Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA AD No.: 2009–0031, dated February 18, 2009; and RUAG Aerospace Defence Technology Dornier 228 Alert Service Bulletin ASB–228–279, dated December 19, 2008, for related information.

Issued in Kansas City, Missouri, on April 16, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–9327 Filed 4–22–09; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–SC–0002–200535(b); FRL–8894–7]

Approval and Promulgation of Implementation Plans; South Carolina; NO_X SIP Call Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a source-specific State Implementation Plan (SIP) revision submitted by the South Carolina Department of Health and Environmental Control on April 14, 2005. This revision responds to EPA's regulation entitled, ''Interstate Ozone Transport: Response to Court Decisions on the Nitrogen Oxides (NO_X) SIP Call, NO_X SIP Call Technical Amendments, and Section 126 Rules,'' otherwise known as the ''NO_X SIP Call Phase II.'' This revision meets the requirements of the NO_X SIP Call Phase II, which requires South Carolina to submit NO_X SIP Call Phase II revisions necessary to achieve applicable, incremental reductions of NO_X, including emission reductions from large internal combustion engines. Transcontinental Gas Pipeline Corporation Station 140 (Transco) is the only facility in South Carolina affected by the NO_X SIP Call Phase II. The intended effect of this SIP revision is to reduce emissions of NO_X originating in the State of South Carolina to help attain and maintain the national ambient air quality standard for ozone. This action is being taken pursuant to section 110 of the Clean Air Act.

In the Final Rules Section of this **Federal Register,** EPA is approving the State's source-specific SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–SC–0002, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: ward.nacosta@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2005–SC–0002,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can also be reached via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register.**

Dated: April 10, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–9223 Filed 4–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0219; FRL–8894–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Michigan; Redesignation of the Detroit-Ann Arbor Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make a determination under the Clean Air Act (CAA) that the Detroit-Ann Arbor nonattainment area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Detroit-Ann Arbor area includes Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties. This determination is based on quality-assured ambient air quality monitoring data for the 2006–2008 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area.

EPA is proposing to approve a request from the State of Michigan to redesignate the Detroit-Ann Arbor area to attainment of the 8-hour ozone NAAQS. The Michigan Department of Environmental Quality (MDEQ) submitted this request on March 6, 2009. In proposing to approve this request EPA is also proposing to approve, as a revision to the Michigan State Implementation Plan (SIP), the State's plan for maintaining the 8-hour ozone NAAQS through 2020 in the area. EPA is proposing to approve the 2005 base year emissions inventory for the Detroit-Ann Arbor area as meeting the requirements of section 182(a)(1) of the CAA. EPA also finds adequate and is proposing to approve the State's 2020

Motor Vehicle Emission Budgets (MVEBs) for the Detroit-Ann Arbor area.

DATES: Comments must be received on or before May 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0219, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0219. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I this document, ''What Should I Consider as I Prepare My Comments for EPA?''

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

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I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Proposing To Take?

EPA is proposing to take several related actions. EPA is proposing to make a determination that the Detroit-Ann Arbor nonattainment area has attained the 8-hour ozone standard and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Michigan's request to change the legal designation of the Detroit-Ann Arbor area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve Michigan's maintenance plan SIP revision for Detroit-Ann Arbor (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Detroit-Ann Arbor area in attainment of the ozone NAAQS through 2020. EPA is proposing to approve the 2005 base year emissions inventory for the Detroit-Ann Arbor area as meeting the requirements of section 182(a)(1) of the CAA. Additionally, EPA is proposing to approve the newly-established 2020 MVEBs for the Detroit-Ann Arbor area. The adequacy comment period for the MVEBs began on March 12, 2009, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/*

transconf/adequacy.htm). The adequacy comment period for these MVEBs ended on April 13, 2009. EPA will address any comments in the final rule. Please see section VII. B. of this rulemaking, ''Adequacy of Michigan's MVEBs,'' for further explanation on this process. We are proposing to find adequate and approve, the State's 2020 MVEBs for transportation conformity purposes.

