Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air 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, the Administrator certifies 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 Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule 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. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives 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 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 7, 1997. 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: October 16, 1996.

William E. Muno,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart KK, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401—7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(112) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(112) On August 29, 1996, the United States Environmental Protection Agency received from the Ohio Environmental Protection Agency, changes to the approved vehicle inspection and maintenance (I/M) program which control the release of volatile organic compounds from vehicles. These changes provide a repair spending cap of $300 and a temporary hardship extension of time up to 6 months for owners to perform needed repairs on vehicles which fail the I/M program test.

(i) Incorporation by reference.

(A) Rule 3745–26–01—Definitions effective May 15, 1996.

(B) Rule 3745–26–12—Requirements for motor vehicle owners in the enhanced or opt-in enhanced automobile inspection and maintenance program, effective May 15, 1996.

[FR Doc. 97–194 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[LA–34–1–7300; FRL–5670–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Correction of Classification; Approval of the Maintenance Plan; Redesignation of Pointe Coupee Parish to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 22, 1996, EPA simultaneously published a direct final notice of rulemaking and a notice of proposed rulemaking in which EPA published its decision to approve a revision to the Louisiana State Implementation Plan (SIP) to redesignate Pointe Coupee Parish to attainment for ozone. During the 30-day comment period, EPA received an adverse comment letter in response to the July 22, 1996, rulemaking. This final rule summarizes the comments and EPA's responses, and finalizes EPA's decision to correct the classification of Pointe Coupee Parish from a serious to a marginal ozone nonattainment area. This action also approves the redesignation of Pointe Coupee Parish, Louisiana to attainment for ozone.

EFFECTIVE DATE: This action is effective on December 20, 1996.

ADDRESSES: Copies of the State's request and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

Anyone wishing to review this petition at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–

L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

I. Background

On July 22, 1996, EPA published a direct final rulemaking approving a revision to the existing Louisiana SIP to redesignate Pointe Coupee Parish to attainment for ozone (61 FR 37833). At the same time that EPA published the direct final rule, a separate notice of proposed rulemaking was published in the Federal Register (61 FR 37875). This proposed rulemaking specified that EPA would withdraw the direct final rule if adverse or critical comments were filed on the rulemaking within 30 days of its publication. The EPA received a letter containing adverse comments regarding the direct final rule on August 21, 1996, and published the withdrawal of the direct final rule on September 25, 1996 (61 FR 50238).

The specific rationale EPA used to approve the redesignation of Pointe Coupee Parish to attainment for ozone was explained in the direct final rule and will not be restated here. This final rule addresses the comments received during the public comment period and announces EPA's final action regarding approval of the redesignation request.

II. Response to Public Comments

The EPA received an adverse comment letter dated August 21, 1996, from the Citizens Commission for Clean Air in the Lake Michigan Basin, and thus proceeded to withdraw the direct final rule and adequately address each comment. The EPA's responses to each comment are detailed below.

A. Comments on the Correction Action

Comment: The commenters challenge the authority of the Administrator under section 110(k)(6) of the Clean Air Act (the Act) to reclassify an ozone nonattainment area by asserting that the original classification was made in error. The EPA failed to pause and consider section 110(k)(6) in conjunction with section 107(d)(4)(A).

Response: The EPA disagrees with the commenter's contention that the Administrator exceeded her authority in correcting the classification of Pointe Coupee Parish from serious to marginal. Section 110(k)(6) of the Act clearly allows the Administrator to revise an area's classification when a determination is made that the original classification was made in error. Section 107(d)(4)(A) of the Act discusses nonattainment designations for ozone and carbon monoxide. Section 107(d)(4)(A)(iv) of the Act requires that the boundaries of any such area classified as serious, severe, or extreme nonattainment for ozone shall include the entire Metropolitan Statistical Area (MSA) or Consolidated Metropolitan Statistical Area (CMSA), unless notice is received by the Administrator from the Governor of the State that additional time is necessary to evaluate the application of this clause. This notice must be received within 45 days of the initial classification. It should be noted that MSA and CMSA boundaries are established by the Bureau of the Census. Section 107(d)(4)(A)(v) of the Act further states that, in order to make a finding that a portion of the MSA or CMSA should be excluded from the nonattainment area boundaries, the Administrator should take into account such factors as population density, traffic congestion, commercial development, meteorological conditions, and pollution transport. The EPA agrees that these requirements must be considered when evaluating a proposed change to an existing MSA's or CMSA's boundary condition. As detailed in the July 22, 1996, Federal Register, EPA considered all of the aforementioned factors prior to making the decision to correct Pointe Coupee Parish's classification. However, it should be noted once again that Pointe Coupee Parish is not part of the Baton Rouge CMSA, and thus the requirements of 107(d)(4)(A)(iv) and 107(d)(4)(A)(v) of the Act do not demand our consideration when correcting this error under section 110(k)(6)of the Act.

