

exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosures of the record.

(ii) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) are exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the subject. The exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualification for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(3) *Personnel Research Test Validation Records (OPM/GOVT-6)*. All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

* * * * *

Dated: August 19, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96-21682 Filed 8-23-96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[W170-02-7299 and W171-02-7300; FRL-5553-1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 5, 1996, and June 11, 1996, the Environmental Protection Agency (EPA) published a proposal to approve the redesignations to

attainment and associated maintenance plans for the ozone National Ambient Air Quality Standard (NAAQS) for the Wisconsin counties of Walworth, and Kewaunee, Manitowoc, and Sheboygan, respectively. The 30-day comment periods concluded on July 5, 1996, for Walworth County and on July 11, 1996 for the remaining three counties. Two comment letters were received in response to the proposed rulemakings, both from the Citizens Commission for Clean Air in the Lake Michigan Basin. This final rule summarizes all comments and EPA's responses, and finalizes the approval of the redesignations to attainment for ozone and associated maintenance plans for Walworth, Sheboygan, and Kewaunee Counties. Manitowoc County is not being finalized at this time due to a possible monitored exceedance of the ozone standard in that county. The monitored exceedance, as yet, has not been subject to the standard quality assurance procedures. If the exceedance is validated, it would be the fourth exceedance over the past three years and would therefore constitute a violation at the Manitowoc County Woodland Dunes monitor.

EFFECTIVE DATE: This action will be effective August 26, 1996.

ADDRESSES: Copies of the SIP revisions, public comments and EPA's responses are available for inspection at the following address: (It is recommended that you telephone Randy Robinson at (312) 353-6713 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Regulation Development Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353-6713.

SUPPLEMENTARY INFORMATION:

I. Background Information

The redesignation requests and maintenance plans for the Walworth County marginal nonattainment area and the Kewaunee, Manitowoc, and Sheboygan Counties moderate ozone nonattainment areas discussed in this final rule were submitted to EPA by the WDNR on December 15, 1995, and May 15, 1996, respectively. On June 5, 1996, the EPA published in the Federal Register a proposal to approve the redesignation request and associated

section 175A maintenance plan for Walworth County as a revision to the Wisconsin ozone SIP (61 FR 28541). The proposed approval of the Kewaunee, Sheboygan, and Manitowoc Counties redesignation requests and maintenance plans was published on June 11, 1996 (61 FR 29508). Comments were received regarding the proposed rulemakings. Additionally, preliminary exceedances of the ozone National Ambient Air Quality Standard (NAAQS) were monitored in Manitowoc County during the 30 day comment period. If these exceedances are validated, it would mean that Manitowoc County is in violation. Consequently, EPA is not taking final action on the request for redesignation to attainment and maintenance plan for Manitowoc County at this time. The EPA will continue to work with the State to address the Manitowoc situation. This notice does not, therefore, further discuss the Manitowoc redesignation action.

The final rule contained in this document addresses the comments which were received during the public comment period and announces EPA's final action regarding the redesignations and section 175A maintenance plans for Walworth, Kewaunee, and Sheboygan Counties.

II. Public Comments and EPA Responses and Final Rulemaking Actions

The following discussion summarizes and responds to the comments received regarding the proposed redesignations to attainment for Walworth, Kewaunee, and Sheboygan Counties. Walworth County was proposed in a separate rulemaking from Kewaunee and Sheboygan Counties. A set of comments was received for Walworth County on July 5, 1996. A set of comments was received for Kewaunee and Sheboygan Counties on July 11, 1996. However, the bulk of the comments dealt with matters common to both rulemakings. The first part of this section addresses these common comments. The second part will address comments pertaining to a specific area.

Comment: The commentator states that redesignating the counties of Walworth, Kewaunee, and Sheboygan to attainment for ozone is "inappropriate without additional safeguards". The commentator primarily singles out the contingency plan as inadequate to address future ozone violations caused by emissions from upwind areas.

Response: Section 107(3)(d)(E) of the Clean Air Act (Act) sets out the criteria which must be met before an area can be redesignated to attainment. These

criteria are: (i) The Administrator determines that the area has attained the NAAQS; (ii) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (v) the State containing such area has met all requirements applicable to the area under section 110 and part D. It is appropriate to redesignate the counties of Walworth, Sheboygan, and Kewaunee to attainment for ozone because EPA has determined that they meet the specific criteria and are therefore eligible for redesignation to attainment.