III. What Is the Background for These Actions?

A. What Is the General Background Information?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the current 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56778), the Detroit-Ann Arbor area was designated as a moderate nonattainment area under the 1-hour ozone NAAQS. The area was subsequently redesignated to attainment of the 1-hour standard on March 7, 1995 (60 FR 12459). At the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005, the Detroit-Ann Arbor area was designated as attainment under the 1-hour ozone NAAQS.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million (ppm). On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in Title I, part D, 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas.

Under EPA's implementation rule for the 1997 8-hour ozone standard, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (i.e. the three-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Detroit-Ann Arbor area was designated as a subpart 2, 8-hour ozone moderate nonattainment area by EPA on April 30, 2004 (69 FR 23857, 23910–23911) based on air quality monitoring data from 2001–2003 (69 FR 23860).

Under section 181(a)(4) of the CAA, EPA may adjust the classification of an ozone nonattainment area to the next higher or lower classification if the design value for the area is within five percent of the cut off for that higher or lower classification. On September 22, 2004, EPA adjusted the classification of several nonattainment areas which had been designated and classified under subpart 2 on April 30, 2004. At that time, EPA adjusted the classification of the Detroit-Ann Arbor nonattainment area from moderate to marginal (69 FR 56697, 56708–56709).

40 CFR 50.10 and 40 CFR part 50, appendix I provide that the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. See 40 CFR part 50, appendix I, 2.3.

On March 6, 2009, MDEQ requested that EPA redesignate the Detroit-Ann Arbor area to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2006 through 2008, indicating the 8-hour NAAQS for ozone had been attained for the Detroit-Ann Arbor area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard, and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075. EPA has not yet promulgated area designations for this standard. While both the 1997 and 2008 8-hour ozone standards are currently in place, the actions addressed in this proposed rulemaking relate only to the 1997 8-hour ozone standard.

B. What Are the Impacts of the December 22, 2006, and June 8, 2007, United States Court of Appeals Decisions Regarding EPA's Phase 1 Implementation Rule?

1. Summary of Court Decision

On December 22, 2006, in *South Coast Air Quality Management Dist.* v. *EPA,* the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour ozone standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. *Id.,* Docket No. 04 1201. Therefore, several provisions of the Phase 1 Rule remain effective: Provisions related to classifications for areas currently classified under subpart 2 of Title I, part D, of the CAA as 8-hour nonattainment areas; the 8-hour attainment dates; and, the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS. The June 8, 2007 decision also left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8, 2007 decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8, 2007 decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation or prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the Detroit-Ann Arbor area is classified under subpart 2. The June 8, 2007, opinion clarifies that the Court did not vacate the Phase 1 Rule's provisions with respect to classifications for areas under subpart 2. The Court's decision, therefore, upholds EPA's classifications for those areas classified under subpart 2 for the 8-hour ozone standard.

3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Detroit-Ann Arbor area was an attainment area subject to a CAA section 175A maintenance plan under the 1-hour standard. The Court's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court, in its June 8, 2007 decision, clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Detroit-Ann Arbor area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measures (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus, the decision in *South Coast* should not alter requirements that would preclude EPA from proposing or finalizing the redesignation of this area.

IV. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from William G. Laxton, Director Technical Support Division, June 18, 1990;

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, November 30, 1993.

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and,

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

V. Why Is EPA Proposing To Take These Actions?

On March 6, 2009, Michigan requested redesignation of the Detroit-Ann Arbor area to attainment for the 8-hour ozone standard. EPA believes that the area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA.

VI. What Is the Effect of These Actions?

Approval of the redesignation request would change the official designation of the area for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Michigan SIP a plan for maintaining the 8-hour ozone NAAQS through 2020. The maintenance plan includes contingency measures to remedy future violations of the 8-hour NAAQS. It also establishes MVEBs of 106 tons per day (tpd) VOC and 274 tpd NO_X for Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties (SEMCOG Region) and 2.1 tpd VOC and 4.4 tpd NO_X for Lenawee County.

