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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2009-0219; FRL-8921-2]

#### 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:** Final rule.

**SUMMARY:** EPA is making 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 approving 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 approving this request, EPA is also approving, as a revision to the Michigan State Implementation Plan (SIP), the State's plan for maintaining the 8-hour ozone NAAQS in the area through 2020. EPA is approving 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 approving the State's 2020 Motor Vehicle Emission Budgets (MVEBs) for the Detroit-Ann Arbor area. EPA proposed these actions on April 23, 2009. EPA provided a 30-day review and comment period, which closed on May 26, 2009. EPA received comments in support of the redesignation from Consumers Energy and the Southeast Michigan Council of Governments. EPA received no comments in opposition to the proposal.

**DATES:** This final rule is effective June 29, 2009.

**ADDRESSES:** EPA has established a docket for this action: Docket ID No.

EPA-R05-OAR-2009-0219. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the U.S. 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](mailto: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 Is the Background for This Rule?

##### A. What Is the General Background Information?

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million (ppm). EPA published a final rule designating and classifying areas under the 1997 8-hour ozone NAAQS on April 30, 2004 (69 FR 23857).

On March 12, 2008, EPA promulgated a more stringent 8-hour ozone standard of 0.075 ppm which was published in the **Federal Register** on March 27, 2008 (73 FR 16436). EPA will designate nonattainment areas under the 2008 8-hour ozone standard in 2010. Today's approval of Michigan's SIP revision addresses only the status of the Detroit-Ann Arbor area with respect to the 1997 8-hour ozone standard.

The background for today's actions with respect to the 1997 ozone standard is discussed in detail in EPA's April 23, 2009, proposal (74 FR 18479). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm. (See 69 FR 23857 (April 30, 2004) for further information.) 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, as determined in accordance with appendix I of part 50.

Under the CAA, EPA may redesignate nonattainment areas to attainment if sufficient complete, quality-assured data are available to determine that the area has attained the standard and that it meets the other CAA redesignation requirements in section 107(d)(3)(E).

On March 6, 2009, MDEQ submitted a request to redesignate the Detroit-Ann Arbor area to attainment of the 8-hour ozone standard. The 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 achieved. The April 23, 2009, proposed rule provides a detailed discussion of how Michigan met this and other CAA requirements.

##### 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?

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 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. 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, the Phase 1 Rule 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 remain effective. The June 8th decision 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 8th decision reaffirmed the Court's 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, contingent on 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 8th 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.

For the reasons set forth in the proposal, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude 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.

With respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8th decision clarified that, for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires only 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.

## II. What Comments Did We Receive on the Proposed Rule?

EPA provided a 30-day review and comment period. The comment period closed on May 26, 2009. EPA received comments in support of the

redesignation from Consumers Energy and the Southeast Michigan Council of Governments. EPA did not receive any adverse comments.

## III. What Action Is EPA Taking?

EPA is making a determination that the Detroit-Ann Arbor area has attained the 8-hour ozone NAAQS. EPA is also approving the maintenance plan SIP revision for the Detroit-Ann Arbor area. EPA's approval of the maintenance plan is based on Michigan's demonstration that the plan meets the requirements of section 175A of the CAA. 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 approving the redesignation of the Detroit-Ann Arbor area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is approving 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 approving the State's 2020 MVEBs for the Detroit-Ann Arbor area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3) which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of planning requirements for this 8-hour ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

## IV. Statutory and Executive Order Reviews

### *Executive Order 12866; Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

### *Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *Regulatory Flexibility Act*

This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

### *Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under State law, and does not impose any additional enforceable duty beyond that required by State law, it 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).

### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a State to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

*Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

*National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with

applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Absent a prior existing requirement for the State to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, enacted pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by August 28, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 the action. This action may not be challenged later in proceedings to enforce its requirements. (*See* 42 U.S.C. 7607(b)(2).)

**List of Subjects**

*40 CFR Part 52*

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

*40 CFR Part 81*

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

Dated: June 11, 2009.