As mentioned above, the first criterion requires that the area has attained the NAAQS. If a violation of the NAAQS does occur after the redesignation of an area to attainment, section 175A(d) of the Act requires that the State Implementation Plan for the area contain contingency provisions which would promptly correct the violation. The mechanism that would trigger the implementation of contingency measures in each of the three Wisconsin counties is a monitored violation of the NAAQS determined to be caused by local sources. The EPA believes that this triggering mechanism is appropriate given the overwhelming evidence demonstrating that Walworth, Sheboygan and Kewaunee Counties are the recipients of transported ozone and ozone precursors from upwind areas, such as the Milwaukee-Racine and Chicago-Gary areas. The EPA believes that this triggering mechanism satisfies the requirement of section 175A(d), because if a violation is due to transport, then control measures implemented in the violating area will not correct the violation, which is the stated purpose of the section 175A(d) contingency provisions.

If violations of the ozone NAAQS are monitored in the redesignated counties, current evidence indicates that emission reductions will likely be needed from upwind areas in order for the violation to be corrected. The upwind areas of immediate concern are the Milwaukee-Racine and Chicago-Gary severe-17 nonattainment areas. It is reasonable to consider the current and future emission reductions that will occur in

these upwind areas, as measures that will reduce future ozone concentrations in the immediate nonattainment areas as well as in areas downwind. The severe-17 nonattainment areas have attainment dates of 2007. As a result of this classification, the areas will have to achieve significant reductions in ozone precursor emissions prior to the area's attainment date, as part of the States' obligations to comply with the rate-of-progress requirements of section 182(c)(2). Many of the reductions have already occurred or will occur well before the year 2007. The EPA considers these requisite reduction measures to effectively address any future elevated concentrations of ozone in the downwind counties of Kewaunee, Sheboygan and Walworth, attributable to transport from the Milwaukee and Chicago areas. These Act measures are mandatory and have been or will be implemented in accordance with a schedule that ensures that the severe-17 nonattainment areas achieve continuous progress toward attainment. Also, the 15 percent plan, which has been approved for the Wisconsin ozone nonattainment areas (61 FR 11735), contains contingency measures that would provide reductions in the event that the State is unable to show a 15 percent reduction in VOC's, from the year 1990 to 1996, in the nonattainment areas. The EPA believes it appropriate to consider these measures (those needed to comply with the rate-of-progress provisions and the section 172(c)(9) contingency measures) to be contingency measures under section 175A(d) for the Wisconsin counties being redesignated since they should serve to correct any violations attributable to transport and either are or are required to be included in the Wisconsin SIP. In essence, locally caused violations will be dealt with through locally implemented contingency measures while transport caused violations would be dealt with through control measures being implemented in upwind areas. Additionally, reductions of emissions from upwind sources will likely be implemented as a result of the work currently being done by the Ozone Transport Assessment Group. This group, made up of State and Federal environmental agencies, environmental groups, and industry, is charged with evaluating and recommending regional control strategies that will help reduce the amount of transported ozone and precursors. The EPA intends to use its regulatory authority to ensure implementation of these control strategies. The reductions resulting from these strategies will assist urban areas in

their efforts to demonstrate attainment as well as to lower the concentration of ozone found in more rural areas, such as the three Wisconsin counties.

Comment: The commentor states that EPA is not enforcing existing prohibitions against interstate pollution. The commentor elaborates by citing section 110(a)(2)(D) and section 126 as Act provisions giving EPA the authority to demand emission reductions from States contributing to nonattainment in downwind areas. Section 110(a)(2)(D)(I)(I) requires that the SIP "contain adequate provisions prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, * * *"

Response: Nothing in section 110(a)(2)(D) prohibits EPA from approving the redesignation requests for Walworth County or for Kewaunee and Sheboygan Counties. Section 110(a)(2)(D) applies to the Milwaukee-Chicago-Gary nonattainment areas. The SIP revisions that will achieve the necessary reductions for these areas are still under development. They are due to be submitted in mid-1997 (See March 2, 1995 Mary Nichols Memorandum) and will include local emission reduction strategies as well as the regional control strategies implemented as a result of the Ozone Transport Assessment Group process. The EPA will evaluate these revisions for compliance with section 110(a)(2)(D) when they are submitted.

