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Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper (preferably in five copies), disk, or CD-ROM submissions), to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically; if furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background comments or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For information about submitting comments, call or write to Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Bethesda, MD 20814; telephone (301) 504-6833.

SUPPLEMENTARY INFORMATION: On April 28, 2010, the Commission published a notice of proposed rulemaking ("NPR") in the **Federal Register** titled, "Safety Standard for Bassinets and Cradles" (75 FR 22303). The Commission issued the NPR pursuant to section 104(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") which requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The NPR proposed a more stringent safety standard for bassinets and cradles that will further reduce the risk of injury associated with these products. The NPR provided a 75-day

public comment period which ended on July 12, 2010.

Although the NPR was posted on the CPSC's Web site at the same time it was published in the **Federal Register**, the NPR was not posted on the [regulations.gov](http://www.regulations.gov) Web site until June 23, 2010. Additionally, after publication of the NPR, Commission staff met with various parties concerning test methods described in the NPR. The Commission is placing summaries of those meetings into the administrative record. To ensure that all interested parties have adequate notice of this NPR and the meeting summaries and the ability to comment on them, the Commission is reopening the docket to continue to receive public comments until September 10, 2010.

Dated: July 14, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2010-0477; FRL-9176-4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Michigan; Redesignation of the Allegan County Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Michigan's request to redesignate the Allegan County, Michigan 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone standard, because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Michigan Department of Natural Resources and Environment (MDNRE) submitted this request on May 24, 2010 and supplemented it on June 16, 2010.

This proposed approval involves several related actions. EPA is proposing to determine that the Allegan County area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2007-2009 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained

in the area. Preliminary data available for 2010 is consistent with continued attainment. 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 2021 in the area.

EPA is proposing to approve the 2005 emissions inventory submitted with the redesignation request as meeting the comprehensive emissions inventory requirement of the CAA for the Allegan County area. Finally, EPA is proposing to find adequate and approve the State's 2021 Motor Vehicle Emission Budgets (MVEBs) for the Allegan County area.

DATES: Comments must be received on or before August 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2010-0477, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* bortzer.jay@epa.gov.

3. *Fax:* (312) 692-2054.

4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand delivery:* Jay Bortzer, Chief, 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-2010-0477. 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>

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 of 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, Attainment Planning and Maintenance 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 actions is EPA proposing to take?

EPA is proposing to take several related actions. EPA is proposing to determine that the Allegan County nonattainment area has attained the 1997 8-hour ozone standard and that the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve the request from MDNRE to change the legal designation of the Allegan County area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve, as a revision to the Michigan SIP, the State's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Allegan County area in attainment of the ozone NAAQS through 2021. EPA is proposing to approve the 2005 emissions inventory

for the Allegan County area as meeting the comprehensive inventory requirements of section 172(c)(3) of the CAA. If EPA's determination of attainment is finalized, under the provisions of 40 CFR 51.918, the requirement to submit certain planning SIPs related to attainment (the Reasonably Available Control Measure (RACM) requirement of section 172(c)(1) of the CAA, the Reasonable Further Progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) are not applicable to the area as long as it continues to attain the NAAQS and would cease to be applicable upon redesignation. In addition, as set forth in more detail below, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. Finally, EPA is proposing to find adequate and approve the newly-established 2021 MVEBs for the Allegan County area. The adequacy comment period for the MVEBs began on June 17, 2010, 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 ends on July 19, 2010. Please see section VI. B. of this rulemaking, "Adequacy of the MVEBs," for further explanation of this process. We are proposing to find adequate and approve the State's 2021 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 8-hour standard, the ozone NAAQS was based on a 1-hour standard. EPA originally designated the Allegan County area as an ozone nonattainment area under section 107 of the 1977 CAA on March 3, 1978 (43 FR 8962). EPA revisited this original designation in 1991 to reflect new designation requirements contained in the 1990 CAA. On November 6, 1991 (56 FR 56694), EPA retained the original