**Walter W. Kovalick Jr.**,  
*Acting Regional Administrator, Region 5.*

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

**PART 52—[AMENDED]**

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

*Authority:* 42 U.S.C. 7401 *et seq.*

**Subpart X—Michigan**

■ 2. Section 52.1170(e) is amended by adding an entry to the end of the table to read as follows:

**§ 52.1170 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS**

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
8-hour ozone maintenance plan .....	Detroit-Ann Arbor (Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	3/6/2009	6/29/2009	

■ 3. Section 52.1174 is amended by adding paragraph (z) to read as follows:

**§ 52.1174 Control strategy: Ozone.**

\* \* \* \* \*

(z) Approval—On March 6, 2009, Michigan submitted a request to redesignate the Detroit-Ann Arbor area (Lenawee, Livingston, Macomb,

Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties) to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). As part of its redesignation requests, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan

include a contingency plan and an obligation to submit subsequent maintenance plan revisions in 8 years as required by the Clean Air Act. If monitors in any of these areas record a violation of the 8-hour ozone NAAQS, Michigan will adopt and implement one or more contingency measures. The list of possible contingency measures

includes: Reduced VOC content in architectural, industrial, and maintenance (AIM) coatings rule; auto body refinisher self-certification audit program; reduced VOC degreasing/solvent cleaning rule; diesel retrofit program; reduced idling program; portable fuel container replacement rule; and, food preparation flame broiler control rule. Also included in the Michigan's submittal were a 2005 base year emissions inventory and motor vehicle emission budgets (MVEBs) for use to determine transportation

conformity in the area. For the Detroit-Ann Arbor area, Michigan has established separate MVEBs for the Southeast Michigan Council of Governments (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 tons per day for VOC and 274 tpd for NO<sub>x</sub>. MDEQ has determined the 2020 MVEBs for Lenawee County to be 2.1 tpd for VOC and 4.4 tpd for NO<sub>x</sub>.

**PART 81—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.323 is amended by revising the entry for Detroit-Ann Arbor, MI in the table entitled "Michigan-Ozone (8-Hour Standard)" to read as follows:

**§ 81.323 Michigan.**

\* \* \* \* \*

**MICHIGAN-OZONE (8-HOUR STANDARD)**

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Detroit-Ann Arbor, MI: Lenawee County .....	6/29/2009	Attainment.		
Livingston County. Macomb County. Monroe County. Oakland County. St. Clair County. Washtenaw County. Wayne County.				
* * * * *				

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 141 and 143**

[EPA-HQ-OW-2008-0644; FRL-8920-8]

RIN 2040-AF00

**National Primary Drinking Water Regulations: Minor Correction to Stage 2 Disinfectants and Disinfection Byproducts Rule and Changes in References to Analytical Methods**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** In this action, EPA is making a minor correction to the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR) and minor, unrelated, editorial changes in references to analytical methods in the regulations. EPA promulgated the Stage 2 Disinfectants and Disinfection Byproducts Rule on January 4, 2006. A requirement for ground water systems serving 500-9,999 people was

unintentionally excluded from the final rule. As a result, the rule allowed for less routine compliance monitoring than intended for this category of public water systems (PWSs). These PWSs should have been required to monitor for both total trihalomethanes (TTHM) and haloacetic acids (HAA5) concentrations at two locations. Due to the error, they were only required to monitor for either TTHM or HAA5 at two locations. EPA is also making minor, unrelated changes in the regulations by adding references to the list of analytical methods approved under the Expedited Approval Process, removing references to outdated methods, and specifying a new source for the publication titled *Technical Notes on Drinking Water Methods*.

**DATES:** This final rule is effective on July 29, 2009. For judicial review purposes, this final rule is promulgated as of June 29, 2009. The incorporation by reference of certain publications listed in this rule is effective as of June 29, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. OW-2008-0644. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the OW Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OW docket is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the Stage 2 DBPR minor correction contact Tom Grubbs, Standards and Risk Management Division, Office of Ground Water and Drinking Water, M/C 4607M, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number (202) 564-5262; e-mail address [grubbs.thomas@epa.gov](mailto:grubbs.thomas@epa.gov). For information concerning the methods