VII. What Is EPA's Analysis of the Request?

A. Attainment Determination and Redesignation

EPA is proposing to make a determination that the Detroit-Ann Arbor area has attained the 8-hour ozone standard and that the area has met all other applicable section 107(d)(3)(E) redesignation criteria. The basis for EPA's determination is as follows:

1. The Area Has Attained the 8-Hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make a determination that the Detroit-Ann Arbor area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and part 50, appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

MDEQ submitted ozone monitoring data for the 2006 to 2008 ozone seasons. MDEQ quality-assured the ambient monitoring data in accordance with 40 CFR 58.10, and recorded it in the AIRS database, thus making the data publicly available. The data meet the completeness criteria in 40 CFR part 50, appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each 3-year period. Monitoring data is presented in Table 1 below.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND THREE-YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS

County	Monitor	2006 4th high (ppm)	2007 4th high (ppm)	2008 4th high (ppm)	2006–2008 average (ppm)
Lenawee	Tecumseh 260910007	0.074	0.081	0.072	0.076
Macomb	New Haven 260990009	0.078	0.093	0.073	0.081
	Warren 260991003	0.078	0.091	0.072	0.080
Oakland	Oak Park 261250001	0.072	0.086	0.074	0.077
St. Clair	Port Huron 261470005	0.078	0.089	0.067	0.078
Washtenaw	Ypsilanti 261610008	0.076	0.077	0.069	0.074
Wayne	Allen Park 261630001	0.068	0.079	0.067	0.071
	E–7 Mile 261630019	0.078	0.092	0.078	0.082
	Linwood 261630016	0.069	.....	.....	.....
	SW High School 261630015	0.067	.....	.....	.....

In addition, as discussed below with respect to the maintenance plan, MDEQ has committed to continue to operate an EPA-approved monitoring network as necessary to demonstrate ongoing compliance with the NAAQS. MDEQ remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System in accordance with Federal guidelines. In summary, EPA believes that the data submitted by Michigan provide an adequate demonstration that the Detroit-Ann Arbor area has attained the 8-hour ozone NAAQS.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Michigan has met all currently applicable SIP requirements for purposes of redesignation for the Detroit-Ann Arbor area under section 110 of the CAA (general SIP requirements). We have also determined that the Michigan SIP meets all SIP requirements currently applicable for purposes of redesignation under part D of Title I of the CAA (requirements specific to marginal nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, we have determined that the Michigan SIP is fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). In making these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992, Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

a. The Detroit-Ann Arbor Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

i. Section 110 General SIP Requirements

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the

state after reasonable public notice and hearing, and that, among other things, it: includes enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provides for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provides for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; includes provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; includes criteria for stationary source emission control measures, monitoring, and reporting; includes provisions for air quality modeling; and, provides for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO_X SIP Call [1] and Clean Air Interstate Rule (CAIR) (70 FR 25162)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Michigan's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA. EPA has previously approved provisions of the Michigan SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.1170). Further, in submittals dated December 6, 2007, and September 19, 2008, Michigan confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard.

ii. Part D Requirements

EPA has determined that, with the approval of the base year emissions inventory discussed in section VII.C. of this rulemaking, the Michigan SIP will meet the applicable SIP requirements under part D of the CAA for the Detroit-Ann Arbor area. Under part D of the CAA, an area's classification determines the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

The Detroit-Ann Arbor area was classified as a marginal area under subpart 2, therefore the State must meet both the applicable requirements of subpart 1 and subpart 2 of part D. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176. The subpart 2 requirements applicable to the Detroit-Ann Arbor area are contained in section 182(a) (marginal nonattainment area requirements).

Subpart 1 Section 172 Requirements

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Detroit-Ann Arbor area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonably Available Control Measures (RACM) as expeditiously as practicable. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the areas attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment.

The reasonable further progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant because the Detroit-Ann Arbor area has demonstrated monitored attainment of the ozone NAAQS. (General Preamble, 57 FR 13564). In addition, because the Detroit-Ann Arbor area has attained the ozone NAAQS and is no longer subject to an RFP requirement, the section 172(c)(9) contingency measures are not applicable.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement was superseded by the inventory requirement in section 182(a)(1).