nonattainment designation for Allegan. At the time of the 1991 designations, current monitoring data were not available for this area, nor had the State completed a redesignation request showing that it complied with the requirements of section 107(d)(3)(E) of the CAA. Therefore, EPA designated the area as nonattainment, but did not establish a nonattainment classification, establishing the area as an incomplete data ozone nonattainment area. EPA subsequently redesignated the Allegan County area to attainment of the 1-hour standard effective January, 16 2001. (See 65 FR 70490 (November 24, 2000)). This attainment designation was thus in effect at the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts (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, of the CAA, 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 Allegan County area was designated as a subpart 1, 8-hour ozone nonattainment area by EPA on April 30, 2004 (69 FR 23857 and 23910), based on air quality monitoring data from 2001–2003 (69 FR 23860).

40 CFR 50.10 and 40 CFR part 50, Appendix I provide that the 1997 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, section 2.3(d).

The MDNRE submitted a request to redesignate the Allegan County area to attainment for the 1997 8-hour ozone standard on May 12, 2010 and supplemented the submittal on June 16, 2010. The redesignation request includes three years of complete, quality-assured data for the period of 2007 through 2009, indicating the 8-hour NAAQS for ozone, as promulgated in 1997, had been attained for the Allegan County 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 redesignation requirements in section 107(d)(3)(E) of the CAA.

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. In May 2008, States, environmental groups, and industry groups filed petitions with the DC Circuit Court of Appeals for review of the 2008 ozone standards. In March 2009, the court granted EPA's request to stay the litigation so EPA could review the standards and determine whether they should be reconsidered. On September 16, 2009, EPA announced reconsideration of our 2008 decision setting national standards for ground-level ozone. The designation process for that standard has been stayed. On January 6, 2010, EPA proposed to set the level of the primary 8-hour ozone standard within the range of 0.060 to 0.070 ppm, rather than at 0.075 ppm. We expect by September 2010 to have completed our reconsideration of the standard and also expect that thereafter we will proceed with designations. Therefore, the actions addressed in today's 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 (South Coast)*, 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 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 1997 8-Hour Standard

With respect to the 1997 8-hour standard, the court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. In its January 16, 2009, proposed rulemaking in response to the *South Coast* decision, EPA has proposed to classify Allegan County under subpart 2 as a moderate area. 74 FR 2936, 2944. If EPA finalizes this rulemaking, the requirements under subpart 2 will become applicable when they are due, a deadline that EPA has proposed to be one year after the effective date of a final rulemaking classifying areas as moderate or marginal. 74 FR 2940–2941. Although a future final decision by EPA to classify this area under subpart 2 would trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any requirements that might be applied in the future.

First, at the time the redesignation request was submitted, the Allegan County area was not classified under subpart 2, nor were there any subpart 2 requirements yet due for this area. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. See September 4, 1992, Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld EPA's redesignation rulemaking applying this interpretation. See also 68 FR 25418, 25424, 25427 (May 12, 2003) (Redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP

requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking. In *Sierra Club v. Whitman*, 285 F.3d 63 (DC Cir. 2002), the DC Circuit upheld a district court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The court stated: "Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it, for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request.

3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Allegan County area was an attainment area subject to a CAA section 175A maintenance plan under the 1-hour standard at the time that the 1-hour standard was revoked. Therefore, the DC Circuit's decisions with respect to 1-hour nonattainment anti-backsliding requirements 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 Allegan County area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (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 Air Quality Management Dist.* would not

preclude EPA from 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 (TSDs) 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. What is the effect of these actions?

Approval of the redesignation request would change the official designation of the Allegan County area for the 1997 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 2021. The maintenance plan includes contingency measures as required under CAA section 175A to remedy future violations of the 8-hour NAAQS. It also establishes MVEBs for the Allegan County area of 3.93 tons per day (tpd) VOC and 6.92 tpd NO_x for 2021.

