard. Thus, the definition of "nonattainment area" in section 171(2), which provides that, for purposes of part D, a nonattainment area means an area that "is designated "nonattainment" with respect to [a particular] pollutant within the meaning of section 107(d)" does not contradict EPA's interpretation of the language of section 171(1) defining "RFP" requirements in terms of reductions for the purpose of "ensuring attainment."

EPA believes that, in general, the classification of an area designated nonattainment for ozone determines the set of requirements of subpart 2 to which the area is subject.

The issue becomes the substance of some of those requirements. In general, section 182(b)(1) and section 172(c)(9) apply to moderate ozone nonattainment areas. EPA, however, has interpreted section 182(b)(1) and 172(c)(9) such that additional SIP submission requirements are not necessary for an area classified as a moderate ozone nonattainment area that is attaining the ozone standard, for so long as the area continues to attain the standard. This is not a waiver of the requirement that by their terms clearly apply; it is a determination that certain requirements are written so as to be applicable only if the area is not attaining the standard. If prior to the redesignation of such an area to attainment, the area violated the ozone NAAQS, that determination would no longer apply. That area will once again be faced with an obligation to submit SIP revisions pursuant to sections 172(c)(9) and 182(b)(1).

Finally, other requirements of part D that are not written in such a way continue to apply solely by virtue of the area's classification and designation as a moderate ozone nonattainment area. For example, the VOC RACT requirement of section 182(a)(2) applies regardless of whether an area is attaining the standard. Similarly, the requirements of part D new source review continue to apply to areas designated nonattainment solely by virtue of their continuing nonattainment designation.

Comment: The Administrative Procedures Act (APA) requires that "substantive rules of general applicability" be subjected to public comment before promulgation. EPA's

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guidance interpreting section 107(d)(3)(E) requirements constitutes substantive rules of general applicability and thus, required to be subjected to public comment.

Response: EPA's reference to and reliance on guidance documents interpreting section 107(d)(3)(E),[10] all of which are either published or publicly available and a part of the record of the July 20, 1995 rulemaking and this rulemaking, is in no way illegal under provisions of either the Act or the APA. The commentor cites the APA's requirement that "substantive rules of general applicability" be published in the **Federal Register** and subject to public comment before promulgation. These documents do not purport to be anything but guidance. That is precisely why EPA performed the July 20, 1995 rulemaking, and this rulemaking action, a notice and comment rulemaking to take comment on its statutory interpretations and factual determinations in order to make a binding and enforceable determination regarding the Grand Rapids area. The April 2, 1996 notice referred to EPA's policy memorandum not as binding the Agency to adopt the interpretations being proposed therein, but rather as useful descriptions of rationale underlying those proposed interpretations. EPA has explained the legal and factual basis for its rulemaking in the April 2, 1996 rulemaking and afforded the public a full opportunity to comment on EPA's proposed interpretation and determination fully consistent with the applicable procedural requirements of the APA.

Comment: The 1993 Nichols and 1995 Seitz memoranda are inconsistent with earlier redesignation guidance (General Preamble, Calcagni and Shapiro memoranda) pertaining to required SIP revisions for redesignations.

Response: The October 1994 Nichols memorandum and the May 1995 Seitz memorandum represented modifications of earlier policies. That does not necessarily mean these memoranda were by any means completely inconsistent with prior policies. For example, the May 1995 Seitz memorandum interpreted the more specific RFP requirements of section 182(b)(1) in a manner consistent with EPA's previous interpretation of the more general section 171 and 172 requirements. Furthermore, EPA notes that it is permissible to revise its policies provided that the revised policies, as is the case with these, are legally justified and reasonable.

Comment: The commentor contends that ozone remains a significant public health threat in Grand Rapids since it fails to demonstrate attainment of the ozone NAAQS. The commentor proceeds to discuss an analysis of eight hour ozone concentration averages in the Grand Rapids Consolidated Metropolitan Statistical Area for 1995. The commentor states that on 26 days at least one monitor recorded ozone concentrations at or above 80 parts per billion (ppb) and represent days when at-risk populations were exposed to unhealthy levels of air pollution. The commentor states that by examining ground level wind directions and speeds and comparing results of monitors upwind (Jenison or Parnell) from Grand Rapids to downwind observations (Parnell or Jenison), the commentor has determined that 18 of these episodes indicate that local emissions significantly exacerbate the formation of unhealthy levels of ozone.

Response: The EPA determines attainment and nonattainment based on the current NAAQS of 0.12 parts per million (ppm) not 80 ppb. Therefore, the EPA must evaluate the eligibility for redesignation on the basis of the current, health based standard. The EPA agrees with the commentor's contention that ozone and ozone precursor emissions from the Grand Rapids urbanized area may contribute to ozone concentrations in downwind areas (downwind areas are relative to wind directions) by virtue of the fact that the area is an urbanized area. Nonetheless, the Grand Rapids area has demonstrated attainment of the current ozone NAAQS in the three year period 1992–1994, and continues to demonstrate attainment for the period 1993–1995.

The EPA evaluated the winds on July 13, 1995, where exceedances of the ozone NAAQS were recorded at all 3 monitors in the Grand Rapids area: Jenison at 0.133 ppm; Grand Rapids at 0.163 ppm; and Parnell at 0.134 ppm. Given that the winds were predominantly from the southwest and west/southwest, one would deduce that the exceedances were a result of ozone transport into the area. This is especially likely in view of the fact that the Jenison monitor, which is the Grand Rapids upwind monitor,[11] recorded an ozone concentration of 0.133 ppm.

Comment: The commentor acknowledges that emissions from the Milwaukee-Chicago-Gary corridor were transported north out of the basin on June 16, 1994, under high south/south-southeasterly winds. However, the commentor attributes an exceedance recorded in Grand Rapids on June 17, 1994, at a level of 149 ppb, to emissions from the Grand Rapids area since winds were still to light.

Response: The EPA acknowledges that local emissions, those from the Grand Rapids urbanized area, may affect ozone concentrations in the area and any downwind area. However, the extent of any contribution to ozone levels from the Grand Rapids area cannot be determined with any degree of certainty based on the information provided by the commentor, particularly in light of indications that the Grand Rapids area is the recipient of significant levels of transported ozone. Regardless of its origin, this exceedance does not constitute a violation of the ozone NAAQS. Thus, the area continues to be eligible for redesignation based on monitoring data showing no violations of the ozone NAAQS for the periods 1992–1994 and 1993–1995.

Comment: The commentor suggests that the 1992–1994 period cannot be used to demonstrate improvements in air quality due to permanent and enforceable emission reductions. Otherwise, the Chicago-Milwaukee-Gary severe-17 ozone nonattainment area could be downgraded to moderate ozone nonattainment. The commentor also alludes to the Detroit's assessment of contingency measures necessary to reduce domain-wide peaks in Tiverton, Ontario (Canada) below 200 ppb.

Response: The November 6, 1991 (56 FR 56694) classifications served to determine a control strategy adequate to achieve emissions reductions that would improve the air quality in an area to a level that would demonstrate attainment of the NAAQS. Consequently as an area implemented its control strategy it is anticipated that the air quality would continually improve until the area demonstrated attainment of the NAAQS. Upon demonstration of attainment, an area could request redesignation pursuant to section 107(d)(3) of the Act. The EPA has not allowed any area to reclassify based on 1992–1994 monitoring data or any other data sets outside of the data sets used in the November 1991 designations and classifications. Furthermore, pursuant to the General Preamble (April 16, 1992, 57 FR 13498), it is appropriate to redesignate any area to attainment based on the most recent consecutive 3 years of air quality data demonstrating attainment of the ozone NAAQS if the area satisfies the other redesignation criteria of section 107(d)(3)(E) including a demonstration that the improvement

[10] It is presumed that the commentor is referring to such documents as the October 1994 Nichols, May 1995 Seitz, and September 1992 Calcagni memoranda as well as the General Preamable (April 16, 1992, 57 FR 13498).

[11] An upwind monitor would indicate background levels of ozone entering an area.

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in air quality was due to permanent and enforceable emission reductions. Since the Grand Rapids area demonstrated attainment of the ozone NAAQS in the period 1992–1994, it is an appropriate period to be used as the basis for redesignation of the area to attainment particularly since the area has also satisfied the other section 107(d)(3) redesignation criteria including a reasonable demonstration that of permanent and enforceable emission reductions were the cause of the improvement in air quality in the area. The Grand Rapids area achieved 0.6 and 2.4 tons per day of VOC and NO_X emission reductions between 1991 and 1994. In addition, since the Grand Rapids area is the recipient of significant levels of transported ozone, Michigan also attributes the improvement in air quality, in part, to emission reductions achieved throughout the Lake Michigan region.