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more

[1] On October 27, 1998 (63 FR 57356), EPA issued a NO_x SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP call, MDEQ has developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Michigan's rules as fulfilling Phase I of the NO_X SIP Call on May 4, 2005 (70 FR 23029) and as fulfilling Phase II of the SIP Call on January 29, 2008 (73 FR 5101).

detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Michigan has demonstrated that the Detroit-Ann Arbor area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The PSD program was delegated to the State of Michigan on September 10, 1979, and amended on November 7, 1983, and September 26, 1988. In addition, on December 21, 2006, MDEQ submitted, as a revision to its SIP, State rules to implement the PSD program. On September 16, 2008, EPA conditionally approved the majority of Michigan's PSD program, and partially disapproved the subsection of Michigan's rule corresponding to 40 CFR 51.166(p). On September 30, 2008, MDEQ submitted a revision to the SIP correcting the deficiencies cited in the conditional approval. The Federal delegation of authority allows Michigan to continue to implement 40 CFR 51.166(p).

The State's PSD program will become effective in the Detroit-Ann Arbor area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Michigan SIP meets the requirements of section 110(a)(2).

Subpart 1 Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity), as well as to all other Federally-supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Michigan's general and transportation conformity SIPs on December 18, 1996 (61 FR 666079 and 61 FR 66609, respectively). Michigan has submitted onroad motor vehicle budgets for the SEMCOG portion of the Detroit-Ann Arbor area and Lenawee County of 106 tpd and 2.1 tpd VOC and 274 tpd and 4.4 tpd NOx, respectively, for the year 2020. The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

Subpart 2 Section 182(a) Requirements

As set forth in the September 4, 1992, and September 17, 1993, EPA guidance memoranda referenced in section IV of this action, ''What are the Criteria for Redesignation?,'' only those requirements which came due prior to Michigan's submittal of a request to designate the Detroit-Ann Arbor area must be fully approved into the SIP before or at the time EPA approves the redesignation of the area to attainment. These requirements are discussed below.

Base year emissions inventory. Section 182(a)(1) requires the submission of a base year emissions inventory. As part of Michigan's redesignation request for the Detroit-Ann Arbor area, the State submitted a 2005 base year emissions inventory. EPA is proposing to approve the 2005 base year inventory Michigan submitted with the redesignation request as meeting the section 182(a)(1) emissions inventory requirement.

Emissions statements. EPA approved Michigan's emission statement SIP, as required by section 182(a)(3)(B), on March 8, 1994 (59 FR 10752).

Thus, the Detroit-Ann Arbor area has satisfied all applicable requirements under section 110 and part D of the CAA.

b. The Detroit-Ann Arbor Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the Michigan SIP for the Detroit-Ann Arbor area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See page 3 of the September 4, 1992, John Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Michigan has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to the Detroit-Ann Arbor County area under the 1-hour ozone standard. In this action, EPA is proposing to approve Michigan's 2005 base year emissions inventory for the Detroit-Ann Arbor area as meeting the requirement of section 182(a)(1) of the CAA. With the exception of Michigan's PSD SIP, which is discussed above, no Detroit-Ann Arbor area SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA finds that Michigan has demonstrated that the observed air quality improvement in the Detroit-Ann Arbor area is due to permanent and enforceable reductions in emissions resulting from implementation of the

SIP, Federal measures, and other State-adopted measures.