VI. What is EPA’s analysis of the request?

A. Attainment Determination and Redesignation

EPA is proposing to determine that the Allegan County area has attained the 1997 8-hour ozone standard and that the area has met all other applicable redesignation criteria under CAA section 107(d)(3)(E). The basis for EPA’s proposed approvals of the redesignation requests 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 Allegan County area has attained the 1997 8-hour ozone NAAQS. Whether an area is considered

to be attaining the 8-hour ozone NAAQS is 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 the 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 EPA’s Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for determining attainment.

Michigan included in its redesignation request certified ozone monitoring data for the 2007 to 2009 ozone seasons. Michigan has quality-assured all of the ambient monitoring data in accordance with 40 CFR 58.10, and has recorded it in the AQS database. The data meet the completeness criteria in 40 CFR 50, Appendix I, which requires a minimum completeness of 75% annually and 90% over each three-year period. Monitoring data are 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	2007 4 th high (ppm)	2008 4 th high (ppm)	2009 4 th high (ppm)	2007–2009 average (ppm)
Allegan	26–005–0003	0.094	0.073	0.076	0.081

Preliminary data available for 2010 are consistent with continued attainment.

In addition, as discussed below with respect to the maintenance plan, MDNRE has committed to continue to operate an EPA-approved monitoring network as necessary to show ongoing compliance with the NAAQS. MDNRE remains obligated to continue to quality-assure monitoring data in accordance with 40 CFR part 58 and to enter all data into AQS in accordance with Federal guidelines. In summary, EPA believes that the data show that the Allegan County area has attained the 1997 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 Allegan County area under section 110 of the CAA (general SIP requirements). We are also proposing to determine 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 subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the emissions inventory under section 172(3), we have approved

all applicable requirements of the Michigan SIP for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is proposing to approve Michigan’s 2005 emissions inventory as meeting the section 172(c)(3) comprehensive emissions inventory requirement.

In proposing these determinations, we have ascertained which SIP requirements are applicable to the area for purposes of redesignation, and have determined that there are SIP measures meeting those requirements and that they are fully approved under section 110(k) of the CAA. As discussed more fully below, for purposes of evaluating a redesignation request, SIPs must be fully approved only with respect to requirements that became due prior to

the submission of the redesignation request.

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, 12465–12466 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). 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 St. Louis).

If EPA's proposal to determine that the Allegan County area has attained the 1997 8-hour ozone standard is finalized, pursuant to 40 CFR 51.918, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (c)(6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA), will not be applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble, EPA stated that:

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans * * * provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

"General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum at 6 ("The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.")

a. The Allegan County Area Has Met All Applicable Requirements for Purposes of Redesignation 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, among other things, must: Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; include criteria for stationary source emission control measures, monitoring, and reporting; include provisions for air quality modeling; and provide 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 Call¹ and Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12, 2005)). 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 that 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)) and (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 1-hour ozone redesignation (65 FR 37890 (June 19, 2000)), and in the Pittsburgh, Pennsylvania 1-hour 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 to the extent they are applicable for purposes of redesignation. 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. EPA has not yet taken rulemaking action on these submittals; however, such approval is not necessary for redesignation.

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

ii. Part D Requirements

EPA has determined that, if EPA finalizes the approval of the emissions inventories discussed in section VI.C. of this rulemaking, the Michigan SIP will meet the applicable SIP requirements for the Allegan County area applicable for purposes of redesignation under part D of the CAA. 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.

Since the Allegan County area was not classified under subpart 2, of Part D at the time its redesignation request was submitted, the subpart 2 requirements do not apply for purposes of evaluating the State's redesignation request. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176.

Subpart 1 Section 172 Requirements.

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Allegan County 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 RACM as expeditiously as practicable and to provide for attainment of the primary NAAQS. 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 each area as components of the area's attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. 40 CFR 51.918.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Allegan County area has monitored attainment of the ozone NAAQS. (General Preamble, 57 FR 13564). See also 40 CFR 51.918. In addition, because the Allegan County area has attained the ozone NAAQS and is no longer subject

to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. As part of Michigan's redesignation request for the Allegan County area, the State submitted a 2005 emissions inventory. As discussed below in section VI.C., EPA is proposing to approve the 2005 inventory, submitted by Michigan along with the redesignation request, as meeting the section 172(c)(3) emissions inventory requirement.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires 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 nonattainment NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more 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 Allegan County area will be able to maintain the standard without part D NSR in effect; therefore, the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Allegan County 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)

applicable for purposes of redesignation.