The comment regarding Detroit, Michigan is unclear and irrelevant to this rulemaking action.

Comment: Based on a table comparing number of days with temperatures above 90 degrees and number of monitored exceedances in Chicago, the commentor states that the years for which the Grand Rapids area demonstrated attainment, 1992–1994, fail the requirement that attainment can not be due to "unusually favorable meteorology" since that time period represents "a statistically significant (Chi square=14.6, Alpha=0.005) negative deviation" from the number of days conducive to formation of ozone or days with temperatures above 90 degrees.

Response: Section 107(d)(3)(E)(iii) requires that, for the EPA to approve a redesignation, it must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions. The September 1992 Calcagni memorandum, at page 4, clarifies this requirement by stating that "[attainment 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 April 2, 1996 **Federal Register** notice, the Grand Rapids area has reasonably demonstrated that permanent and enforceable emission reductions are responsible for the recent improvement in air quality. This demonstration was accomplished through an estimate of the reductions (from a nonattainment year, 1991 to an attainment year, 1994) of VOC and NO_X achieved primarily through implementation of the Federal Motor Vehicle Control Program (FMVCP) from 1991–1994, in line with the September 1992 Calcagni memorandum. The total reductions achieved from 1991 to 1994 were 0.6 tons of VOC and 2.4 tons of NO_X per day. The State claimed credit only for emission reductions achieved as a result of implementation of this federally enforceable control measure. The emission reductions claimed are conservative since they do not include the emission reductions resulting from other control measures and programs implemented during this time period, such as the VOC RACT fix-ups and catch-ups. The State, therefore, adequately demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions. Furthermore, the State has always maintained that the Grand Rapids area is significantly affected by ozone transported from the Chicago-Milwaukee-Gary severe-17 ozone nonattainment area. Consequently, emission reductions occurring in these areas are also attributable to the improvement in air quality in the Grand Rapids area.

With respect to the commentor's contention that meteorological conditions were not conducive to ozone production during the 1992–1994 period, the commentor provided an analysis of the number of days with temperatures equal to or greater than 90 degrees Fahrenheit at Chicago's O'Hare airport and the total number of monitored exceedance days from 1981–1995 throughout the Lake Michigan area. Since, the data is not limited to the Grand Rapids area, i.e. the number of 90 degree days in Chicago not Grand Rapids and the number of monitored exceedance days throughout the Lake Michigan area not only Grand Rapids, it would not be accurate to conduct a statistical analysis or draw conclusions pertaining to the Grand Rapids area based on this data, particularly in light of the transport phenomena affecting Grand Rapids. EPA, however, conducted a general statistical analysis of the meteorological parameters in the Grand Rapids area of maximum monthly temperatures and days with temperatures greater than 90 degrees Fahrenheit for the periods of April through September, 1992 through 1994, with the 10-year (1982–1991) averages for these parameters. The 1992–1994 averages for these parameters agreed with those for the 10-year averages with only minor differences. Based on averaged parameters, it can be concluded that the 1992–1994 period was typically conducive to ozone formation. Finally, the EPA notes that the Grand Rapids area has been in attainment for the two 3-year periods (1992–1994, and 1993–1995), 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: The commentor contends that the Ottawa County ozone monitoring network is inadequate to permit redesignation. The commentor notes that every monitor located on the eastern shoreline of Lake Michigan recorded a violation of the NAAQS in 1995, and finds it inconceivable that residents of southeastern Ottawa County were not exposed to ozone at levels above the NAAQS. This, the commentor concludes, should compel the EPA to require the State to site a monitor along the lakeshore in Ottawa County. The commentor is particularly concerned that EPA refuses to acknowledge that violations recorded at the Holland monitor, in Allegan County, which it contends, indicates violations of the NAAQS in Ottawa County. The commentor further states that it agrees with Michigan's contention that the Holland monitor "* * * is representative of the conditions in Ottawa County."

Response: As discussed in detail in the April 2, 1996, EPA believes that the monitoring network for the Grand Rapids area satisfies the requirements of 40 CFR part 58, appendix D. Michigan established a number of monitors on the west side of the State for purposes of gathering field data for the Lake Michigan Ozone Study (LMOS) during 1989–1991. Based on the field study data, the State decided to locate an ozone monitor in Holland, an urbanized area in Allegan County (just south of Ottawa County). However, at the encouragement of EPA, the State reestablished a monitor in Ottawa County, i.e. the Jenison site, in 1994. This in addition to the two monitors that already exist in Kent County. Thus, an ozone monitor is established in Ottawa County, however, the monitor is not at the lakeshore but inland and represents background ozone concentrations for the Grand Rapids urban area. The EPA has not taken any action to disapprove the network, but continually works with the State to improve the quality of the ambient monitoring network throughout the State. The fact that EPA and the State undertake actions that may result in improvements to the network, does not mean that EPA views the monitoring

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data which shows attainment of the standard in the Grand Rapids area as being inadequate or unreliable. EPA continually reviews monitoring networks to determine how they can be improved. However, the fact that a monitoring network is susceptible to improvement does not mean that the existing network does not meet EPA's regulations, nor does it mean that the data collected from the existing network should be ignored or discounted. EPA believes that the monitoring data fully supports a determination that the Grand Rapids area has attained the standard and is, therefore, eligible for redesignation to attainment. EPA does not believe that there is a basis for discounting the data which shows attainment of the standard.

EPA further notes that the additional monitor established in Ottawa County as part of the ongoing network improvements did not monitor an exceedance in 1992 when it operated for part of the ozone season, and has monitored only one exceedance since the monitor was reestablished in 1994. While that monitor has yet to be in operation for three full years, those initial results support the finding that the area has attained the standard. As a violation does not occur unless four exceedances occur at a single monitor over a three-year period, the data from the Grand Rapids area support the determination that the area has attained the standard and is, therefore, eligible for redesignation.

Michigan contends that the Holland monitor "* * * data is included in this request as representative of levels of transported ozone coming into the area." This can be interpreted to mean that the Holland monitor is representative of ozone that is being transported into Ottawa County. However, as explained in the proposal, the Allegan monitor cannot be considered part of the Grand Rapids area since it is outside the two county nonattainment area and the State of Michigan has never formally requested that it be made part of the Grand Rapids area's monitoring network. Furthermore, the Holland monitor is not representative of ozone concentrations resulting from ozone precursor emissions from the Grand Rapids area. The EPA is making its conclusion about the air quality data that has been collected from the valid network that currently exists in the Grand Rapids area.

Comment: The commentor is concerned about the validity of monitoring data collected at the Jenison monitor, specifically, the commentor alleges that of the years 1992–1994 only the 1994 data set is usable and is supplemented with 1995. In addition, the commentor questions the interpretation of the missing daily ozone value for July 14, 1995, from the Ottawa County ozone monitor. The commentor suggests that the missing daily ozone value for July 14, 1995 cannot be assumed to be less than the level of the standard since the maximum ozone concentration on the preceding day exceeded the standard.

Response: The Jenison monitor is one of three monitors in the Grand Rapids area. The other two monitors have operated in Kent County since 1980 and recorded a complete data set for 1992–1994 that demonstrate attainment of the ozone NAAQS consistent with EPA guidance including the September 1992 Calcagni memorandum and January 1979 document entitled "Guideline for the Interpretation of Ozone Air Quality Standards". The April 2, 1996 proposal noted that the Jenison monitor operated for 63 percent of the 1992 ozone season with no exceedances of the ozone NAAQS. The monitor was relocated to Holland, as discussed previously, based on the LMOS. However, at the encouragement of EPA, the State reestablished a monitor in Ottawa County, i.e. at Jenison, in 1994. Thus, the Jenison monitor has partial 1992 data and complete data for 1994 and 1995. No exceedances of the ozone NAAQS were recorded in 1992 and 1994 and one was recorded in 1995 at 0.133 ppm. As noted in the April 2, 1996 proposal, the "Guideline for the Interpretation of Ozone Air Quality Standards" suggests that evaluation ozone data requires the use of all ozone data collected at a site during the past 3 calendar years. If no data are available for a particular year then the remaining years are used. Since 1992 data is incomplete and 1993 data is unavailable for this monitor, it would suffice to use ozone monitoring data for the remaining most recent calendar years, 1992–1995. The Ottawa County monitor demonstrates attainment of the ozone NAAQS with the average number of expected exceedances of 0.5, a value less than 1.0.