Section 126 of the Act states that: "Any State or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 7410(a)(2)(D)(ii) of this title or this section. Within 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition." Neither the State of Wisconsin, nor any other State, has petitioned the EPA to make a finding under section 126 as defined above. As mentioned earlier, the issue of transported ozone and ozone precursors is being addressed through the regulatory aspects of the Ozone Transport Assessment Group. The complex science of ozone formation and transport has necessitated the initiation of a study of what types of strategies would be effective in reducing the

amount of transported ozone. Unlike other criteria pollutants, the most effective control strategy and the most culpable source(s) are not always obvious. The work being done by the Ozone Transport Assessment Group will provide information on what types of control strategies need to be implemented, and over what geographic areas. Once the results are available, EPA intends to use its authority under section 110(k)(5) to ensure implementation of these control strategies. These regional strategies, combined with past and future rate-of-progress reductions, will significantly reduce the occurrence of health threatening concentrations of ozone over all areas.

Comment: The commenter states that the "integrity of redesignation requirements is further eroded by USEPA's inadequate ozone transport policy." The commenter further states that the Walworth County and the Kewaunee and Sheboygan County SIPs are incomplete due the waiving of the following requirements: section 172 (c)(2) reasonable further progress (RFP) requirement; section 176 transportation and general conformity requirements; section 182 (a)(4) new source review requirement; and section 182(f) NO_x requirements.

Response: The EPA rejects the contention that the SIPs are incomplete. The EPA also rejects the contention that the redesignation requirements of section 107(d)(3)(E) are not being fully enforced.

Section 172 (c)(2) RFP

With respect to the RFP requirement, since Walworth, Kewaunee, and Sheboygan Counties are being designated from a nonattainment areas to attainment based on a showing that they have already attained the NAAQS, the requirement to detail their future progress toward attainment is unnecessary. The General Preamble (57 FR 13498) states that the requirements for RFP will not apply in evaluating a request for redesignation since, at a minimum, the air quality data for the area must show that the area has already attained the NAAQS for the pollutant in question.

Section 182 (a)(4) New Source Review

The EPA has not waived the Part D New Source Review (NSR) requirement for the three Wisconsin Counties. The State has submitted NSR rules to EPA and these rules were fully approved on January 18, 1995 (60 FR 3538). The NSR rules apply only to nonattainment areas. Once an area is redesignated to attainment, the part C—Prevention of

Significant Deterioration of Air Quality (PSD) rules apply accordingly. Wisconsin has demonstrated that Kewaunee and Sheboygan Counties will maintain the NAAQS for ozone with PSD rules in effect.

Section 176 General and Transportation Conformity

The EPA has not "waived" the requirement for adoption and implementation of conformity regulations. Rather, EPA has determined that those requirements will continue to apply after the area is redesignated, and therefore need not be fulfilled as a condition of redesignation. This national policy was exercised in the Tampa, Florida redesignation finalized on December 7, 1995, (60 FR 62748). The State of Wisconsin, in fact, submitted transportation and general conformity SIP revisions on November 23, 1994 and November 30, 1994, respectively. An EPA action proposing approval of the transportation conformity revision was published on May 10, 1996 (61 FR 21412). The issue is whether full approval of these rules is needed prior to redesignation. As presented in the June 5, 1996 and June 11, 1996 proposed rulemakings, the EPA believes that it is reasonable to interpret the conformity requirement as not being applicable for purposes of redesignation under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continue to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While a redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment, and are required to implement conformity under Federal rules if State rules are not yet adopted,

the EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

For the reasons just discussed, the EPA believes that the ozone redesignation requests for Walworth County and for Kewaunee and Sheboygan Counties may be approved notwithstanding the lack of fully-approved State transportation and general conformity rules. This redesignation policy was also exercised in the Tampa, Florida, Cleveland-Akron-Lorain, Ohio, and Grand Rapids, Michigan ozone redesignations finalized on December 7, 1995 (60 FR 52748), May 7, 1996 (61 FR 20458), and June 21, 1996 (61 FR 31831), respectively.

According to the Federal transportation and general conformity rules, conformity applies to maintenance areas as well as nonattainment areas. Once redesignated, the redesignated areas will be maintenance areas and will be required to conduct emission analyses to determine that the VOC and NO_x emissions remain below the motor vehicle emission budget established in the maintenance plan. The General Preamble to the conformity regulations further clarifies this issue, particularly as it pertains to areas requesting and obtaining a section 182(f) NO_x exemption.