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 66607 and 61 FR 66609, respectively). Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005 (Pub. L. 109–59). Among the changes Congress made to this section of the CAA were streamlined requirements for State conformity SIPs. Michigan is in the process of updating its transportation conformity SIP to meet these new requirements. Michigan

has submitted onroad motor vehicle budgets for the Allegan County area of 3.93 tpd VOC and 6.92 tpd NO_x for 2021. 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.

b. The Allegan County Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

If EPA issues a final approval of the emissions inventory under section 172(c)(3), EPA will have fully approved the Michigan SIP for the Allegan County 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 various required SIP elements under the 1-hour ozone standard. In this action, EPA is proposing to approve Michigan's 2005 emissions inventory for the Allegan County area as meeting the requirement of section 172(c)(3) of the CAA. No Allegan County 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 Allegan County 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, MDNRE has calculated the change in emissions between 2005 and 2008. Michigan is using the 2005 emissions inventory developed in conjunction with the Lake Michigan Air Directors Consortium (LADCO) as the nonattainment inventory. The State developed an attainment inventory for

2008, one of the years the Allegan County 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 Allegan County 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 area:

i. Stationary Source NO_x Rules

Michigan has developed rules governing the control of NO_x emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, major cement kilns, and internal combustion engines. EPA approved Michigan's rules as fulfilling Phase I of the NO_x SIP Call on May 4, 2005 (70 FR 23029) and as meeting Phase II of the NO_x SIP Call on January 29, 2008 (73 FR 5101). Michigan began complying with Phase I of this rule in 2004. Compliance with Phase II of the SIP Call, which requires the control NO_x emissions from large internal combustion engines, began in 2007.

ii. 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 following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower VOC and NO_x emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_x emission reductions will occur nationwide: passenger cars (light duty vehicles) (77%); light duty trucks, minivans, and sports utility vehicles (86%); and, larger sports utility vehicles, vans, and heavier trucks (69 to 95%). VOC emission reductions are expected to range from 12 to 18%, depending on vehicle class, over the same period. Some of these emission reductions had occurred by the 2006–2008 period used to demonstrate attainment, and additional emission reductions will occur during the maintenance period.

Heavy-Duty Diesel Engine Rule. EPA issued this rule in July 2000. This rule, which went into effect in 2004, includes

standards that limit the sulfur content of diesel fuel. A second phase, which took effect in 2007, further reduced the highway diesel fuel sulfur content to 15 parts per million, leading to additional reductions in combustion NO_x and VOC emissions. EPA expects this rule to achieve a 95% reduction in NO_x emissions from diesel trucks and busses.

Non-Road Diesel Rule. EPA promulgated this rule in 2004. This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. EPA estimates that compliance with this rule will cut NO_x emissions from non-road diesel engines by up to 90%. This rule is currently achieving emission reductions, but will not be fully implemented until 2010.

iii. 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. Affected States were required to comply with Phase I of the SIP Call beginning in 2004, and with Phase II beginning in 2007. The reduction in NO_x emissions has resulted in lower concentrations of transported ozone entering the Allegan County area. Between 2005 and 2008, units subject to Phase I of the NO_x SIP Call have reduced ozone season emissions by 68,000 tons. In addition, under Phase II of the NO_x SIP Call, EPA estimates that emissions from cement kilns have been reduced by 30% and emissions from internal combustion engines have been reduced by 80–91%. Emission reductions resulting from regulations developed in response to the NO_x SIP Call are permanent and enforceable.

b. Emission Reductions

For the point, area and nonroad sectors, Michigan is using the 2005 emissions inventory developed in conjunction with LADCO (Base M Round 5) as the nonattainment inventory. 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. In developing the 2005 nonattainment year inventory, MDNRE provided point and area source inventories to LADCO. LADCO processed these inventories through the Emission Modeling System to generate summer weekday emissions for VOC and NO_x. The point source data provided to LADCO is a combination of

EPA’s EGU inventory and source specific data reported to MDNRE for non-EGU sources. Area source emissions were estimated by MDNRE using published Emission Inventory Improvement Program methodologies or methodologies shared by other States. The methodology used for each area source category was documented. 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 and

emissions estimates were developed for commercial marine vessels, aircraft, and railroads (MAR), three nonroad categories not included in NMIM. Onroad mobile emissions were prepared by the Michigan Department of Transportation (MDOT) using the MOBILE6.2 emissions model.