It is unclear to EPA why the commentor believes that the missing daily ozone value for July 14, 1995 has been assumed to be less than the level of the standard. AIRS reports consistently show that there were no missing days assumed to be less than the standard for the Ottawa County monitor for 1995. The monitor captured 179 of a potential 183 days of monitoring data (98 percent data completeness). The 4 missing days (183 − 179=4) were *not* assumed to be less than the standard, but rather were accounted for in the calculation of the number of expected exceedances consistent with 40 CFR 51 (appendix H). The four missing days of data included July 14, 1995.

Comment: The commentor states that Michigan fails to comply with the section 176 conformity requirements and provides discussion to support the comment.

Response: This specific comment was submitted by the commentor to EPA in response to the EPA's February 2, 1996 (61 FR 3815–3817) direct final rulemaking to approve Michigan's general conformity SIP. As a result the EPA withdrew the direct final rulemaking in an action published on March 25, 1996 (61 FR 12030). This comment is not relevant to redesignation and therefore, will be addressed in the final rulemaking action on Michigan's general conformity SIP. See also the discussion above in the response on conformity requirements as they pertain to redesignation.

Comment: The commentor states that the Michigan City, Indiana ozone monitor (18–091–0005) in LaPorte County in northeastern Indiana recorded six exceedances during 1995, including daily ozone values of 0.154 ppm and 0.149 ppm. The commentor argues that several of the exceedances recorded in the Michigan City area are attributable, in part, to ozone and precursors originating in west Michigan.

The commentor notes that in response to EPA's June 2, 1995 proposed rulemaking pertaining to the determination of attainment for the Grand Rapids area, they submitted a comment regarding LMOS modeling for June 20–21 (Episode 4) which confirms that emissions from western Michigan contribute to exceedances of the ozone NAAQS. The commentor further notes that Episode 4 conditions are "associated with a lesser, yet significant, number of historical ozone episodes."

The commentor suggests that EPA stated that it has an "affirmative responsibility" to address transported emissions from upwind areas that significantly contribute to air quality problems in downwind areas. See 60 FR 37368.

The commentor notes that Michigan only cites LMOS modeling which shows that ozone and ozone precursors are transported into the Grand Rapids area. The commentor is concerned that Michigan refuses to acknowledge LMOS modeling that indicates that ozone and precursor emissions originating from Grand Rapids under certain meteorological conditions which occur with regular frequency, contribute to

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exceedances in downwind areas, including Michigan City, Indiana.

Response: The EPA has reviewed wind speeds and wind directions in Grand Rapids and Michigan City, Indiana for the 6 days on which exceedances were recorded in Michigan City, Indiana in 1995. The winds on the days at issue in Grand Rapids were predominantly from the south/southwest, i.e. into the Grand Rapids area with the exception of June 15, 1995, when the winds in Grand Rapids were predominantly from the easterly. The winds in Michigan City on the same days were also predominately from the south/southwest. Since Michigan City, Indiana is south-southwest of the Grand Rapids area, the exceedances on these days in 1995 were clearly not attributable to emissions from the Grand Rapids area but likely from the Chicago-Gary severe-17 nonattainment area.

The commentor has not clearly indicated what version of the modeling is used as the basis of their comment. It must be emphasized that the version of the LMOS modeling approved for regulatory purposes by EPA on December 15, 1994, for Episode 4 (June 20–21), does not clearly indicate the extent of the contribution of emissions from the Grand Rapids area to exceedances in the Michigan City, Indiana or any other downwind area. Since the extent of Grand Rapids' contribution to exceedances downwind cannot be determined with any degree of certainty given the information currently available, it would be premature for EPA to issue a finding pursuant to section 110(a)(2)(D). The commentor does not provide any additional information that would cause the EPA to determine that the imposition of additional control requirements in the area is warranted at this time. As further information becomes available, however, such a finding may be warranted.

In light of the preliminary information currently available, EPA does not believe that it would be justifiable to disapprove the redesignation request on the basis of concerns regarding transported emissions. The redesignation does not mean, however, that the Grand Rapids area might not have to achieve additional reductions pursuant to other provisions of the Act if it is determined in the future that such reductions are necessary to deal with transport from the Grand Rapids area to downwind areas. Finally, EPA would note that the issue of transported ozone and ozone precursors is being addressed by EPA through the OTAG which is composed of industry, environmental groups, Federal, State and Local governments from the eastern half of the United States. The Lake Michigan States of Illinois, Indiana, Wisconsin, and Michigan are all participating, at some level, in the OTAG process (Phase I/Phase II attainment demonstrations as provided for in the March 2, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, entitled "Ozone Attainment Demonstrations"). In addition, Phase II of this analysis will assess the need for regional control strategies and refine local control strategies. Phase II will also provide the States and EPA the opportunity to determine appropriate regional strategies to resolve transport issues including any impacts the Grand Rapids area may have on ozone concentrations in its downwind areas.

The commentor references the July 20, 1995 final rule regarding the determination of applicability of certain RFP and attainment demonstration requirements to the Grand Rapids area, and claims that EPA stated that it has an "affirmative responsibility" to address transported emissions from upwind areas that significantly contribute to air quality problems in downwind areas. EPA was, in fact, responding to a comment from the same commentor regarding the impacts of Grand Rapids on downwind areas. The EPA stated that it has the authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the Act to ensure that the required and necessary reductions are achieved in Grand Rapids, should subsequent modeling become available, such as the modeling that will be available through completion of the Phase II analysis, or any other subsequent modeling data. The EPA acknowledged in that final rule and in the April 2, 1996 proposal to redesignate Grand Rapids that preliminary modeling indicates that western Michigan is the recipient of transported ozone and that the area may also contribute to ozone concentrations in downwind areas. However, the LMOS modeling is being refined and is intertwined with the OTAG Phase I/Phase II process. Indeed, should the Phase II or any other modeling become available that demonstrates that reductions in ozone precursor emissions from the Grand Rapids area are necessary, the EPA has the authority to ensure that these emission reductions are achieved. In summary, currently no technically supportable basis exists for EPA to exercise its responsibility to take appropriate action to seek additional emission reductions in the Grand Rapids area.

Finally, Michigan submitted LMOS modeling which illustrated ozone and ozone precursor transport into the Grand Rapids area in the context of an overwhelming transport petition. Since Episode 4 models northeasterly wind patterns, it would not be relevant in demonstrating overwhelming transport into the area.

Comment: The commentor states that the maintenance plan submitted by Michigan is inadequate because Michigan's attainment emission inventory does not comply with EPA requirements and implies that there are insufficient enforceable pollution control measures available to ensure attainment and promptly correct any violations. The commentor appears to be saying that the SIP revision requirements of section 110 and part D should initially reduce ozone pollution, and subsequently maintain the improvement in air quality. The commentor also suggest that the emission inventory projections in the maintenance plan underestimate emissions growth in Grand Rapids.

Response: The commentor does not provide support for the contention that the attainment emission inventory does not comply with EPA requirements. EPA has reviewed Michigan's attainment emission inventory and believes that the inventory, in fact, is sufficient and meets EPA's requirements and guidance regarding emission inventories. With respect to the sufficiency of control measures necessary to ensure attainment and promptly correct a violation, the EPA would note first that Michigan has included inspection and maintenance, Stage II, low Reid Vapor Pressure fuel at 7.8 psi, and VOC RACT for major plastic parts coating, wood furniture coating and industrial clean-up solvents as control measures to be implemented to address a violation not attributable to transport. EPA believes that these control measures are adequate for purposes of contingency measures. The control measures already implemented in the area were obviously sufficient to allow the area to attain the ozone standard. Furthermore, the State has demonstrated that VOC and NO_X emissions will continue to decrease from the 1991 atttainment year levels through the 10 year maintenance period.

EPA agrees with the commentor that emission controls under section 110 and part D should reduce ozone pollution and subsequently maintain improvements in air quality. Although Michigan did not claim permanent and enforceable emission reductions credit for emission reductions achieved as a result of implementing section 110 and part D requirements, the State must continue to implement these programs even after redesignation.