B. Comments on the Urban Airshed Modeling (UAM) Study

Comment: The Baton Rouge UAM study utilized an outdated and underestimated biogenic volatile organic compound (VOC) inventory, which recent EPA modeling guidance and Ozone Transport Assessment Group (OTAG) participants concluded warranted replacement with the Biogenic Emission Inventory System–2 (BEIS–2) inventory of biogenic VOCs. The Baton Rouge UAM study would likely not model nitrogen oxides (NO_X) reduction disbenefits if it incorporated the BEIS–2 inventory.

Response: Biogenic hydrocarbon emissions have been determined to play an important role in the chemistry of urban ozone formation, especially in warm southern cities. In light of this, the State developed the biogenic emission inventory for the Baton Rouge area based on area-specific data rather than using EPA BEIS–2 program. The area-specific land-use database used in the biogenic emission development was derived from four different sources: the Louisiana Department of Transportation and Development; a study of Baton Rouge's biogenic hydrocarbon emissions by Carlos Cardolino and William Chameides at the Georgia Institute of Technology using LANDSAT imagery; the U.S. Geological Survey's geo-ecology database; and the U.S. Forest Service's 1991 forest statistics for the southeast Louisiana parishes and forest statistics of south delta Louisiana parishes. The emission factors used in estimating biogenic emissions in the Baton Rouge area were obtained from the Rasmussen and Khalil and Zimmermann studies of biogenic sources. The emission factors from the Rasmussen and Khalil and Zimmermann studies were derived from direct measurements of various types of vegetation in the Baton Rouge and Tampa Bay, Florida areas, respectively.

In addition, the correction factors based on Guenther, *et. al.*, were used to adjust both temperature and solar radiation for isoprene, while the correction factors developed by Tingey, *et. al.*, were used to address temperature concerns for alpha-pinene and beta-pinene. The EPA believes this approach represents a site-specific approach which describes the VOC biogenic source inventory in Baton Rouge more accurately than BEIS–2.

Comment: The Baton Rouge UAM study lacked an updated chemistry component (CB–4). The EPA would be remiss in not reconsidering these improvements in UAM capability and reevaluating the accuracy of the Baton Rouge UAM study.

Response: The updated CB–4 has been developed for use with BEIS–2. As explained above, the Louisiana Department of Environmental Quality (LDEQ) developed its VOC biogenic inventory based on area-specific data instead of the BEIS–2 program. In addition, the updated chemistry component was not available at the time when LDEQ conducted the Baton Rouge UAM study.

Comment: It appears unreasonable for EPA to claim sufficient confidence in the accuracy of the Baton Rouge UAM study, that reliance upon it warrants reclassification of Pointe Coupee under section 110(k)(6) of the Act.

Response: The LDEQ used UAM version IV, an EPA-approved photochemical grid model, for reclassification of Point Coupee under section 110(k)(6) of the Act. The State has followed EPA guidance on the application of UAM. As required, the State performed quality assurance testing of model inputs and diagnostic testing of the base meteorological

episode simulation to ensure that the model functioned properly and that accurate results were obtained for the right reasons. The State applied a number of performance evaluation techniques such as diagnostic analyses to examine the effects of uncertainty and identify possible deficiencies in the model input. The sensitivity analysis investigated the sensitivity of the model to the various model inputs and ensured that the response of the model to changes in the inputs was physically realistic. In addition, the State conducted a model performance evaluation using graphical and statistical analyses to demonstrate that its model results acceptably replicated the historical ozone episodes.

Comment: The commenters believe that the Baton Rouge UAM study is equivocal and disputed by other peer-reviewed UAM studies and field research. The commenters cited a recent analysis prepared by ENVIRON Corporation which reviewed the Baton Rouge UAM study. This review commented that the model-predicted peak always occurred late in the afternoon (5 p.m.), whereas the observed peak occurred late in the morning (11 a.m. or noon). This suggested that there were meteorological and/or chemical phenomena occurring that were not being captured by the model.