Michigan is using 2008 for the attainment year inventory. Michigan used linear regression analysis to extrapolate area source emissions estimates. Nonroad emissions were calculated using NMIM, as described above, except that the MAR portion of

the nonroad sector was interpolated from LADCO 2005, 2009, and 2018 MAR emissions estimates. Point source emissions were calculated by MDNRE using the 2008 Michigan Air Emissions Reporting System point source inventory. Onroad mobile emissions were prepared by MDOT using the MOBILE6.2 emissions model.

Using the inventories described above Michigan has documented changes in VOC and NO_x emissions from 2005 to 2008 for the Allegan County area. Emissions data are shown in Table 2, below.

TABLE 2—COMPARISON OF 2005 AND 2008 VOC AND NO_x EMISSIONS FOR THE ALLEGAN COUNTY AREA (TPD)

	VOC			NO _x		
	2005	2008	Net change (2005–2008)	2005	2008	Net change (2005–2008)
Point	2.02	1.52	– 0.50	2.33	3.45	1.12
Area	10.00	9.33	– 0.67	1.00	1.02	0.02
Onroad	4.70	3.93	– 0.77	8.43	6.92	– 1.51
Nonroad	6.16	4.59	– 1.57	4.44	4.55	0.11
Total	22.88	19.37	– 3.51	16.20	15.94	– 0.26

Table 2 shows that the Allegan County area reduced VOC emissions by 3.51 tpd and NO_x emissions by 0.26 tpd between 2005 and 2008. 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 Allegan County 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 2021.

a. Maintenance Plan Requirements

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 MDNRE developed an emissions inventory for 2008, one of the years used to demonstrate monitored attainment of the 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 2, above.

c. Demonstration of Maintenance

Along with the redesignation request, MDNRE submitted revisions to the Michigan 8-hour ozone SIP to include a maintenance plan for the Allegan County area, in compliance with section 175A of the CAA. The demonstration shows maintenance of the 8-hour ozone standard through 2021 by showing that current and future emissions of VOC and NO_x for the Allegan County 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 inventory projections for the years 2018 and 2021 to demonstrate maintenance. MDOT calculated onroad emissions for 2018 and 2021 using the MOBILE6.2 emissions model. MDEQ used the 2018 Base M, Round 5 emissions inventory developed by LADCO for the remaining source categories for 2018. For 2021, MDNRE estimated emissions for the remaining source categories using linear regression analysis. NO_x reductions from CAIR are not included in the 2018 and 2021 emissions estimates.

TABLE 3—COMPARISON OF 2008, 2018, AND 2021 VOC AND NO_x EMISSIONS FOR THE ALLEGAN COUNTY AREA (TPD)

	VOC					NO _x				
	2008	2018	2021	Net change (2008–2018)	Net change (2008–2021)	2008	2018	2021	Net change (2008–2018)	Net change (2008–2021)
Point	1.52	2.79	2.91	1.27	1.39	4.45	2.10	2.13	–2.35	–2.32
Area	9.33	8.61	8.16	–0.72	–1.17	1.02	1.09	1.11	0.07	0.09
Onroad	3.93	2.53	2.28	–1.40	–1.65	6.92	3.10	2.71	–3.82	–4.21
Nonroad	4.59	3.88	2.20	–0.71	–2.39	4.55	2.04	2.11	–2.51	–2.44
Total	19.37	17.81	15.55	–1.56	–3.82	16.94	8.33	8.06	–8.61	–8.88

The emission projections show that Michigan does not expect emissions in the Allegan County area to exceed the level of the 2008 attainment year inventory during the maintenance period, even without implementation of CAIR. (See also discussion below). As shown in Table 3, VOC and NO_x emissions in the Allegan County area are projected to decrease by 3.82 tpd and 8.88 tpd, respectively, between 2008 and 2021.