Section 182(f) NO_x Requirement

Section 182(f) establishes NO_x requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO_x reductions would not contribute to attainment. On July 13, 1994, Wisconsin submitted, along with Illinois and Indiana, a section 182(f) NO_x petition to be relieved of the section 182(f) NO_x requirements based on urban airshed modeling. The modeling demonstrates that local NO_x emission reductions would not contribute to attainment of the NAAQS for ozone in the nonattainment areas, which includes Kewaunee and Sheboygan Counties. The EPA approved the section 182(f) petition on January 26, 1996 (61 FR 2428). Therefore, the section 182(f) NO_x requirements are no longer applicable requirements for these areas. However, approval of the waiver does not exempt these counties from requirements that may be imposed as a result of the Ozone Transport Assessment Group process, as explained in the January 26, 1996, final rulemaking.

Comment: The commenter stated that exempting ozone nonattainment areas from compliance with part D NSR

regulations presents special problems since prevention of significant deterioration (PSD) and preconstruction rules "do not fully address how emissions of ozone precursors should be treated to assure that major new or modified sources do not cause or contribute to a NAAQS violation."

Response: The EPA emphasizes that, contrary to the commentator's contention, ozone nonattainment areas are not exempt from compliance with part D NSR regulations. An October 14, 1994, memorandum was issued by Mary Nichols, Assistant Administrator for Air and Radiation, titled, Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment (Nichols Memorandum). That memorandum suggests that areas that are otherwise eligible for redesignation need not have a fully approved part D NSR program as a prerequisite to redesignation since the PSD program would apply once the area has been redesignated to attainment. As mentioned previously, the State of Wisconsin submitted NSR rules on November 15, 1992. These rules were approved by EPA on January 18, 1995 (60 FR 3538). The NSR rules have been in effect in Kewaunee and Sheboygan Counties because of their nonattainment designation. Upon redesignation to attainment, the requirements of the PSD program will replace the NSR requirements. (See discussion of NSR issue in the Grand Rapids Federal Register, 60 FR 37366).

The Nichols' memorandum's statement that EPA regulations (40 CFR 51.165(b)(3) and Appendix S) "do not fully address how ozone precursor emissions should be treated to ensure that major new or modified sources do not cause or contribute to an ozone NAAQS violation" is based on the difficulty in modeling the impact of emissions from specific sources on ozone formation. The policy, however, also states that for areas with preconstruction monitoring or other information that indicate that the area is not meeting the ozone standard after redesignation to attainment, Appendix S or 40 CFR 51.165(b) apply. These areas should then require major new or modified sources to obtain VOC emission offsets of at least a 1:1 ratio. In addition, the PSD program allows Best Available Control Technology (BACT) in place of Lowest Achievable Emission Rate (LAER) if the less stringent control technology can be justified based on an economic, energy and environmental impacts analysis. Consequently, if a justification for a RACT control cannot be made on the basis of an environmental impact analysis, the

State may impose a more stringent level of control other than what may be selected as BACT in an area redesignated to attainment but not meeting the NAAQS. With these elements, the preconstruction review programs can assure that major new or modified sources achieve the statutory goals of Part D NSR.

Comment: The commentator states that the EPA should process the November 23, 1994, and November 30, 1994 transportation and general conformity rules submittals before finalizing action on the Wisconsin redesignations. The commentator supports this by stating that changes in mobile source emissions and in demographic patterns around the area are directly related to ozone precursor emissions.

Response: The EPA agrees that surface transportation projects and evolving demographic distributions can have an influence on an area's ozone precursor emissions and its overall ability to demonstrate maintenance with the ozone NAAQS. However, approval of the redesignation requests for Walworth County and for Kewaunee and Sheboygan Counties does not relieve the State from the requirement that it comply with the conformity provisions of the Act, including performing conformity analyses. The State has submitted transportation and general conformity rules. As mentioned earlier, the transportation SIP revision was proposed for approval on May 10, 1996, and should be finalized soon. The State is simply adopting the Federal rules for general conformity, and final approval of that submittal is expected soon. Our national policy, as first exercised in the December 7, 1995, Tampa rulemaking (60 FR 62748), does not require conformity as a prerequisite for redesignation. The status of the State rules is not a factor. Therefore, the EPA believes that the ozone redesignation requests for Walworth County and for Kewaunee and Sheboygan Counties may be approved notwithstanding the lack of fully-approved State transportation and general conformity rules.