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It should be recognized that approval of the redesignation is not expected to result in an increase in ozone precursor emissions. In fact, a decrease in both VOC and NO_X emissions from the Grand Rapids area is expected over the 10-year maintenance period. See 61 FR 14522, April 2, 1996. It should be noted that redesignation does not allow States to automatically remove control programs which have contributed to an area's attainment of a NAAQS for any pollutant. The EPA'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 modeling [12] or adequate justification [13], is approved by the EPA. In this case no previously implemented control strategies are being relaxed as part of this redesignation.

Further, apart from Title I requirements related to the cessation of the Grand Rapids 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 FMVCP requirements.

The commentor does not provide any support for its contention that the emissions growth projections in the maintenance plan are underestimated for the Grand Rapids area. The emissions projections in the maintenance plan are based on the 1991 emission inventory developed for the LMOS modeling effort. The projections are based on growth factors extracted from the EPA's Economic Growth Analysis System and supplemental information used in the development of emission projections. Point source growth factors for utilities are based on source specific data provided by the utility companies. Area source growth factors were supplemented with population and gasoline sales/marketing data. The stationary source emission estimates (point and area) were developed using the geocoded emissions modeling and projections system (GEMAP) which employs projection methodologies equivalent to those in the EPA's Emissions Projections System. EPA's MOBILE5a model was used to develop the mobile source emission estimates. Therefore, the emission projections methods are consistent with EPA's guidance.

Comment: The commentor cites two separate provisions of the Act, sections 182(c)(9) and 175A(d) that demand that maintenance plans include "specific measures to be undertaken if the area fails to meet any applicable milestone. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or Administrator upon a failure by the State to meet the applicable milestone." Section 182(c)(9). The commentor argues that Michigan's triggering mechanism is patently illegal and unacceptable under the Act.

The commentor states that the triggering mechanism defeats the meaning and purpose of the ozone standard (40 CFR 50.9) in that the ozone standard does not account for transport, i.e. an area is either in attainment or nonattainment due to observed ozone violations and that the designation and classification are purely a function of observed ozone values and not a function of the origin of ozone.

The commentor also questions the evaluation criteria utilized by Michigan, calling it "extremely suspect."

Response: Section 182(c)(9) contains the requirements for serious and above areas to adopt contingency measures pertaining to RFP, and is not relevant to this redesignation. Section 175A(d), however, is relevant and states that "* * * plan revision submitted under this section shall contain 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." The mechanism that would trigger the implementation of contingency measures in the Grand Rapids area is "an actual monitored ozone violation of the NAAQS, as defined in 40 CFR 50.9, determined not to be attributable to transport from upwind areas." The EPA believes that this triggering mechanism is appropriate for the Grand Rapids area, given the overwhelming evidence demonstrating that the area is the recipient of transported ozone and ozone precursors from the Milwaukee-Chicago-Gary severe-17 nonattainment areas. EPA believes that this triggering mechanism satisfies the requirement of section 175A(d), because if a violation is due to transport, then control measures implemented in the Grand Rapids area will not likely correct the violation. Thus, when violations are occurring as a result of transport, an attempt to impose control measures in the Grand Rapids area would be futile. EPA believes that it is implicit in the Act that the purpose of control measures is to achieve attainment.

Because violations due to transport are not accounted for in the ozone NAAQS at 40 CFR 50.9 does not mean that transport cannot be taken into account for purposes of implementing a control strategy to correct a violation. Although areas are designated and classified based on monitored violations, regardless of their origin, areas redesignated to attainment will be provided an opportunity to implement contingency measures to correct the violation before EPA would exercise its authority to redesignate the area back to nonattainment.

As part of the contingency plan for the Grand Rapids area, Michigan will conduct a technical analysis of meteorological conditions leading up to and during the exceedances contributing to a violation in order to determine local culpability. The commentor is concerned about the criteria to be used to evaluate transport, although the commentor does not provide any specifics about what criteria they are concerned. Furthermore, EPA notes that any analysis conducted by Michigan to determine local culpability will be subject to a public process. As part of the contingency plan, Michigan has incorporated procedures to involve EPA and afford the public the opportunity to review and participate in the determination of whether transport or local sources are reasonable for a violation.

Comment: The commentor contends that the only contingency measure actually adopted by Michigan is low RVP to 7.8 psi during the ozone season. The commentor notes that implementation of the I/M program was stayed by the Governor of Michigan on December 29, 1994, and that the Michigan legislature rescinded implementation of the Stage II vapor recovery program once the EPA promulgated its on board canister rule.

Response: The Grand Rapids moderate ozone nonattainment area was required to adopt and implement a basic I/M program. An enhanced I/M program was adopted by Michigan and fully approved by EPA into the SIP on October 11, 1994 (59 FR 51379), and was to have commenced operation on January 1, 1995. By the end of 1994, the Grand Rapids area had attained the ozone standard and was therefore, eligible for redesignation. The January 5, 1995 (60 FR 1735) revisions to the national I/M rule stipulate that areas

[12] Such a demonstration must show that removal of a control program will not interfere with maintenance of the ozone NAAQS and would entail submittal of an attainment modeling demonstration with the EPA's current *Guideline on Air Quality Models.*

[13] See September 1992 Calcagni memorandum.

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otherwise eligible for redesignation may submit the following in order to satisfy the I/M component of the SIP: legislative authority for basic I/M; a provision in the SIP providing that I/M be placed in the contingency measure portion of the maintenance plan; and an enforceable schedule and commitment by the Governor or his designee for adoption and implementation of a basic I/M program upon a triggering event. Also, *see* September 17, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, entitled, "SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone, Carbon Monoxide NAAQS on or after November 15, 1992,"[14] memorandum. With this, the Governor stayed the implementation of the I/M program in the Grand Rapids area. The Grand Rapids area, therefore, only needs to satisfy the items noted above. The legislative authority to implement an I/M program is contained in Michigan's Enrolled House Bill No. 4165, which provides that I/M may be implemented as a contingency measure consistent with an area's maintenance plan if it is not necessary for maintenance. The section 175A maintenance plan provides for the implementation of I/M as a contingency measure and also provides an enforceable schedule for the implementation of I/M as a contingency measure.

With respect to the commentor's concern regarding the rescission of Stage II, section 10c(3) of Michigan's Enrolled Senate Bill No. 726 for Stage II suspends implementation of the Stage II program once EPA has promulgated the final onboard rule. However, section 10c(3) also retains the authority to implement Stage II as a contingency measure in a maintenance plan for an area redesignated to attainment. Thus, once Grand Rapids is redesignated to attainment, Stage II may be implemented by the State as a contingency measure pursuant to the maintenance plan.

In conclusion, the State has adopted legislative authority to implement I/M, Stage II and low RVP to 7.8 psi as contingency measures.

Comment: The commentor notes that the January 24, 1996 letter from Dennis Drake, Chief of the Air Quality Division, Michigan Department of Environmental Quality to Valdas Adamkus, Regional Administrator, Region 5, and the State's April 11, 1996 contingency plan SIP revision imply that the VOC non-CTG RACT rules were at least adopted when in fact they were not.

Response: The January 24, 1996 letter merely notified EPA of the State's intention to revise the Grand Rapids area's maintenance plan to include a commitment to adopt and implement non-CTG VOC RACT rules for major sources of plastic parts coating, wood furniture coating and industrial clean-up solvents as contingency measures for the Grand Rapids area. The actual revision to the maintenance plan SIP, dated April 11, 1996, states that rules to apply non-CTG RACT to major sources of plastic parts coating, wood furniture coating and industrial clean up solvents have been "drafted." The State specifically notes that the promulgation process requires additional steps including "approval of the proposed rules by the Office of Regulatory Reform, the Legislative Services Bureau, and the Joint Legislative Committee on Administrative Rules." The State clearly indicated that the rules are draft and additional steps are necessary for promulgation. Furthermore, EPA explained in the April 2, 1996 proposal that the contingency measure for this element is that the State would commit to adopt and implement non-CTG VOC RACT rules for the three source categories noted previously.

Comment: The commentor suggests that the State's failure to adopt and implement the VOC non-CTG RACT rules in accordance with section 182(b)(2)(A) of the Act violates the sections 110 and 107(d)(3)(E)(v) requirements. Section 107(d)(3)(E) requires the State to adopt a complete part D nonattainment plan, which these non-CTG VOC RACT rules are part of, prior to redesignation.