In addition, LADCO performed a regional modeling analysis to address the effect of the recent court decision vacating CAIR. This analysis is documented in LADCO’s “Regional Air Quality Analyses for Ozone, PM_{2.5}, and Regional Haze: Final Technical Support Document (Supplement), September 12,

2008.” LADCO produced a base year inventory for 2005 and future year inventories for 2009, 2012, and 2018. To estimate future EGU NO_x emissions without implementation of CAIR, LADCO projected 2007 EGU NO_x emissions for all States in the modeling domain based on Energy Information Administration growth rates by State and fuel type for the years 2009, 2012, and 2018. The assumed 2007–2018 growth rates were 8.8% for Illinois, Iowa, Missouri, and Wisconsin; 13.5% for Indiana, Kentucky, Michigan, and Ohio; and 15.1% for Minnesota. Emissions were adjusted by applying legally enforceable controls (e.g., consent decree or rule requirements). EGU NO_x emissions projections for the States of Illinois, Indiana, Michigan,

Ohio, and Wisconsin are shown below in Table 4. The emission projections used for the modeling analysis do not account for certain relevant factors such as allowance trading and potential changes in operation of existing control devices. The NO_x projections indicate that, due to the NO_x SIP Call, certain State rules, consent decrees resulting from enforcement cases, and ongoing implementation of a number of mobile source rules, EGU NO_x is not expected to increase in Michigan, or any of the States in the immediate region, and overall NO_x emissions in Michigan and the nearby region are expected to decrease substantially between 2005 and 2020.² Total NO_x emissions projections are shown in Table 5, below.

TABLE 4—EGU NO_x EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO, AND WISCONSIN (TPD) FOR 2007, 2009, 2012, AND 2018

	2007	2009	2012	2018
EGU	1,582	1,552	1,516	1,524

TABLE 5—TOTAL NO_x EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO, AND WISCONSIN (TPD) FOR THE YEARS 2005, 2009, 2012, AND 2018

	2005	2009	2012	2018
Total NO _x	8,260	6,778	6,076	4,759

Given that 2007 is one of the years Michigan used to demonstrate monitored attainment of the 8-hour NAAQS, Table 4 shows that EGU NO_x emissions will remain below attainment levels through 2018. If the rate of emissions increase between 2012 and 2018 continues through 2021, EGU NO_x emissions would still remain below attainment levels in 2020. Furthermore, as shown in Table 5, total NO_x emissions clearly continue to decrease substantially throughout the maintenance period.

Ozone modeling performed by LADCO supports the conclusion that the Allegan County area will maintain the 8-hour ozone standard throughout the maintenance period. Peak modeled ozone levels in the area for 2012 and 2018 are 0.083 ppm and 0.078 ppm, respectively. These projected ozone levels were modeled applying only legally enforceable controls; e.g., consent decrees, rules, the NO_x SIP Call, Federal motor vehicle control programs, etc. Because these programs will remain in place, emission levels, and therefore ozone levels, would not be

expected to increase significantly between 2018 and 2021. Given that projected emissions and modeled ozone levels continue to decrease substantially through 2018, it is reasonable to infer that a 2021 modeling run would also show levels well below the 1997 8-hour ozone standard.

EPA has considered the relationship of the maintenance plans to the reductions required pursuant to CAIR. This rule was remanded to EPA, and the process of developing a replacement rule is ongoing. However, the remand of CAIR does not alter the requirements of

² There is more uncertainty about the use of SO₂ allowances and future projections for SO₂

emissions; thus, further review and discussion will be needed regarding the appropriateness of using

these emission projections for future PM_{2.5} SIP approvals and redesignation requests.

the NO_x SIP Call, and Michigan has demonstrated maintenance without any additional CAIR requirements (beyond those required by the NO_x SIP Call). Therefore, EPA believes that Michigan's demonstration of maintenance under sections 175A and 107(d)(3)(E) is valid.