In making this demonstration, the State has calculated the change in emissions between 2005 and 2007. Michigan used the 2005 nonattainment area base year emissions inventory required under section 182(a)(1) of the CAA as the nonattainment inventory for redesignation purposes. The State developed an attainment inventory for 2007, one of the years the Detroit-Ann Arbor area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Detroit-Ann Arbor and upwind areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

i. VOC Controls. Michigan developed a rule to limit VOC emissions from consumer and commercial products. This rule was approved by EPA on October 26, 2007 (72 FR 60781). Michigan also adopted a lower Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in the Detroit-Ann Arbor area. EPA approved the SIP revision on January 31, 2007 (72 FR 4432).

ii. NO_X rules. MDEQ developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Michigan's rules as fulfilling Phase I of the NO_X SIP Call on May 4, 2005 (70 FR 23029), and as fulfilling Phase II of the SIP Call on January 29, 2008 (73 FR 5101).

iii. Federal Emission Control Measures. Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include: the National Low Emission Vehicle (NLEV) program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards. In addition, in 2004, EPA issued the Clean Air Non-road Diesel Rule (69 FR 38958 (July 29, 2004)). EPA expects this rule to reduce off-road diesel emissions through 2010, with emission reductions starting in 2008.

iv. Control Measures in Upwind Areas. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X. The reduction in NO_X emissions has resulted in lower concentrations of transported ozone entering the Detroit-Ann Arbor area. Emission reductions resulting from regulations developed in response to the NO_X SIP call are permanent and enforceable.

b. Emission Reductions

Michigan is using 2005 for the nonattainment inventory and 2007 for the attainment inventory. MDEQ provided a 2005 base year inventory to the Lake Michigan Air Directors Consortium (LADCO). The main purpose of LADCO is to provide technical assessments for and assistance to its member states on problems of air quality. LADCO's primary geographic focus is the area encompassed by its member states (Illinois, Indiana, Michigan, Ohio, and Wisconsin) and any areas which affect air quality in its member states. The base year inventory was processed by LADCO to develop summer day emissions for use in regional air quality analyses and attainment demonstration modeling. The point source data was obtained from the Michigan Air Emissions Reporting System. Area source emissions were taken from the 2005 emissions inventory developed by MDEQ to comply with the Consolidated Emission Reporting Rule for the EPA National Emissions Inventory (NEI). Nonroad mobile emissions were generated for LADCO using EPA's National Mobile Inventory Model (NMIM), with the following exceptions: recreational motorboat populations and spatial surrogates were updated; emissions estimates were developed for aircraft, commercial marine vessels, and railroads, three nonroad categories not included in NMIM; and, onroad mobile emissions were calculated by the Southeast Michigan Council of Governments (SEMCOG) using the MOBILE6.2 emissions model.

For the 2007 attainment year inventory, point source emissions were taken from the Michigan Air Emissions Reporting System. Onroad mobile emissions were calculated by SEMCOG using the MOBILE6.2 emissions model. For the remaining categories, MDEQ used the 2005 inventory described above along with 2002, 2009, and 2018 emissions inventories developed by LADCO to interpolate point, area, and nonroad mobile emissions for 2007. For each combination of county and pollutant, a linear regression analysis was performed using the values from the established inventories for 2002, 2005, 2009, and 2018. From the best-fit line established by the regression analysis, values for 2007 were obtained.

Using the inventories described above, Michigan's submittal documents changes in VOC and NO_X emissions from 2005 to 2007 for the Detroit-Ann Arbor area. Emissions data are shown in Tables 3 through 5 below.

TABLE 3—DETROIT-ANN ARBOR AREA VOC AND NO_X EMISSIONS FOR NONATTAINMENT YEAR 2005

[tpd]

	Point		Area		Onroad		Nonroad		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Livingston	0.66	1.89	11.92	1.00	5.00	16.20	9.61	4.38	27.19	23.47
Macomb	9.62	2.30	38.72	2.36	16.50	40.60	23.12	19.27	87.96	64.53
Monroe	11.16	104.83	9.85	0.93	5.20	16.40	9.56	7.69	35.77	129.85
Oakland	9.80	3.10	55.34	4.19	34.00	88.90	46.35	25.52	145.49	121.71
St. Clair	5.55	68.97	5.20	0.67	4.70	11.60	11.35	7.83	26.80	89.07
Washtenaw	1.42	3.82	17.23	0.97	10.30	30.90	12.47	9.99	41.42	45.68
Wayne	24.27	63.11	82.11	5.38	50.40	130.80	39.97	45.09	196.75	244.38
Lenawee	1.21	0.37	8.89	0.73	2.70	5.30	4.37	3.54	17.17	9.94
Area Total	63.69	248.39	229.26	16.23	128.80	340.70	156.80	123.31	578.55	728.63