Response: In the April 2, 1996 proposal, the EPA acknowledges that the section 182(b)(2)(A) requirement for non-CTG VOC RACT rules is an applicable requirement and that current EPA redesignation policy requires that these rules be fully adopted, and if not necessary for maintenance of the NAAQS, be moved to the contingency plan portion of the maintenance plan. However, the EPA, in this instance, proposed an exception to this policy based on a combination of three factors as previously discussed. The commentor, however, has not provided comments specific to the rationale used as the basis of the exception.

EPA emphasizes that, even without this exception to its general policy, the State would have been able to have the RACT rules become a part of the contingency measures in the maintenance plan upon approval of the redesignation. However, that could have occurred only after or upon EPA's full approval of the adopted RACT rules. Therefore, the only difference between EPA's general policy and the exception to that policy proposed for Grand Rapids is that a commitment to adopt and implement the RACT rules in an expeditious manner, rather than fully-adopted RACT rules, would be among the contingency measures in the maintenance plan. As previously discussed, the EPA believes that this exception to its general policy is legally permissible under the statutory provisions governing redesignation. The VOC RACT requirements remain applicable requirements under section 107 and EPA believes that their treatment in the contingency plan as commitments is consistent with the manner in which EPA has accepted other commitments to adopt and implement contingency measures in maintenance plans under section 175A.

Comment: The commentor states that the contingency measures provided for in the maintenance plan are inadequate and illusory. The commentor further elaborates that none of the contingency measures are adopted with the necessary legislative authority or described with sufficient specificity, nor do they include milestones to insure prompt implementation as required by section 175A(d) or EPA guidance.

Response: Contrary to the commentor's statement, legislative authority is adopted for three of the contingency measures, I/M, Stage II and low RVP to 7.8 psi. Further, the State has submitted an enforceable commitment to implement the three non-CTG VOC RACT rules. Neither the Act nor redesignation guidance require milestones to track the State's compliance with adoption and implementation of contingency measures. The September 1992 Calcagni memorandum suggests that the contingency plan identify the contingency measure to be adopted, provide a schedule and procedure for adoption and implementation, and provide a specific time limit for action by the State. The Grand Rapids area's contingency plan identifies the measure to be adopted, provides a procedure for adoption of the non-CTG VOC RACT rules ("promulgation involves * * * additional steps * * * approval of the proposed rules by the Office of Regulatory Reform, the Legislative Services Bureau * * * " See April 11, 1996, SIP revision) and provides a schedule for implementation (e.g. 20 months from the Governor's decision to employ these rules as contingency measures). It is noted that the critical component of this schedule is not the

[14] Hereinafter referred to as the "September 1993 Shapiro memorandum."

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State's internal schedule for adoption of the rule(s) but the schedule for full implementation.

It is further noted that the contingency measure implementation schedules for the Grand Rapids area were derived from the Act, and applicable State and Federal regulations. The schedule established for the implementation of contingency measures provides for the implementation of such measures as soon as within 1 year of a violation [15]. The EPA 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: The commentor states that EPA guidance requires that a maintenance plan "ensure prompt correction of any violation of the NAAQS." Yet the Grand Rapids maintenance plan SIP revision of April 11, 1996 allows implementation of the non-CTG RACT rules within 26 months of an ozone violation. The commentor is concerned that 26 months for implementation of the non-CTG VOC RACT rules does not ensure prompt correction of a violation. In addition, the maintenance plan lacks adequate milestones to track the State's compliance.

Response: The 26-month schedule to implement the non-CTG VOC RACT rules takes into account 6 months to quality assure the monitoring data indicating a violation of the ozone NAAQS, conduct an analysis to determine local culpability with respect to a violation, and to afford the public an opportunity to participate in the determination of local culpability, 8 months for full adoption of any of the non-CTG RACT rule(s) chosen as a contingency measure, and 12 months for full implementation.[16] The EPA believes that this is an expeditious schedule for adoption and implementation of these rules.

Furthermore, neither the Act nor redesignation guidance requires milestones to track the State's compliance with adoption and implementation of contingency measures. The September 1992 Calcagni memorandum suggests that the contingency plan identify the contingency measure to be adopted, provide a schedule and procedure for adoption and implementation, and provide a specific time limit for action by the State. The Grand Rapids area's contingency plan identifies the measure to be adopted, provides a procedure for adoption of the non-CTG VOC RACT rules ("promulgation involves * * * additional steps * * * approval of the proposed rules by the Office of Regulatory Reform, the Legislative Services Bureau * * *" See April 11, 1996, SIP revision) and provides a schedule for implementation (e.g. 20 months from the Governor's decision to employ these rules as contingency measures). The critical component of this schedule is not the State's internal schedule for adoption of the rule(s) but the schedule for full implementation.

Finally, there are other more effective contingency measures than the non-CTG VOC RACT rules that could be implemented more expeditiously such as Stage II and low RVP gasoline (to 7.8 psi).

Comment: The commentor states that allowing the State to commit to subsequent adoption of the three required VOC non-CTG RACT rules as contingency measures is "extraordinary and prohibited * * * preferential treatment" for Michigan and is inconsistent with EPA guidance and recent actions on other moderate area redesignation requests. The commentor believes that such preferential treatment rewards the State for its failure to satisfy Act requirements. This is particularly so, since the EPA penalized adjacent States that did not adopt and implement these non-CTG VOC RACT rules and other control measures. Preferential treatment is "illegal" and undermines the cooperation of other States implementing future control measures to reduce ozone and ozone precursor emissions and other efforts such as LMOS and OTAG. The commentor further states that the EPA's preferential treatment is especially evident in its allowing Michigan to determine the need for implementation of contingency measures based on parameters developed by Michigan.

Response: EPA again notes that, even without the exception to its general policy proposed in the April 2, 1996 rulemaking, the State would have been able to have the RACT rules become a part of the contingency measures in the maintenance plan upon approval of the redesignation. However, that could have occurred only after or upon EPA's full approval of the adopted RACT rules. Consequently, the only difference between EPA's general policy and the exception to that policy described in the proposal is that a commitment to adopt and implement the RACT rules in an expeditious manner, rather than fully-adopted RACT rules, would be among the contingency measures in the maintenance plan. EPA would also note that, in general, contingency measures need not be fully adopted. See September 1992 Calcagni memorandum. Thus, EPA is acknowledging that allowing Michigan to incorporate these non-CTG VOC RACT measures into the contingency plan without fully adopted rule is an exception to policy. The commentor, however, has not provided any basis to dispute the rationale for this exception and factors presented in the April 2, 1996 proposal.

The EPA disagrees with the commentor's contention that EPA is affording Michigan "preferential treatment." EPA guidance and policies have been, or can be, applied to all areas, including Grand Rapids, in an equitable manner. EPA periodically will make an exception to policy where an exception is warranted and appropriate. Allowing an exception to policy for a particular area does not constitute preferential treatment for that area but instead is a neutral determination that is available to other areas that could also demonstrate circumstances that would warrant the same exception. This is the first instance that the issue of full adoption of these particular non-CTG VOC RACT rules has arisen in the context of redesignation. As such, it is in this action that the exception to policy is being exercised.

The commentor does not cite any instances, nor is EPA aware of any instances, where EPA penalized an adjacent State that did not adopt and implement these non-CTG VOC RACT rules. The commentor does not specify the "other control measures" referred to.

In addition, with respect to the Grand Rapids maintenance plan, Michigan has incorporated a process not only to involve the EPA but to afford the public an opportunity to participate in the process to determine the necessity to select and implement contingency measures based on a technical analysis to determine local culpability. Thus, although Michigan will be conducting the analysis an opportunity for the public review and participate will be provided.

Comment: The commentor states that the non-CTG VOC RACT rules should have been adopted and implemented by November 15, 1994. The commentor also notes that neither Michigan nor EPA acknowledges this. The commentor adds that EPA has failed to enforce

[15] Phased in implementation of Stage II commences within 6 months of the Governor's decision to employ Stage II or one year of a monitored violation.

[16] See March 16, 1989 memorandum from John Calcagni, Director, Air Quality Management Division and John Seitz, Director, Stationary Source Compliance Division entitled "Compliance Schedules for Volatile Organic Compounds." This memorandum clarifies that the "presumptive norm" for source compliance with a new or revised rule is recommended to be 1 year or less.

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sections 182(b)(2)(A) at that time and is failing to enforce section 175A of the Act, now.