Response: The mistiming of the observed peak with the simulated peak at one monitoring site is not as important a criterion in evaluating performance as the model's ability to simulate the concentrations of the observed peaks. The base case model simulations provided a good representation of the spatial and temporal characteristics of the episodes as a whole. There was good replication of the average ozone concentration throughout the entire domain and the observed peaks were well simulated. Model performance is judged by the overall statistics at all the monitoring sites, not by a microscale effect of the model being able to simulate the exact timing of the observed peak at one monitoring site. All EPA model performance criteria fell well within the limits established by EPA to judge model performance. The EPA has confidence in the accuracy of the UAM study and its results.

Comment: The commenters were concerned that the Baton Rouge UAM study excluded potentially significant contributions of ozone precursor emissions from Pointe Coupee in the Baton Rouge boundary conditions.

Response: The LDEQ selected a large modeling domain to ensure that it allowed resolution of ozone and precursor advection upwind and downwind of the area of interest. The Baton Rouge modeling domain covers all or part of 20 parishes in Louisiana, including Point Coupee Parish. The ozone precursor emissions from all the parishes in the Baton Rouge modeling domain were taken into consideration in the UAM study. The Baton Rouge boundary conditions were based on aircraft measurements, surface based measurements, and EPA-recommended background values.

C. Comments on the Redesignation Action

Comment: The commenters noted that between December 1, 1990, and June 1, 1995, EPA had approved approximately forty-one (41) redesignation requests nationwide. Several of these redesignated areas, such as Kansas City, Kansas/Missouri, Detroit, Michigan, San Francisco, California, Charlotte, North Carolina; Huntington-Ashland, West Virginia/Kentucky, and Grand Rapids violated the ozone standard after redesignation. The commenters state that the application of EPA's diluted redesignation guidance in reviewing these maintenance plans contributed to the violations. The commenters also noted that the Baton Rouge area observed 11 exceedances of the ozone standard in 1995.

Response: To date EPA has redesignated a total of 41 areas to attainment for ozone. Of these areas, only five (Detroit, Michigan, Memphis, Tennessee, San Francisco, California, Kansas City, Kansas-Missouri, and Lafourche Parish, Louisiana) subsequently monitored violations of the ozone standard. The EPA believes that this demonstrates that for the vast majority of instances the redesignation policy is appropriate, since most of the redesignated areas have not violated the ozone standard 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 of the Act before the area can be redesignated to attainment. Section 175A(d) of the Act requires that a maintenance plan contain contingency provisions deemed necessary by the Administrator to assure that the State will promptly correct any 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 National Ambient Air Quality Standard (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 any 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).

Comment: The commenters state that EPA should stay approval of the redesignation until all specified Act requirements are met. Further, EPA should stay action on ozone redesignation requests from States participating in the OTAG until regional ozone precursor emission strategies are proposed and implemented.

Response: As discussed in the July 22, 1996, rulemaking action, EPA has identified five general criteria which must be met prior to any approval of a redesignation request. Redesignation requests which meet these five criteria have demonstrated compliance with the ozone standard and all the necessary requirements of the Act. As discussed in the July 22, 1996, rulemaking action, EPA believes that the Pointe Coupee Parish redesignation request has met all of the Act requirements and the redesignation criteria. Therefore, EPA is compelled to approve the request. However, it should be noted that redesignation to attainment does not necessarily preclude an area from any future control strategy developed by OTAG.

Comment: Exception was taken to the use of EPA's redesignation guidance, entitled *Reasonable Further Progress; Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard* (Seitz memo), John S. Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), dated May 10, 1995. The Pointe Coupee redesignation is exempted from sections 172(c)(2) and 172(c)(6) of the Act, apparently pursuant to the Seitz memo. The EPA apparently utilized the 1995 Seitz memo in determining that Pointe Coupee Parish had attained the ozone standard.

Response: The EPA's interpretation of the requirements of sections 172(c)(2) and (c)(6) of the Act was not based upon the May 10, 1995 Seitz memo, but rather upon the consistent rationale articulated much earlier in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498) and the guidance memorandum entitled *Procedures for Processing Requests to Redesignate Areas to Attainment* (Calcagni memo), dated September 4, 1992. As the Tenth Circuit recently observed:

> In that preamble, the Environmental Protection Agency determined that certain general nonattainment plan requirements do not apply in evaluating a request for redesignation to attainment under circumstances where (1) an area has in fact monitored attainment of the standard, and (2) those requirements are expressly linked by statutory language with the notion of reasonable further progress. *See* 57 FR 13564. The Environmental Protection Agency rezoned that when an area requests redesignation to attainment status, ''at a minimum, the air quality data for the area must show that the area has already attained [the National Ambient Air Quality Standards]. Showing the State will make [reasonable further progress] towards attainment will, therefore, have no meaning at that point.''