TABLE 4—DETROIT-ANN ARBOR AREA VOC AND NO_X EMISSIONS FOR ATTAINMENT YEAR 2007

[tpd]

	Point		Area		Onroad		Nonroad		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Livingston	0.86	2.55	8.94	0.79	4.40	13.50	9.07	3.97	23.27	20.81
Macomb	10.72	2.39	36.09	3.87	13.80	33.10	21.96	17.00	82.57	56.36
Monroe	9.41	65.79	9.92	0.73	4.50	13.60	9.02	6.91	32.85	87.03
Oakland	9.03	3.36	55.39	6.07	28.50	72.60	44.15	22.85	137.07	104.88
St. Clair	4.99	65.99	6.92	0.89	3.90	9.50	10.86	7.08	26.67	83.46
Washtenaw	1.82	3.55	16.70	1.47	8.80	25.60	11.88	8.93	39.20	39.55
Wayne	21.67	65.19	79.20	8.58	41.80	105.90	38.63	40.27	181.30	219.94
Lenawee	1.28	0.35	6.05	0.55	2.10	4.40	4.13	3.32	13.56	8.62
Area Total	59.78	209.17	219.21	22.95	107.80	278.20	149.70	110.33	536.49	620.65

TABLE 5—COMPARISON OF DETROIT-ANN ARBOR AREA 2005 AND 2007 VOC AND NO_X EMISSIONS

[tpd]

	VOC			NO_X		
	2005	2007	Net change (2005–2007)	2005	2007	Net change (2005–2007)
Point	63.69	59.78	−3.91	248.39	209.17	−39.22
Area	229.26	219.21	−10.05	16.23	22.95	6.72
Onroad	128.80	107.80	−21.00	340.70	278.20	−62.50
Nonroad	156.80	149.70	−7.10	123.31	110.33	−12.98
Total	578.55	536.49	−42.06	728.63	620.65	−107.98

Table 5 shows that the Detroit-Ann Arbor area reduced VOC emissions by 42.06 tpd and NO_X emissions by 107.98 tpd between 2005 and 2007. Based on the information summarized above, Michigan has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175a of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with its request to redesignate the Detroit-Ann Arbor nonattainment area to attainment status, Michigan submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the area through 2020.

a. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: the attainment VOC and NO_X emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The MDEQ developed an emissions inventory for 2007, one of the years Michigan used to demonstrate monitored attainment of the 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 4, above.

c. Demonstration of Maintenance

Along with the redesignation request, Michigan submitted a revision to the 8-hour ozone SIP to include a maintenance plan for the Detroit-Ann Arbor area, in compliance with section 175A of the CAA. This demonstration shows maintenance of the 8-hour ozone standard through 2020 by assuring that current and future emissions of VOC and NO_X for the Detroit-Ann Arbor area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Michigan is using emissions inventories for the years 2009 and 2020 to demonstrate maintenance. Onroad mobile source emissions were estimated by SEMCOG using MOBILE6.2. For the 2020 inventory, MDEQ used the 2005 inventory described above along with 2002, 2009, and 2018 emissions inventories developed by LADCO to interpolate emissions estimates for the remaining source sectors. For each combination of county and pollutant, a linear regression analysis was performed using the values from the established inventories for 2002, 2005, 2009, and 2018. From the best-fit line

established by the regression analysis, values for 2020 were obtained. Emissions estimates are presented in Table 6 below.