Response: Although EPA's general redesignation policy requires that rules and programs for requirements that come due prior to submittal of a complete redesignation request be adopted and fully approved into the area's SIP, it also allows for these measures to be moved into the area's maintenance plan as contingency measures if they are not yet implemented and not necessary for maintenance of the standard. September 1993 Shapiro memorandum. Thus, the non-CTG VOC RACT rules should have been adopted but not necessarily implemented. The rules would have been moved over into the area's maintenance plan since they were not needed for maintenance.

The April 2, 1996 proposal to approve the Grand Rapids redesignation does, in fact, acknowledge that the non-CTG VOC RACT rules were required to be submitted to EPA by November 15, 1994 and implemented by November 15, 1995. See 61 FR 14526. The State's April 11, 1996 submittal also acknowledges that these rules were due on November 15, 1994.

For the reasons explained above, however, EPA believes that its treatment of these rules in this redesignation is justifiable and appropriate.

Comment: The commentor is concerned that Michigan's contingency plan lacks milestones and is inconsistent with the specificity that the EPA required of contingency plans in other areas such as the Toledo, Ohio contingency plan, which included a number of milestones to gauge the State's progress.

Response: Neither the Act nor redesignation guidance require milestones to track the State's compliance with adoption and implementation of contingency measures. The September 1992 Calcagni memorandum suggests that the contingency plan identify the contingency measure to be adopted, provide a schedule and procedure for adoption and implementation, and provide a specific time limit for action by the State. The Grand Rapids area's contingency plan identifies the measure to be adopted, provides a procedure for adoption of the non-CTG VOC RACT rules ("promulgation involves * * * additional steps * * * approval of the proposed rules by the Office of Regulatory Reform, the Legislative Services Bureau * * * " See April 11, 1996, SIP revision) and provides a schedule for implementation (e.g. 20 months from the Governor's decision to employ these rules as contingency measures). The critical component of this schedule is not the State's internal schedule for adoption of the rule(s), but the schedule for full implementation.

Comment: The commentor is concerned that the schedule for implementation of the non-CTG VOC RACT rules for the three source categories identified would not "promptly correct any violation of the standard" since it allows over 2 years after an ozone violation before adopting and implementing a selected contingency measure.

Response: As noted previously, the 26-month schedule to implement the non-CTG VOC RACT rules takes into account: 6 months to quality assure the monitoring data indicating a violation of the ozone NAAQS, conduct an analysis to determine local culpability with respect to the violation, and afford the public an opportunity to participate in the determination of local culpability; 8 months for full adoption of any of the non-CTG RACT rule(s) chosen as a contingency measure; and 12 months for full implementation. The EPA believes that this is an adequate and expeditious schedule for adoption and implementation of these rules. In addition, the contingency plan contains other measures that provide for implementation of a measure as soon as within 1 year of a violation.[17]

Comment: The commentor suggests that the September 1992 Calcagni memorandum requires States to implement all the control measures prior to redesignation but that a revision to the SIP to remove measures may be submitted. The commentor interprets this to mean that the State must have adopted and implemented the "applicable control measures" in the area. The commentor notes that Michigan did not adopt and implement the non-CTG VOC RACT rules for plastic parts coating, wood furniture coating and clean-up solvents as required by section 182(b)(2)(A). In addition, Michigan did not adopt rules for non-CTG source categories which it deemed unnecessary due to the absence of existing sources.

Response: The September 1992 Calcagni memorandum interprets section 175A(d) as requiring the continued implementation of all measures contained in the area's part D nonattainment plan and that removal of these implemented measures would require a demonstration that the measures are not necessary for attainment or maintenance. In addition, once removed those measures are required to be incorporated into the area's contingency plan as contingency measures. The non-CTG VOC RACT rules, however, were not adopted by the State or approved by EPA into the area's part D nonattainment SIP. As such, the non-CTG VOC RACT rules were not required to be implemented as a prerequisite for redesignation since they were not incorporated into the part D nonattainment SIP. Furthermore, EPA's general redesignation policy does not require the implementation of all measures that were applicable to the area instead, it allows unimplemented measures to be moved into an area's maintenance plan as contingency measures if they are not necessary for maintenance. *See* Detroit redesignation with respect to Stage I (March 7, 1995, 60 FR 12459).

It is unclear to EPA why the commentor would be concerned that the State did not adopt rules applicable to sources which do not exist in the State. Appendix E of the supplement to the General Preamble (April 28, 1992, 57 FR 18070) stipulated that the States submit a list of major stationary sources that are expected to be subject to one of the 11 source categories for which EPA was to issue a CTG. Michigan submitted such a list on November 15, 1992. States have not been required to adopt rules for non-CTG source categories for which no sources exist in the State.

Comment: The commentor states that EPA noted to Michigan, in its preliminary review of the Grand Rapids area's redesignation request, that adopted rules for the applicable source categories in Appendix E should be submitted. In response, the State committed to adopt these non-CTG VOC RACT rules as contingency measures should they be chosen as contingency measures. The commentor believes this is an "inadequate and unacceptable substitute" for adoption and implementation of these rules.

Response: EPA's comments merely represented a preliminary review of the State's redesignation request. As discussed in the April 2, 1996 proposal, current EPA policy, in fact, would require the State to have submitted adopted non-CTG VOC RACT rules for the 3 source categories at issue before the area could be redesignated to attainment. As discussed previously, however, EPA proposed to make an exception to policy in this instance for several reasons, including the fact that the RACT rules at issue came due after the end of the ozone season in which Grand Rapids attained the standard and were not needed to bring about attainment of the ozone standard in Grand Rapids. In addition, the State has

[17] See footnote 15.

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demonstrated continued maintenance of the ozone standard through 2007 without the implementation of these measures and other contingency measures are included in the maintenance plan that would bring about far greater emission reductions than the VOC RACT rules, and would therefore be substantially more effective in terms of correcting violations attributable to local emissions from the Grand Rapids area that may occur after redesignation. Again, the commentor does not challenge the rational used to make the exception to policy pertaining to the non-CTG RACT rules.

EPA's general redesignation policy requires that rules and programs for requirements that come due prior to submittal of a complete redesignation request be adopted and fully approved into the area's SIP. The policy also allows for these measures to be moved into the area's maintenance plan as contingency measures if they are not necessary for maintenance of the standard. September 1993 Shapiro memorandum. Thus, the non-CTG VOC RACT rules should have been adopted but may have been moved over into the area's maintenance plan, if the area demonstrated that the measure(s) was not necessary for maintenance.

Comment: The commentor submits that the EPA is prohibited from accepting commitments by a State to adopt and implement contingency measures in place of fully adopted and implemented rules as required for SIP revisions pursuant to section 110(k)(4). *Natural Resources Defense Counsel (NRDC)* v. *U.S. EPA*.

Response: EPA does not believe that the D.C. Circuit's decision in *NRDC* v. *U.S. EPA*, 22 F.3d 1125 (D.C. Cir. 1994) concerning the use of commitments under section 110(k)(4) prohibits EPA from fully approving commitments by a State to adopt and implement contingency measures in a section 175A maintenance plan. The *NRDC* decision concerned the use of the section 110(k)(4) conditional approval mechanism, which contemplates the conversion of a conditional approval to a disapproval if a State fails to comply with a commitment to adopt specific enforceable measures by a date certain, which may be no later than one year after the conditional approval. In contrast, the commitments regarding contingency measures in a section 175A maintenance plan become enforceable commitments once they are fully-approved into the maintenance plan. As these commitments are fully approved into the SIP, they, like other provisions of a fully-approved plan, are enforceable pursuant to the provisions of the Act. *See* September 1992 Calcagni memorandum at p. 12 (stating that "the contingency plan is considered to be an enforceable part of the SIP"). EPA notes that it has not relied on the section 110(k)(4) conditional approval mechanism for dealing with commitments regarding maintenance plan contingency measures either before or after the *NRDC* decision, but has consistently fully-approved such commitments, thereby making them an enforceable part of the SIP. In sum, EPA does not believe that its authority to accept such commitments was affected by the *NRDC* decision.

Comment: The commentor cites the September 1992 Calcagni memorandum which provides that, "for purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved," and interprets this language to imply that contingency measures need not be self-executing and provides the State discretion in selection of a contingency measure from a host of "adopted contingency measures."