See 57 FR 13564. *Sierra Club* v. *EPA*, No. 95–9541 (10th Cir. November 13, 1996) Slip Opinion at 12–13.

Similarly, the General Preamble found that, with respect to section 172(c)(6)of the Act, ''since attainment will have been reached, no other measures are needed to provide for attainment.'' *See* 57 FR 13564.

The Calcagni memo reiterated EPA's reading of sections 172 (c)(2) and (c)(6) of the Act. The Calcagni memo stated that ''the requirements for reasonable further progress * * * and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'' *See* Calcagni memo at page 6.

The commenters cite the May 10, 1995, Seitz memo as the basis for EPA's interpretation that sections 172 (c)(2) and (c)(6) do not require area to adopt additional control strategies if that area has attained the standard. However, this cite is misdirected. Although the May 10, 1995, Seitz memo and determinations that rely upon it are ''a logical extension of EPA's original, general interpretation of the 1990 Clean Air Act Amendments'' *Sierra Club* v. *EPA*, supra at 13, the Seitz memo concerns provisions applicable to designations of moderate and above. Thus, EPA does not rely upon the Seitz memo here, but rather upon the longstanding rationale articulated in the General Preamble and the Calcagni memo.

Comment: The Administrative Procedures Act (APA) requires that ''substantive rules of general applicability'' be subjected to public comment before promulgation. The EPA's guidance interpreting section 107(d)(3)(E) of the Act's requirements constitutes substantive rules of general applicability and thus, required to be subjected to public comment.

Response: The EPA's reference to and reliance on guidance documents interpreting section 107(d)(3)(E) of the Act, all of which are either published or publicly available and a part of the record of the July 22, 1996, rulemaking and this rulemaking, is in no way illegal under provisions of either the Act or the APA. The commenters cite 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 instituted 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 Pointe Coupee reclassification and redesignation. The EPA explained the legal and factual basis for its rulemaking in the July 22, 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) of the Act in a manner consistent with EPA's previous interpretation of the more general section 171 and 172 Act 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: Exempting marginal ozone nonattainment areas from compliance with applicable Title I, part D requirements, for purposes of facilitating redesignation requests for these areas is inconsistent and illegal under section 107(d)(3)(E) of the Act.

Response: The EPA has not exempted marginal ozone nonattainment areas from the applicable requirements of Title I, part D of the Act. As discussed in the July 22, 1996, rulemaking action, Pointe Coupee would be subject to the marginal requirements of section 182(a) of the Act rather than section 182(c) of the Act. Therefore, in order to be redesignated, the State must have met the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176 of the Act, as well as the applicable requirements of subpart 2 of part D. As explained in the July 22, 1996, Federal Register (61 FR 37835), EPA evaluated the redesignation request against those applicable part D requirements and determined that those requirements had been met.

D. Miscellaneous Comments

Comment: There is a strong argument that the Louisiana State and Local Air Monitoring Network is inadequate for Pointe Coupee Parish.

Response: The Air quality surveillance plan developed for the Baton Rouge area included Pointe Coupee Parish. The EPA evaluated the established air quality monitoring network and the surveillance plan against the 40 CFR part 58 Ambient Air Quality Surveillance requirements, determined its compliance with all applicable part 58 requirements, and approved the plan. The EPA performs annual reviews of this established air quality surveillance plan to ensure its continued compliance with part 58. The EPA believes that the current monitoring location in New Roads adequately represents ambient ozone levels in Pointe Coupee Parish.

III. Final Rulemaking Action

In this final action EPA is promulgating a revision to the Louisiana SIP and the Code of Federal Regulations, parts 52 and 81, to correct the classification of Pointe Coupee Parish from serious to marginal, and to redesignate the Parish to attainment for ozone. This redesignation request was submitted by the Governor to EPA by letter dated December 20, 1995.

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 the SIP shall be considered separately in light of specific

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

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

This action has been classified for signature by the 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 E.O. 12866 review.

B. Regulatory Flexibility Act

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

The 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

The EPA has determined that the approval action promulgated 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 approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 7, 1997. 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) of the Act.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air Pollution control, Designation of areas for air quality planning purposes.

Dated: December 20, 1996.

Carol M. Browner,

Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(70) to read as follows:

§ 52.970 Identification of Plan.