TABLE 6—COMPARISON OF 2007—2020 VOC AND NO_X EMISSIONS

[tpd]

	VOC				NO_X			
	2007	2009	2020	Net change 2007–2020	2007	2009	2020	Net change 2007–2020
Point	59.78	52.48	59.37	−0.41	209.17	182.56	225.34	16.17
Area	219.21	211.95	219.56	0.35	22.95	26.04	27.50	4.55
Onroad	107.80	95.10	50.30	−57.50	278.20	226.40	69.30	−208.90
Nonroad	149.70	131.21	102.00	−47.70	110.33	100.80	62.29	−48.04
Total	536.49	490.74	431.23	−105.26	620.65	535.80	384.43	−236.22

The emission projections show that MDEQ does not expect emissions in the Detroit-Ann Arbor area to exceed the level of the 2007 attainment year inventory during the maintenance period. In the Detroit-Ann Arbor area, MDEQ projects that VOC and NO_X emissions will decrease by 105.26 tpd and 236.22 tpd, respectively.

As part of its maintenance plan, the State elected to include a ''safety margin'' for the area. A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The Detroit-Ann Arbor area attained the 8-hour ozone NAAQS during the 2006–2008 time period. Michigan used 2007 as the attainment level of emissions for the area. In the maintenance plan, MDEQ projected emission levels for 2020. For the Detroit-Ann Arbor area, the emissions from point, area, nonroad, and mobile sources in 2007 equaled 536.49 tpd of VOC. MDEQ projected VOC emissions for the year 2020 to be 431.23 tpd of VOC. The SIP submission demonstrates that the Detroit-Ann Arbor area will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 105.26 tpd of VOC for 2020. By this same method, 236.22 tpd (*i.e.,* 620.65 tpd less 384.43 tpd) is the safety margin for NO_X for 2020. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network

Michigan currently operates eight ozone monitors in the Detroit-Ann Arbor area. MDEQ has committed to continue to operate an EPA-approved monitoring network as necessary to demonstrate ongoing compliance with the NAAQS. MDEQ remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System in accordance with Federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Detroit-Ann Arbor area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. Michigan's plan for verifying continued attainment of the 8-hour standard in the Detroit-Ann Arbor area consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. MDEQ will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602) to track future levels of emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Michigan has adopted a contingency plan for the Detroit-Ann Arbor area to address possible future ozone air quality problems. The contingency plan adopted by Michigan has two levels of response, depending on whether a violation of the 8-hour ozone standard is only threatened (Action Level Response) or has occurred (Contingency Measure Response).

An Action Level Response will be triggered when a two-year average fourth-high monitored daily peak 8-hour ozone concentration of 0.085 ppm or higher is monitored within the maintenance area. An Action Level Response will consist of Michigan performing a review of the circumstances leading to the high monitored values. MDEQ will conduct this review within six months following the close of the ozone season. If MDEQ determines that contingency measure implementation is necessary to prevent a future violation of the NAAQS, MDEQ will select and implement a measure that can be implemented promptly.

A Contingency Measure Response will be triggered by a violation of the standard (a three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration of 0.085 ppm or greater). When a Contingency Measure Response is triggered, Michigan will select one or more control measures for implementation. The timing for implementation of a contingency

measure is dependent on the process needed for legal adoption and source compliance, which varies for each measure. MDEQ will expedite the process of adopting and implementing the selected measures, with a goal of having measures in place as expeditiously as practicable and within 18 months. EPA is interpreting this commitment to mean that the measure will be in place within 18 months.

MDEQ included the following list of potential contingency measures in the maintenance plan:

i. Reduced VOC content in architectural, industrial, and maintenance (AIM) coatings rule;

ii. Auto body refinisher self-certification audit program;

iii. Reduced VOC degreasing/solvent cleaning rule;

iv. Diesel retrofit program;

v. Reduced idling program;

vi. Portable fuel container replacement rule; and,

vii. Food preparation flame broiler control rule.

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, Michigan commits to submit to the EPA an updated ozone maintenance plan eight years after redesignation of the Detroit-Ann Arbor area to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175(A) of the CAA, Michigan has committed to retain the VOC and NO_X control measures contained in the SIP prior to redesignation. Michigan also commits to submitting to EPA any contingency measures adopted under the section 175A maintenance plan.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Michigan for the Detroit-Ann Arbor area meets the requirements of section 175A of the CAA.