The NO_x SIP Call requires States to make significant, specific emissions reductions. It also provided a mechanism, the NO_x Budget Trading Program, which States could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_x Budget Trading Program, 40 CFR 51.121(r), but created another mechanism, the CAIR ozone season trading program, which States could use to meet their SIP Call obligations (70 FR 25289–90). EPA notes that a number of States, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that required sources to participate in the NO_x Budget Trading Program. In addition, because the provisions of CAIR, including the ozone season NO_x trading program, remain in place during the remand, EPA is not currently administering the NO_x Budget Trading Program. Nonetheless, all States, regardless of the current status of their regulations that previously required participation in the NO_x Budget Trading Program, will remain subject to all of the requirements in the NO_x SIP Call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_x SIP Call, including the statewide NO_x emission budgets, continue to apply after revocation of the 1-hour standard.

All NO_x SIP Call States have SIPs that currently satisfy their obligations under the SIP Call, the SIP Call reduction requirements are being met, and EPA will continue to enforce the requirements of the NO_x SIP Call even after any response to the CAIR remand. For these reasons, EPA believes that regardless of the status of the CAIR program, the NO_x SIP Call requirements can be relied upon in demonstrating maintenance. Here, Michigan has demonstrated maintenance based in part on those requirements.

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 Allegan County area attained the 8-hour ozone NAAQS during the 2007–2009 time period. Michigan used 2008 as the attainment level of emissions for the area. For the Allegan County area, the emissions from point, area, nonroad, and mobile sources in 2008 equaled 19.37 tpd of VOC. In the maintenance plan, MDNRE projected emission levels for 2021 to be 15.55 tpd of VOC. The SIP submissions demonstrate that the Allegan County 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, 3.82 tpd of VOC for 2021. By this same method, 8.88 tpd (*i.e.*, 16.94 tpd less 8.06 tpd) is the safety margin for NO_x for 2021. 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 one ozone monitor in Allegan County. In its redesignation request, MDNRE has committed to continue to operate an EPA-approved monitoring network as necessary to demonstrate ongoing compliance with the NAAQS. Michigan remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the AQS in accordance with Federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Allegan County 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 Allegan County area consists of a plan to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. MDNRE will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) 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 Allegan County area to address possible future ozone air quality problems. The contingency plan adopted by Michigan has two levels of response, an action level response and a contingency measure response.

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

A contingency measure response will be triggered by a violation of the 1997 8-hour ozone 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. MDNRE 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 after State certification of the violation. The State has confirmed EPA's interpretation that this commitment means that the measure

will be adopted and implemented within 18 months of being triggered.

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

- i. Reduced VOC content in architectural, industrial, and maintenance coating 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;
- vii. Food preparation flame broiler control rule; and
- viii. Lower Reid vapor pressure gasoline program.

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, MDNRE commits to submit to the EPA an updated ozone maintenance plan eight years after redesignation of the Allegan County area to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175A of the CAA, Michigan has committed to retain the VOC and NO_x control measures contained in the SIP prior to redesignation.

EPA has concluded that the maintenance plan for Allegan County adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus EPA proposes to find that the maintenance plan SIP revision submitted by Michigan for the Allegan County area meets the requirements of section 175A of the CAA.

B. Adequacy of the MVEBs

1. How are MVEBs developed and what are the MVEBs for the Allegan County 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., RFP and attainment demonstration SIP revisions) and ozone maintenance plans may include 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, as applicable.

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).

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 SIP. 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 approve or find that the MVEBs are "adequate" for use in determining transportation conformity. Once EPA affirmatively approves or finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be 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 is codified at 40 CFR 93.118.

The maintenance plan submitted by Michigan for the Allegan County area contains new VOC and NO_x MVEBs for 2021. The availability of the SIP submission with these 2021 MVEBs was announced for public comment on EPA's Adequacy Web site on June 17, 2010, at: <http://www.epa.gov/otaq/stateresources/transconf/currsips.htm>.