* * * * *

(c) * * *

(70) The Louisiana Department of Environmental Quality submitted a redesignation request and maintenance plan for Pointe Coupee Parish on December 20, 1995. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Louisiana ozone State Implementation Plan for Pointe Coupee Parish. The EPA therefore approved the request for redesignation to attainment with respect to ozone for Pointe Coupee Parish on December 20, 1996.

(i) *Incorporation by reference.* Letter dated August 31, 1995, from Mr. Gustave Von Bodungen, P.E., Assistant Secretary, Louisiana Department of Environmental Quality, transmitting a copy of the Pointe Coupee Parish maintenance plan for the EPA's approval.

(ii) *Additional material.* (A) Letter dated August 28, 1995, from Governor Edwin E. Edwards of Louisiana to Ms. Jane Saginaw, Regional Administrator, requesting the reclassification and redesignation of Pointe Coupee Parish to attainment for ozone.

(B) The ten year ozone maintenance plan, including emissions projections and contingency measures, submitted to EPA as part of the Pointe Coupee Parish redesignation request on December 20, 1995.

3. Section 52.975 is amended by adding paragraph (d) to read as follows:

§ 52.975 Redesignations and Maintenance Plans: Ozone.

* * * * *

(d) Approval—The Louisiana Department of Environmental Quality submitted a redesignation request and maintenance plan for Pointe Coupee Parish on December 20, 1995. The redesignation request and maintenance

plan meet the redesignation requirements in section 107(d)(3)(E) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Louisiana ozone State Implementation Plan for Pointe Coupee Parish. The EPA therefore approved the request for redesignation to attainment with respect to ozone for Pointe Coupee Parish on December 20, 1996.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.319, the ozone table is amended by revising the entry for the Baton Rouge area and by adding an entry for the Pointe Coupee area to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Baton Rouge Area:				
Ascension Parish		Nonattainment		Serious.
East Baton Rouge Parish		Nonattainment		Serious.
Iberville Parish		Nonattainment		Serious.
Livingston Parish		Nonattainment		Serious.
West Baton Rouge Parish		Nonattainment		Serious.
* * *	*	*	*	*
Pointe Coupee Area:				
Pointe Coupee Parish	Dec. 20, 1996			

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

* * * * *

[FR Doc. 97–42 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[WT Docket No. 96–148; GN Docket No. 96–113; FCC 96–474]

Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; and Implementation of Section 257 of the Communications Act; Elimination of Market Entry Barriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order in WT Docket No. 96–148, the Commission adopts rules concerning geographic partitioning and spectrum disaggregation by broadband personal communications service (PCS) licensees. The rules adopted for broadband PCS will permit partitioning and disaggregation by all broadband PCS licensees. This will provide broadband PCS licensees with desirable flexibility to determine the amount of spectrum they will occupy and the geographic area they will serve. Such flexibility will: facilitate the efficient use of spectrum by providing licensees with the flexibility to make offerings directly responsive to market demands for particular types of service; increase competition by allowing market entry by new entrants; and expedite the provision of service to areas that otherwise may not receive broadband PCS service in the near term.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Shaun A. Maher, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This Report and Order in WT Docket No. 96–148 and GN Docket No. 96–113, adopted on December 13, 1996, and released December 20, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 234, 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800. Synopsis of Report and Order.

I. Background

1. The Commission's initial regulations and policies for broadband PCS were adopted in the Broadband PCS Second Report and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90–314, Second Report and Order, 58 FR 59174 (November 8, 1993) (Broadband PCS Second Report and Order), and amended in the Broadband PCS Memorandum Opinion and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90–314, Memorandum Opinion and Order, 59 FR 32830 (June 24, 1994) (Broadband PCS Memorandum Opinion and Order). In the Broadband PCS Memorandum Opinion and Order, the Commission declined to adopt unrestricted geographic partitioning for broadband PCS based on its concern that licensees might use partitioning as a means of circumventing construction requirements. However, the Commission stated that it would consider the issue of geographic partitioning for rural telephone companies (rural telcos) and other designated entities in a future proceeding to establish competitive bidding rules for broadband PCS. The Commission then permitted broadband PCS geographic partitioning for rural telcos in the Competitive Bidding Fifth Report and Order, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 59 FR 37566 (July 22, 1995) (Competitive Bidding Fifth Report and Order). The Commission observed that partitioning was one method to satisfy Congress' mandate to provide an opportunity for rural telcos to participate in the provision of broadband PCS. The Commission also found that rural telcos could take advantage of their existing infrastructure to provide broadband PCS services, thereby speeding service to rural areas. In the Competitive Bidding Further Notice of Proposed Rule Making, Implementation of Section