Response: The September 1992 Calcagni memorandum citation noted by the commentor is valid. However, the September 1992 Calcagni memorandum goes on to say in the next sentences that "the contingency plan * * * should ensure that the contingency measures are adopted expediently once they are triggered." Clearly, this indicates that contingency measures need not be fully adopted since the contingency plan should ensure expeditious adoption of contingency measures.

Comment: The commentor is concerned that the State did not implement an enhanced I/M program as scheduled in December 1994 and that the State has partially rescinded the legal authority for the I/M program.

Response: The Grand Rapids moderate ozone nonattainment area was required to adopt and implement a basic I/M program. An enhanced I/M program was adopted by Michigan and fully approved by EPA into the SIP on October 11, 1994 (59 FR 51379) and was to have commenced implementation on January 1, 1995. By the end of 1994, the Grand Rapids area had attained the ozone standard and therefore, was eligible for redesignation. The January 5, 1995 (60 FR 1735) revisions to the national I/M rule stipulate that areas otherwise eligible for redesignation, may submit the following in order to satisfy the I/M component of the SIP: legislative authority for basic I/M; a provision in the SIP providing that I/M be placed in the contingency measure portion of the maintenance plan; and an enforceable schedule and commitment by the Governor or his designee for adoption and implementation of a basic I/M program upon a triggering event. Also, see September 1993 Shapiro memorandum. With this, the Governor stayed the implementation of the I/M program in the Grand Rapids area. In order to satisfy the I/M component of the SIP, therefore, the State needs to satisfy only the items noted above. The legislative authority to implement an I/M program is contained in Michigan's Enrolled House Bill No. 4165 which provides that I/M may be implemented as a contingency measure consistent with an area's maintenance plan if it is not necessary for maintenance. The 175A maintenance plan provides for the implementation of I/M as a contingency measure, and also provides an enforceable schedule for the implementation of I/M as a contingency measure.

Finally, EPA is not aware of any revocation of the legal authority of the I/M program. In fact, discussions with the State verified that Michigan's Enrolled House Bill No. 4165 has not been revoked or repealed but is still valid.

Comment: The commentor conducted an analysis of 1995 ambient monitoring data and concluded that the emissions from the Grand Rapids area produces tropospheric ozone. Adoption and implementation of the non-CTG VOC RACT rules for plastic parts coating, wood furniture coating and industrial clean-up solvents would have achieved considerable, cost-effective reduction in local VOC emissions as well as lessened the exposure of the community to toxic air pollutants. The commentor states that, if EPA had enforced part D nonattainment plan requirements for the Grand Rapids area, significant VOC emission reductions would have occurred.

Response: The EPA does not dispute the commentor's contention that ozone and ozone precursor emissions from the Grand Rapids urbanized area contribute to the formation of ozone nor that implementation of the non-CTG VOC RACT rules for the three source categories would have achieved reductions in local VOC emissions. Based on the current ozone standard, 0.12 ppm, however, the Grand Rapids area has demonstrated attainment of the current ozone NAAQS in the three year period 1992–1994 and continues to demonstrate attainment for the period 1993–1995 even without the implementation of these rules.

With respect to the EPA's enforcement of part D nonattainment

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plan requirements, EPA's general redesignation policy provides that part D nonattainment plan requirements that have been adopted but unimplemented may be moved into the area's maintenance plan as contingency measures if the area demonstrates that these rules are not necessary for maintenance of the ozone NAAQS. Even if EPA had made a finding of failure to submit after the State of Michigan's failure to submit the non-CTG VOC RACT rules at issue, there is no assurance that those rules would have been adopted and implemented prior to redesignation of the Grand Rapids area. Assuming that the State of Michigan would have adopted and submitted such rules to EPA after a finding of failure to submit, such rules would not have had to have been implemented prior to this redesignation. Indeed, as explained above, since maintenance of the standard has been demonstrated in the Grand Rapids area without such rules, the State would probably have simply included such rules on the list of contingency measures in the maintenance plan and not implemented them prior to the redesignation. In sum, no environmental benefit, and no reduction of emissions would have been realized by EPA's enforcement of section 182(b)(2)(A) in this case.

The commentor's calculations of emission reductions resulting from the implementation of non-CTG VOC RACT in the plastic parts, wood furniture and industrial clean up solvents are somewhat unclear and inaccurate. However, the EPA agrees with the commentor's assumption that in the calculations to determine the emissions on a tons per day basis from a tons per year basis, the tons per year figure should be divided by 365 days. Since the tons per year figures were based on a theoretical emission value, assuming the facilities are operating 365 days per year, dividing by 365 is more accurate and appropriate than dividing by 250. In its original calculations, the EPA erroneously divided by 250 days assuming that the tons per year figure was based on actual emissions and the facilities only operated on weekdays and not on weekends or holidays.

The commentor references two documents as the basis of its calculations, the "Lake Michigan Ozone Control Program Evaluation of Possible Control Measures: Control of Surface Coating of Plastic Parts; Control of Emissions from Wood Furniture Coating [VOC], Evaluation of Possible Control Measures for Solvent Metal Cleaning," developed through the Lake Michigan Air Directors Consortium, April 16, 1993 [18] and "Meeting the 15–Percent Rate-of-Progress Requirement Under the Clean Air Act: A Menu of Options," from STAPPA/ALAPCO, September 1993.[19]

In calculating potential emission reductions for the plastic parts coating source category, EPA believes that the commentor assumed a 95 percent reduction in emissions. This value appears to be based on the LADCO document, which estimates a potential 40–95 percent emission reduction depending on the level of control applied to the source category. The 95 percent reduction assumes that these sources are uncontrolled and that the State's rule would require the most stringent of three control options that represent RACT. Since Michigan has a rule applicable to plastic parts coating sources, the emission reductions would be far less than the 95 percent assumed by the commentor. In fact, according to Michigan's calculations, a non-CTG VOC RACT rule would achieve, approximately, an additional 7 percent reduction to the reductions already achieved by Michigan's Rule 632. The 7 percent reduction represents the additional reductions that would be achieved from the level of controls required by Michigan's current Rule 632 and a level of RACT between the first and second control options available in the draft CTG for this source category.

With respect to the wood furniture source category, the commentor assumed a 70 percent emission reduction. It appears that this value, again, was based on the LADCO document, which estimates a 50–70 percent emission reduction in the wood furniture coating source category. In its calculation of the emission reductions for this source category, EPA assumed a 30 percent emission reduction. This was based on an emission reduction estimate from the non-CTG document "Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations," September 7, 1995. Furthermore, the STAPPA/ALAPCO document referred to by the commentor also estimates an emission reduction of approximately 36 percent. While EPA's assumption is not as optimistic as that assumed by the commentor, EPA believes that the 30 percent emission reduction is a reasonable assumption based on EPA guidance and documentation, which estimates a range of reductions between 20 and 47 percent depending on the process being controlled. Furthermore, even if the optimistic 70 percent emission reduction is assumed, emission reductions from the implementation of I/M or low RVP (to 7.8 psi), at various time intervals, would achieve greater reductions than the plastic parts coating, wood furniture coating and industrial clean-up solvents in aggregate. In addition, emission reductions from the implementation of I/M, low RVP or Stage II would bring about far greater reductions than any of these non-CTG VOC RACT rules individually, even with the 70 percent emission reduction assumed by the commentor.

The commentor appears to be assuming a 15 percent emission reduction for the industrial clean-up solvents source category. The EPA based its calculations on an assumption of 25 percent reduction. Since the basis of the 15 percent assumption is unclear and EPA assumed a higher percentage emission reduction than did the commentor, this does not appear to be an issue of contention.

Consequently, EPA's conclusion that the other, more effective contingency measures, should and would be implemented first even if these RACT rules were to be fully adopted prior to redesignation, is not affected.

III. Final Rulemaking Action

The EPA approves the redesignation of the Grand Rapids, 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.

EPA finds that there is good cause for this redesignation to attainment, and SIP revision to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment which relieves the area from certain Clean Air Act requirements that would other wise apply to it. The immediate effective date for this redesignation is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."

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

[18] Hereinafter referred to as "LADCO document."

[19] Hereinafter referred to as "STAPPA/ALAPCO document."

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technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Ozone SIPs are designed to satisfy the requirements of part D of the Act and to provide for attainment and maintenance of the ozone NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation [section 173(b) of the Act] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on small entities affected.

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

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions 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 7401(a)(2).