The following comments are specific to the proposed approval of the redesignation request for Kewaunee, Manitowoc, and Sheboygan Counties.

Comment: The commentator protests the "clandestine" determination of attainment which was applied to Kewaunee and Sheboygan Counties. The commentator further states that this application exempted the area from the section 182(b)(1) 15 percent requirement.

Response: The EPA's application of the determination of attainment policy to Kewaunee and Sheboygan Counties

was not "clandestine" but rather was clearly explained in the portion of the proposed rulemaking to which it was relevant (i.e., Attainment Demonstration Requirement). The EPA made a determination in the proposed approval of the redesignation to attainment that since these areas are demonstrating monitored attainment of the ozone NAAQS, a factual determination based on 3 years of complete, quality assured monitoring data, certain provisions of the Act do not require SIP revisions to be made by the State for so long as the area continues to attain the standard. As explained in a May 10, 1995, memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled, "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner as EPA had previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172).

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

The 1995 Seitz memorandum was clear about the consequences of the policy for redesignations. First, it made plain that a determination of attainment is not tantamount to a redesignation of an area to attainment. Attainment is only one of the criteria set forth in section 107(d)(3)(E). To be redesignated, the State must satisfy all of the criteria of section 107(d)(3)(E), including the requirement of a demonstration that the improvement in the area's air quality is

due to permanent and enforceable reductions, and the requirements that the area have a fully-approved SIP which meets all of the applicable section 110 and part D requirements, and a fully approved maintenance plan.

Upon the determination of attainment for Kewaunee and Sheboygan Counties, however, the attainment demonstration requirement of section 182(b)(1)(A)(I) is no longer considered an applicable requirement under section 107(d)(3)(E). It is no longer included among those measures required for SIP approval.

The commentator also stated that EPA's determination of attainment, as applied to the moderate counties, waived the 15 percent plan requirement. In fact, a 15 percent plan for the moderate and severe nonattainment areas in Wisconsin was submitted to EPA on November 15, 1993 and was approved on March 22, 1996. The 15 percent plan is being implemented in the moderate counties and is not affected by EPA's determination that the area has attained the standard.

Comment: The commentator states concern about the integrity of the monitoring network in Kewaunee and Sheboygan Counties. The commentator specifically states that 1994, 1995, and 1996 data show "worrisome gaps" and a "continuing problem with reliability." Additionally, the commentator identifies preliminary ozone data indicating exceedances of the ozone standard in 1996 in Manitowoc and Kewaunee Counties.

Response: The Code of Federal Regulations, Part 58, requires 75 percent data collection in order for the monitoring to be considered complete. There are four ozone monitors in the three moderate area counties which were proposed for redesignation to attainment. The monitoring season in Wisconsin extends for 184 days, from April 15th to October 15th. All of the monitors recorded valid readings on at least 96 percent of the total number of possible days. In 1995, the two monitors in Manitowoc recorded valid readings for all 184 days of the ozone season. The commentator did not identify specific days or monitors in which the "gaps" appeared. The Sheboygan monitor was out of service for approximately 98 hours in early July 1995. Most of the hours were from July 7th into July 10th, which was a period of relatively low ozone readings across the area. The monitor experienced a pump failure during this time period. Some of the missing hours were during July 13th and 14th which was a period of elevated ozone concentrations. During this period, condensation in the lines, due to extremely high humidity, caused

invalid readings. However, at other monitors in the region, the maximum ozone concentration during this episode was recorded during the afternoon of July 12th, which is a period when the Sheboygan monitor was collecting data. Data submitted thus far in 1996 does not show excessive gaps in data collection and appears to be fulfilling the data collection requirements.

The commentator also stated that preliminary exceedances (subject to quality assurance procedures) were recorded at the Manitowoc-Woodland Dunes monitor on June 28, 1996 and on July 6, 1996. As we have noted above, if either of these exceedances is determined to be valid, the Manitowoc-Woodland Dunes monitor would be in violation of the ozone standard and, consequently, Manitowoc County would be ineligible for redesignation to attainment. The monitor in Kewaunee County showed an ozone value of 163 parts per billion in June of this year. Preliminary indications from the State are that this value represents ozone from a standard calibration procedure where the monitor was not deactivated during the calibration test. Therefore, the hourly concentration appears in the database but is not representative of ambient ozone concentration levels. Even if it is a valid reading, the Kewaunee County monitor would still not be in violation of the ozone standard because it would only have three exceedances over the past three years, whereas four exceedances are needed for a monitor to be in violation.