B. Adequacy of Michigan's MVEBs

1. How Are MVEBs Developed and What Are the MVEBs for the Detroit-Ann Arbor Area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard. These emission control strategy SIP revisions (*e.g.*, reasonable further progress SIP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the part of the SIP that addresses emissions from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was codified in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM 2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Detroit-Ann Arbor area's maintenance plan contains new VOC and NO_X MVEBs for the year 2020. The availability of the SIP submission with these 2020 MVEBs was announced for public comment on EPA's Adequacy Web site on March 12, 2009, at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2020 MVEBs for the Detroit-Ann Arbor area closed on April 13, 2009. EPA will address any comments in the final rule.

EPA, through this rulemaking, is proposing to find adequate and approve the MVEBs for use to determine transportation conformity in the Detroit-Ann Arbor area because EPA has determined that the area can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. In developing MVEBs for the Detroit-Ann Arbor Area, MDEQ has established separate MVEBS for the SEMCOG region (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties) and for Lenawee County. MDEQ has determined the 2020 MVEBs for the SEMCOG region to be 106 tpd for VOC and 274 tpd for NO_X. MDEQ has determined the 2020 MVEBs for Lenawee County to be 2.1 tpd for VOC and 4.4 tpd for NO_X. These MVEBs exceed the onroad mobile source VOC and NO_X emissions projected by MDEQ for 2020, as summarized in Table 6 above (''onroad'' source sector). MDEQ decided to include safety margins (described further below) of 58.2 tpd for VOC (57 tpd and 1.2 tpd for the SEMCOG region and Lenawee County, respectively) and 211.1 tpd for NO_X (208 tpd and 3.1 tpd for the SEMCOG region and Lenawee County, respectively) MVEBs to provide for mobile source growth. Michigan has

demonstrated that the Detroit-Ann Arbor area can maintain the 8-hour ozone NAAQS with mobile source emissions of 108.1 tpd of VOC (the sum of 106 tpd for the SEMCOG region and 2.1 tpd for Lenawee County) and 278.4 tpd for NO_X (the sum of 274 tpd for the SEMCOG region and 4.4 tpd for Lenawee County), including the allocated safety margins, since emissions will still remain under attainment year emission levels.

2. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 6, the Detroit-Ann Arbor area emissions are projected to have safety margins of 105.26 tpd for VOC and 236.22 tpd for NO_X in 2020 (the difference between the attainment year, 2007, emissions and the projected 2020 emissions for all sources in the Detroit-Ann Arbor area). Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

The MVEBs requested by MDEQ contain safety margins for mobile sources smaller than the allowable safety margins reflected in the total emissions for the Detroit-Ann Arbor area. The State is not requesting allocation of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the State is requesting MVEBs that exceed the projected onroad mobile source emissions for 2020 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

C. 2005 Base Year Emissions Inventory

As discussed above, section 182(a)(1) of the CAA requires areas classified as marginal and above to submit a base year emissions inventory. As part of Michigan's redesignation request for the Detroit-Ann Arbor area, the State submitted a 2005 base year emissions inventory. This inventory is discussed above and summarized in Table 3. EPA is proposing to approve this 2005 base year inventory as meeting the section 182(a)(1) emissions inventory requirement.

VIII. What Action Is EPA Taking?

EPA is proposing to make a determination that the Detroit-Ann Arbor area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the Detroit-Ann Arbor area. EPA's proposed approval of the maintenance plan is based on Michigan's demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. After evaluating Michigan's redesignation request, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve the redesignation of the Detroit-Ann Arbor area from nonattainment to attainment for the 8-hour ozone NAAQS. The final approval of this redesignation request would change the official designation for the Detroit-Ann Arbor area from nonattainment to attainment for the 8-hour ozone standard. EPA is proposing to approve the 2005 base year emissions inventory for the Detroit-Ann Arbor area as meeting the requirements of section 182(a)(1) of the CAA. Finally, EPA also finds adequate and is proposing to approve the State's 2020 Motor Vehicle Emission Budgets (MVEBs) for the Detroit-Ann Arbor area.

IX. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 13, 2009.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

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