Under section 801(a)(1)(A) of the APA as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report constraining this rule and other required information to the U.S. Senate, the U.S. House of Representative and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

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

Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this final action must be filed in the United States Court of Appeals for the appropriate circuit by August 20, 1996. 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, Incorporation by reference, Nitrogen oxides, Ozone, Volatile organic compounds, Motor vehicle pollution, and reporting and record keeping requirements.

40 CFR Part 81

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

Authority: 42 U.S.C. 7401–7671q.

Dated: June 17, 1996.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart X—Michigan

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1170 is amended by adding paragraph (c)(106) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(106) On March 9, 1995, 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 Grand Rapids 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 an attainment emission inventory for NO_X and VOC, a demonstration of maintenance of the ozone NAAQS with projected emission inventories to the year 2007 for NO_X and VOC, a plan to verify continued attainment, a contingency plan, and a commitment to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If a violation of the ozone NAAQS,

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determined not to be attributable to transport from upwind areas, is monitored, Michigan will implement one or more appropriate contingency measure(s) contained in the contingency plan. Once a violation of the ozone NAAQS is recorded, the State will notify EPA, review the data for quality assurance, and conduct a technical analysis, including an analysis of meteorological conditions leading up to and during the exceedances contributing to the violation, to determine local culpability. This preliminary analysis will be submitted to EPA and subjected to public review and comment. The State will solicit and consider EPA's technical advice and analysis before making a final determination on the cause of the violation. The Governor or his designee will select the contingency measure(s) to be implemented within six months of a monitored violation attributable to ozone and ozone precursors from the Grand Rapids area. The menu of contingency measures includes a motor vehicle inspection and maintenance program, Stage II vapor recovery, gasoline RVP reduction to 7.8 psi, RACT on major non-CTG VOC sources in the categories of coating of plastics, coating of wood furniture, and industrial cleaning solvents. Michigan submitted legislation or rules for I/M in House Bill No 4165, signed by Governor John Engler on November 13, 1993; 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. 4165 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 paragraph (o) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(o) Approval—On March 9, 1996, the Michigan Department of Environmental Quality submitted a request to redesignate the Grand Rapids ozone nonattainment area (consisting of Kent and Ottawa Counties) to attainment for ozone. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include an attainment emission inventory for NO_X and VOC, a demonstration of maintenance of the ozone NAAQS with projected emission inventories to the year 2007 for NO_X and VOC, a plan to verify continued attainment, a contingency plan, and a commitment to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If a violation of the ozone NAAQS, determined not to be attributable to transport from upwind areas, is monitored, Michigan will implement one or more appropriate contingency measure(s) contained in the contingency plan. Once a violation of the ozone NAAQS is recorded, the State will notify EPA, review the data for quality assurance, and conduct a technical analysis, including an analysis of meteorological conditions leading up to and during the exceedances contributing to the violation, to determine local culpability. This preliminary analysis will be submitted to EPA and subjected to public review and comment. The State will solicit and consider EPA's technical advice and analysis before making a final determination on the cause of the violation. The Governor or his designee will select the contingency measure(s) to be implemented within 6 months of a monitored violation attributable to ozone and ozone precursors from the Grand Rapids area. The menu of contingency measures includes a motor vehicle inspection and maintenance program, Stage II vapor recovery, RVP reduction to 7.8 psi, RACT on major non-CTG VOC sources in the categories of coating of plastics, coating of wood furniture, and industrial cleaning solvents. The redesignation request and maintenance plan meet the redesignation requirements in section 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, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.323 is amended by revising the attainment status designation table entry for the Grand Rapids area for ozone to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE

Designated areas	Designation		Classification	
	Date [1]	Type	Date	Type
* * *	*	*	*	*
Grand Rapids Area:				
Kent County	June 21, 1996	Attainment.		
Ottawa County	June 21, 1996	Attainment.		
* * *	*	*	*	*

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

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 14

RIN 1018–AB49

Importation, Exportation, and Transportation of Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule updates the U.S. Fish and Wildlife Service (Service) regulations providing for uniform rules and procedures for the importation, exportation, and transportation of wildlife. Several definitions are added and amended. The Service's exception to the designated port of entry requirement for wildlife products or manufactured articles worn as articles of clothing or contained in accompanying personal baggage is amended. The exceptions to the import declaration requirements and export declaration requirements are also amended. The Service minimum age requirement for certain antique articles, other than scrimshaw, imported into the United States is changed. The Service is also revising its clearance requirements and its refusal of clearance requirements. The Service's import declaration filing requirements are also changed.

Changes are also made in the marking requirements for containers used to ship fish or wildlife. Further changes are made in the import and export requirements and fee schedules and the exceptions to license requirements. In addition to the above changes, the non-standards fee schedule in part 13 for an import/export license is amended. Finally, the Service will allow the importation and exportation of dead, preserved, dried, or embedded scientific wildlife specimens by accredited scientists or accredited scientific institutions engaged in taxonomic or systematic research at any U.S. Customs port, or by way of the international mail.

EFFECTIVE DATE: This rule is effective July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Striegler, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of Interior, Washington, DC 20240, Telephone Number (703) 358–1949.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service (Service) has oversight responsibilities under statutory and regulatory authority to regulate the importation, exportation, and transportation of wildlife. The Service, consistent with this authority, has established an inspection program to oversee the importation, exportation, and transportation of wildlife and wildlife products. The Service, in support of its program activities, has promulgated regulations, subject to exemptions and permitted exceptions, restricting the importation and exportation of wildlife and wildlife products to certain designated ports, border ports, and special ports enumerated within the Code of Federal Regulations. Service regulations governing the importation, exportation, and transportation of wildlife are codified in 50 CFR part 14 and are implemented through the efforts of Service Special Agents and Wildlife Inspectors, and with the essential support, cooperation, and assistance of the U.S. Customs Service (Customs) and the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) and other cooperating agencies.

The Service is making the following changes to the Importation, Exportation, and Transportation of Wildlife regulations in part 14. A new section § 14.4, entitled "Definitions", is being added to include several new definitions. In adding these new definitions, the Service's intent is to provide greater uniformity in the interpretation of part 14. This section, includes a definition for the term "commercial" to explain when the commercial intent of a shipment becomes presumptive. The effect of this definition is to clarify when a wildlife shipper is required to obtain an import/export license, and when the personal baggage exception does not apply. A definition is also added for the term "export" to delineate when the filing of an export declaration and clearance by a Service Officer will be required. The term "accompanying personal baggage" is also defined to eliminate any ambiguity as to when hand-carried items and checked baggage will be regarded by the Service as an export or import. The meaning of the term "domesticated animal" is defined to distinguish such animals from wildlife.

The Service, in order to clarify its requirements, is defining the terms "Accredited scientific institutions" and "Accredited scientist." The term "Accredited scientific institution" is defined to include any public museum, public zoological park, accredited institution of higher education, accredited member of the American Zoo and Aquarium Association, accredited member of the American Association of Systematic Collections, or any State or Federal government agency that conducts biological or medical research. The term "Accredited scientist" is defined to include any individual associated with, employed by, or under contract to and accredited by an accredited scientific institution for the purposes of conducting biological or medical research, and whose research activities are approved and sponsored by the scientific institution granting accreditation.

In addition to the above changes, the term "worn" in § 14.15 is being removed and replaced with term "used" in order to clearly define when wildlife products are included within the personal baggage and household effects exception to the designated port requirements.

The Service is making several administrative corrections within the text of the regulations. The erroneous references to § 14.93(d) in § 14.82(a)(2) and the erroneous reference to § 14.93(d)(1) in § 14.93(c)(5) are being changed to read § 14.93(c) and § 14.93(c)(1), respectively. These citations refer to the requisite record requirements applicable to holders of an import/export license.

A reference to the permit requirements of part 23 is included within several sections of part 14. The requirements of part 23 implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The following provisions are being changed to include references to part 23: At § 14.21, the exceptions to the Service's license requirements for shellfish and fishery products; at § 14.55, the exceptions to Service wildlife clearance requirements stating when wildlife and wildlife products may be imported without clearance; at § 14.62(a), the exceptions to the import declaration requirements stating when a Service import declaration (Form 3–177) is not required; at § 14.64(a), the exception to export declaration requirements stating when a Service export declaration (Form 3–177) is not required; and at § 14.92(a)(1) and 14.92(a)(2), the exceptions to license requirements stating when wildlife may be imported or exported without the procurement of a Service import/export license.

The Service is changing the age minimum in § 14.22 for certain antique articles to be consistent with changes in the Endangered Species Act. The

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