The EPA is not finalizing the request for redesignation to attainment for Manitowoc County in this action. The counties of Kewaunee and Sheboygan continue to demonstrate monitored attainment with the ozone NAAQS.

Comment: The commentator expresses concern that the EPA will make the final action approving the redesignation to attainment effective upon the date of publication in the Federal Register. The commentator states that it is inappropriate for the EPA to depart from the "typical thirty day period" used in the past and EPA should not "race against the clock" in order to avoid future monitored exceedances.

Response: The notice of final rulemaking approving the redesignation to attainment for the counties of Sheboygan and Kewaunee will become effective the date it is published in the Federal Register. The thirty-day delay in the effective date is necessary when a final rule will be imposing new requirements upon an area and the area needs time to prepare for the imposition of those new requirements. The redesignation to attainment for

Sheboygan and Kewaunee Counties does not impose any new requirements in those two counties but rather relieves a restriction. Therefore, the effective date of action does not need to be delayed. The immediate effective date for this redesignation is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."

Comment: The commentator states that the redesignation ignores findings from the Lake Michigan Ozone Study which show these areas will be unable to attain and maintain the ozone NAAQS. The commentator also states that EPA is ignoring emissions from Wisconsin areas which may contribute to any future violation of the standard in Kewaunee or Sheboygan County. Additionally, the commentator states that existing Title V requirements should be enforced.

Response: Kewaunee and Sheboygan Counties have demonstrated through monitoring data that they have attained the NAAQS for ozone. The State has also demonstrated that emissions in Kewaunee and Sheboygan Counties will decrease when projected to the year 2007. These decreases, combined with reductions occurring upwind, will assist the areas in their effort to maintain the ozone standard.

The Lake Michigan Ozone Study (LMOS), coordinated by the Lake Michigan Air Directors Consortium (LADCO), has submitted modeling for use in supporting an overwhelming transport petition for Kewaunee, Sheboygan, and Manitowoc Counties. The overwhelming transport guidance was provided in a September 1, 1994, memorandum from Mary D. Nichols, titled "Ozone Attainment Dates for Areas Affected by Overwhelming Transport." This analysis predicted ozone concentrations over the four-state region surrounding Lake Michigan. The modeling, which uses 1991 meteorological conditions and 1990 emission information grown to the year 1996, shows predicted ozone concentrations above the standard in and around Kewaunee and Sheboygan Counties. The modeling was submitted by the State of Wisconsin to support a petition that the moderate nonattainment counties of Kewaunee, Sheboygan, and Manitowoc not be bumped up to a higher classification in response to either a monitored ambient

air quality violation or the lack of a demonstration showing attainment by the year 1996. The overwhelming transport modeling was submitted to demonstrate that high levels of predicted ozone from upwind areas (i.e., Chicago, Milwaukee, and areas further upwind) are impacting the three counties and that the areas would be able to attain the NAAQS but for the overwhelming amount of transported ozone.

Kewaunee and Sheboygan Counties continue to demonstrate monitored attainment of the ozone NAAQS. However, they are part of the LADCO group, which is in the process of developing a final attainment demonstration using photochemical modeling for the four-state LADCO region. Because of LADCO's involvement in the Ozone Transport Assessment Group effort (established pursuant to the March 2, 1995, Mary Nichols Memorandum) and uncertainty about current and future boundary conditions and control strategies, a final attainment demonstration for the area has not been submitted.

Initial modeling for the area was also recently submitted to EPA in response to the Phase I requirements of the Mary Nichols memorandum. This modeling includes predicted ozone concentrations for 1996 and 2007 using various control strategy scenarios combined with several assumptions of boundary ozone conditions. Some of the 2007 scenarios show predicted maximum ozone values below 124 parts per billion, the remainder show areas with predicted ozone values above 124 parts per billion. The modeling documentation only indicates whether attainment will be reached in the four-State LADCO region and does not identify the levels of predicted ozone for Kewaunee and Sheboygan Counties. Overall, the modeling is playing an important role in the determination of emission controls needed to provide for attainment in and downwind of the nonattainment areas in the Lake Michigan Ozone Study region.