The EPA public comment period on adequacy of the 2021 MVEBs for the Allegan County area closes on July 19, 2010.

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in the Allegan County area because the MVEBs submitted by MDNRE meet the adequacy requirements contained in EPA's conformity rule (40 CFR 93.118(e)(4)), and 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. MDNRE has determined the 2021 MVEBs for the Allegan County area to be 3.93 tpd for VOC and 6.92 tpd for NO_x. These MVEBs exceed the onroad mobile source VOC and NO_x emissions projected by MDNRE for 2021, as summarized in Table 3 above ("onroad" source sector). MDNRE decided to include safety margins (described further below) of 1.65 tpd for VOC and 3.58 tpd for NO_x in the MVEBs to provide for mobile source growth. Michigan has demonstrated that the Allegan County area can maintain the 8-hour ozone NAAQS with mobile source emissions of 3.93 tpd for VOC and 6.92 tpd for NO_x, including the allocated safety margins, since total 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 3, the emissions in the Allegan County area are projected to have safety margins of 3.82 tpd for VOC and 8.88 tpd for NO_x in 2021 (the difference between the attainment year, 2008, emissions and the projected 2021 emissions for all sources in the Allegan County 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 MDNRE contain safety margins for mobile sources smaller than the allowable safety margins reflected in the total emissions for the Allegan County area. The State is not requesting allocation to the MVEBs 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 2021 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 Comprehensive Emissions Inventory

As discussed above, section 172(c)(3) of the CAA requires nonattainment areas to submit a comprehensive, accurate and current inventory of actual emissions. As part of Michigan's redesignation request for the Allegan County area, the State submitted a 2005 emissions inventory. This inventory is discussed above in section VI.A.3.b. and summarized in Table 2. EPA is proposing to approve this 2005 inventory as meeting the section 172(c)(3) emissions inventory requirement.

VII. What actions is EPA taking?

EPA is proposing to determine that the Allegan County, Michigan area has attained the 1997 8-hour ozone NAAQS. EPA is proposing to approve the redesignation of the Allegan County area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. After evaluating the redesignation request submitted by Michigan, EPA believes that the request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. The final approval of this redesignation request would change the official designation for the Allegan County area from nonattainment to attainment for the 1997 8-hour ozone standard. EPA is also proposing to approve the maintenance plan SIP revision for the Allegan County area. EPA's proposed approval of the maintenance plan is based on the State's demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. EPA is proposing to approve MDNRE's 2005 emissions inventory for the Allegan County area as meeting the requirements of section 172(c)(3) of the CAA. Finally, EPA finds adequate and is proposing to approve the State's 2021 MVEBs for the Allegan County area.

VIII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those

imposed by State law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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 Clean Air Act. Accordingly, these actions merely do not impose additional requirements beyond those imposed by State law and the Clean Air Act. For that reason, these actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are 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);
- Are 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 Clean Air Act; and
- Do 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 redesignation is an action that affects the status of a geographical area and

does not impose any new regulatory requirements on Tribes, impact any existing sources of air pollution on Tribal lands, nor impair the maintenance of ozone national ambient air quality standards in Tribal lands. However, because there are Tribal lands located in Allegan County, we provided the affected Tribe with the opportunity to consult with EPA on the redesignation. The affected Tribe raised no concerns with the proposed rule.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: July 8, 2010.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2010-17680 Filed 7-19-10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2008-0080; FRL-9176-6]

RIN 2060-AQ26

Amendments to National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Prepared Feeds Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing three amendments to the regulatory text in the prepared feeds manufacturing area source rule. First, this action would correct the date for new sources to submit a Notification of Compliance Status (NOCS) form. Second, this action would correct information that needs to be included in the Notification of Compliance Report for those small facilities that are not required to install cyclones on their pelleting operations. Third, this action would add language to the regulatory text requiring submittal of the annual compliance certification report that was inadvertently left out of the final rule. These corrections and clarifications would not change the