The EPA believes that the ultimate test of whether an area has, in fact, achieved attainment is demonstrated through monitoring and that the redesignation to attainment of Kewaunee County and Sheboygan County is appropriate given their ability to show monitored attainment of the standard and because they have met the other redesignation criteria. An explanation of how the monitored attainment of the ozone standard is determined is contained in 40 Code of Federal Regulations, Part 50, Appendix H. The clean air quality data cover the

years 1993, 1994, and 1995, which rank as some of the worst years in terms of ozone forming potential based on a 42-year record of meteorological data. The lack of a monitored violation in these counties during this time period supports the State's claim that the air quality has improved due to permanent and enforceable reductions, and is in attainment with the NAAQS. However, EPA also feels that the LADCO modeling that has been submitted is legitimate and that it provides information that primarily speaks to the transport of ozone and the effect of various control strategies on future ozone formation. The elevated levels of predicted ozone in the Kewaunee, Manitowoc, and Sheboygan County area (i.e., approximately 120 to 140 parts per billion) are indicative of the transport phenomenon, which is most pronounced generally along the western and eastern shoreline of Lake Michigan. While the modeling is useful to evaluate control strategy effectiveness and transport, less confidence should be placed upon the specific ozone concentrations predicted by the model to occur in 1996 at specific locations across the region.

There has long been an understanding that uncertainty is a part of any ozone modeling analysis. Ozone modeling demonstrations are primarily designed to evaluate control strategies for future attainment. Ozone modeling is not used for, nor intended to be used for, determining an area's current attainment status. In addition to the uncertainties, the test for determining modeled attainment differs substantially from the current form of the ozone NAAQS, which permits occasional exceedances at any location. When evaluating modeling demonstrations, it is appropriate to consider additional information, such as air quality monitoring data, in order to characterize the robustness of the analysis. Because of the uncertainties inherent in the modeling process, air quality monitoring data is weighted more heavily the closer one gets to the attainment date. For the reasons discussed above, EPA believes that the redesignation to attainment for these counties is appropriate given their ability to demonstrate attainment with the ozone standard using monitored data.

As mentioned earlier, the maintenance plan for Sheboygan and Kewaunee Counties includes a triggering mechanism which, in the event of a monitored violation, would activate the contingency plan in the violating county. The contingency plan includes provision for an analysis to be

performed by the State and approved by EPA to identify if the violation was caused by local sources or if it was the result of ozone transported from upwind areas. The contingency plan submitted by the State does not exclude the Milwaukee area from the analysis. However, the contingency plan only speaks to the control measures to be implemented in the violating county if it is determined that implementation of those measures will promptly correct the violation. It does not call for the implementation of control measures in the upwind areas.

The reductions required in the Milwaukee-Racine and Chicago-Gary nonattainment areas were discussed earlier in this document. These reductions will be combined with possible future reductions of ozone precursor emissions from upwind sources, which will likely be implemented as a result of the work currently being done by the Ozone Transport Assessment Group. The EPA intends to use its regulatory authority to ensure implementation of the recommended control strategies coming from the Ozone Transport analysis. The reductions resulting from these strategies will assist urban areas in their efforts to demonstrate attainment as well as to lower the concentration of ozone found in more rural areas, such as the three Wisconsin counties.

The results from the Ozone Transport Assessment Group effort are to be submitted as formal revisions to the SIPs during 1997. The State of Wisconsin is very active in the Ozone Transport Assessment effort. However, the State has not committed to all of the specific reductions in volatile organic compounds as required by EPA, pending the results of the ozone transport analysis showing which emission reduction strategies will be effective. The EPA has issued a finding of failure to submit to the State of Wisconsin for the required reductions.

Finally, the EPA agrees with the commenter that it is important that all existing Title V permit requirements be enforced to ensure that the maximum benefits are received from reductions in ozone precursors already being relied upon.

III. Final Rulemaking Action

The EPA approves the redesignation to attainment for ozone for the Wisconsin counties of Walworth, Kewaunee, and Sheboygan. The EPA also approves the section 175A maintenance plans for these three counties as revisions to the Wisconsin SIP. The State of Wisconsin has satisfied

all of the necessary requirements of the Act.

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

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

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

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

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

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), 2 U.S.C. § 1532, signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rulemaking that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, 2 U.S.C. § 1535, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203, 2 U.S.C. § 1533, requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this final action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subject

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Motor vehicle pollution, Nitrogen oxides, Reporting and recordkeeping requirements.

40 CFR Part 81

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

Dated: August 7, 1996.
Valdas V. Adamkus,
Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (k) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(k) Approval—On December 15, 1995, and May 15, 1996, the Wisconsin Department of Natural Resources submitted requests to redesignate Walworth County and Sheboygan and Kewaunee Counties, respectively, from nonattainment to attainment for ozone. The State also submitted maintenance plans as required by section 175A of the Clean Air Act, 42 U.S.C. § 7505a. Elements of the section 175A maintenance plans include attainment emission inventories for NO_x and VOC, demonstrations of maintenance of the ozone NAAQS with projected emission

inventories to the year 2007 for NO_x and VOC, plans to verify continued attainment, and contingency plans. If a violation of the ozone NAAQS, determined to be caused by local sources is monitored, Wisconsin will implement one or more appropriate contingency measure(s) contained in the contingency plan. Once a violation of the ozone NAAQS is recorded, the State will notify EPA and review the data for quality assurance. A plan to analyze the violation, including an analysis of meteorological conditions, will be submitted within 60 days to EPA-Region 5 for approval. Within 14 months of the violation, Wisconsin will complete and public notice the analysis and submit it to EPA-Region 5 for review. If the analysis shows that local sources caused the violation, Wisconsin will implement the contingency measures within 24 months after the violation. The contingency measures to be implemented in Walworth County are Stage II vapor recovery and non-Control Technology Guideline (non-CTG)

Reasonably available control technology (RACT) limits. Contingency measures to be implemented in either Kewaunee or Sheboygan County are lower major source applicability thresholds for industrial sources and new gasoline standards which will lower VOC emissions. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) and 175A of the Act, respectively.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401-7871q.

2. In section 81.350, the ozone table is amended by revising the entries for Kewaunee County, Sheboygan County, and Walworth County to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—OZONE

Designated areas	Designation		Classification	
	Date ¹	Type	Date	Type
	* * * * *			
Kewaunee County Area Kewaunee County	[Insert Date of Publication]	Attainment.		
	* * * * *			
Sheboygan County Area Sheboygan County	[Insert Date of Publication]	Attainment.		
Walworth County Area Walworth County	[Insert Date of Publication]	Attainment.		
	* * * * *			

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

[FR Doc. 96-21697 Filed 8-23-96; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 63

[FRL-5551-9]

Interim Approval of Section 112(l) Delegated Authority; Washington

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final Interim Approval and Delegation.

SUMMARY: EPA is promulgating final interim approval of the state of Washington Department of Ecology (Ecology) request for delegation of authority to implement and enforce state-adopted hazardous air pollutant regulations which adopt by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) contained within 40 CFR Parts 61 and

63, as these regulations apply to sources that are required to obtain a federal operating permit under 40 CFR Part 70 (i.e., Part 70 sources). EPA is also promulgating interim approval of certain local air agency potential-to-emit limiting regulations which will now be recognized as federally enforceable. At Ecology's request, EPA is delaying approval of certain other state and local potential-to-emit limiting regulations.

These adopted regulations approved as part of this action will be implemented and enforced by both Ecology and/or the following local air authorities within the state of Washington: The Benton County Clean Air Authority (BCCAA); the Northwest Air Pollution Authority (NWAPA); the Olympic Air Pollution Control Authority (OAPCA); the Puget Sound Air Pollution Control Agency (PSAPCA); the Southwest Air Pollution Control Authority (SWAPCA); the

Spokane County Air Pollution Control Authority (SCAPCA); and the Yakima County Clean Air Authority (YCCAA); collectively referred to as "the Washington permitting authorities."

EFFECTIVE DATE: August 26, 1996.

FOR FURTHER INFORMATION CONTACT: Chris Hall, US EPA, OAQ-107, 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553-1949.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the federal Clean Air Act (CAA) enables the EPA to approve state air toxic programs or rules to operate in place of the Federal air toxic program or rules. The Federal air toxic program implements the requirements found in section 112 of the CAA pertaining to the regulation of hazardous air pollutants. Approval of an air toxic program is granted by the EPA if the Agency finds that: (1) the State