SUMMARY: The Coast Guard is revising 33 CFR 110.127c by correcting an error in the geographical description of the Special Anchorage Area for Trinidad Bay, California.

DATE: This regulation becomes effective on April 24, 1986.

ADDRESS: Comments should be mailed to Commander (m), Twelfth Coast Guard District, Bldg. 54-B, Room 250, Coast Guard Island, Alameda, CA 94501-5100. The comments will be available for copying at the above address. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander William A. Dickerson at the above address. Telephone (415) 437-3465.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been unnecessary.

The regulation has no economic impact and no adverse comments are expected concerning the terms of the regulation.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESS**" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are LCDR William A. Dickerson, project officer, Twelfth Coast Guard District Marine Safety Division, and CDR William Bissell, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of Regulation

This regulation corrects the geographic description of the boundary of the Special Anchorage Area for Trinidad Bay, California. For some time, the limits of this special anchorage described in 33 CFR 110.127c have indicated the south-eastern corner of the special anchorage as being at latitude 41°03′09″ N, longitude 124°03′19″ W. The stated longitude is in error, as it indicates a location approximately 3 miles inland. This regulation corrects the error, and correctly indicates the south-eastern corner of the special anchorage at latitude 41°03′09″ N, longitude 124°08′19″ W.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

PART 110—ANCHORAGE REGULATIONS

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.127c is revised, except the note, to read as follows:

§ 110.127c Trinidad Bay, Calif.

The waters of Trinidad Bay, beginning at the southernmost point of Trinidad Head at latitude 41°03′04″ N., longitude 124°08′56″ W.; thence east to Prisoner Rock at latitude 41°03′09″ N., longitude 124°08′37″ W.; thence east to latitude 41°03′09″ N., longitude 124°08′19″ W., thence north to latitude 41°03′26″ N., longitude 124°08′21″ W.; thence following the shoreline to Trinidad Bay in a westerly and southerly direction to the point of beginning.

* * * * *

Dated: March 12, 1986.

John D. Costello,

Vice Admiral, U.S. Coast Guard, Commander, Twelfth Coast Guard District.

[FR Doc. 86-6373 Filed 3-24-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4 and 5; FRL-2991-1]

Approval and Promulgation of Implementation Plans; Ohio and Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: On February 3, 1983, EPA proposed to approve the Ohio and Kentucky 1982 Ozone State Implementation Plans (SIPs) for the Cleveland and Cincinnati ozone nonattainment areas. On July 25, 1984 (49 FR 29973), as a result of new ozone monitoring information which had become available, EPA reopened the comment period as to the ozone SIP for the Cleveland and Cincinnati urban areas and proposed action on the following two district portions of the Ohio and Kentucky ozone SIPs:

1. USEPA proposed to disapprove Ohio's and Kentucky's demonstration that their SIPs assured attainment of the ozone standard in the Cincinnati and Cleveland areas by December 31, 1982, and Ohio's request for rescission of the original attainment date extension until December 31, 1987; and

2. USEPA proposed to disapprove the Ohio and Kentucky SIP, as a whole, for failure to meet the Part D requirements of the Clean Air Act. These requirements are further specified in USEPA's January 22, 1981 **Federal Register** (46 FR 7182) (e.g., Reasonably Available Technology for all subject stationary sources, Transportation Control Measures, Inspection and Maintenance Program and a demonstration that the SIP provides for attainment as expeditiously as practicable but no later than December 31, 1987).

USEPA is today taking final action to disapprove the Ohio and Kentucky demonstration of ozone attainment by December 31, 1982, and Ohio's request to rescind its attainment date extension to December 31, 1987. Final action disapproving only those items will not change the status quo as to the construction ban and funding restrictions: The ban and restrictions will continue not to apply in the relevant areas in Ohio, but will continue to apply in the relevant areas in Kentucky. USEPA is not taking final action at this time on its proposal to disapprove the Ohio and Kentucky SIPs as a whole for failure to meet the requirements of Part D.

EFFECTIVE DATE: This final rulemaking becomes effective on April 24, 1986.

ADDRESSES: Copies of relevant materials are available for inspection at the following addresses: (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V Office and/or Thomas P. Lyttle, at (404) 887-2864, before visiting the Region IV Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Region IV, Air Management Division, 345 Courtland Street NW., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio (Regarding the Ohio Sections), at (312) 886-6088

Thomas P. Lyttle (Regarding the Kentucky Sections), at (404) 887–2864.

SUPPLEMENTARY INFORMATION: This notice discusses USEPA's review of Ohio's and Kentucky's ozone SIP submission in five parts: I. Background Information; II. Air Monitoring Data; III. Compliance Data; IV. Public Comments; and V. Final Action. The discussion of public comments (Part IV) provides a subdivided discussion of comments and responses on A. Procedural and Legal Issues, B. Sanctions Issues, C. Mobile Source Emissions and Inspection and Maintenance Issues, and D. Meteorology and Air Quality Issues, E. Modeling Issues, F. Miscellaneous Issues and G. Comments on USEPA's February 3, 1983 Proposed Rulemaking.

I. Background Information

The 1977 Amendments to the Clean Air Act added a new Part D to Title I of the Act. Under this Part, the States were required to revise their SIPs for all nonattainment areas and to submit the revisions to USEPA by January 1, 1979 (sections 171–178 of the Act; section 129(c) [not codified], Pub. L. 95–95). The revised plans were to provide for attainment by December 31, 1982, unless the States demonstrated that they could not attain either the ozone or carbon monoxide (CO) standard by that date, despite the implementation of all reasonable control measures (sections 172(a)(1), 173(2)).

If USEPA approved a plan showing attainment could not be achieved by December 1982, upon request of the State, the attainment date for ozone or CO could be extended up to December 31, 1987. States receiving such extensions were to submit second SIP revisions that provide for attainment by the new USEPA approved attainment date, and comply with all of the Part D requirements (section 172(c)). These second SIP revisions had to be submitted by July 1, 1982 (section 129(c) (uncodified), Pub. L. 95–95).

The Cincinnati urban area consists of the following counties designated as nonattainment for ozone: Hamilton, Butler, Clermont, and Warren Counties in Ohio and Boone, Campbell, and Kenton Counties in Kentucky. The Cleveland urban area consists of the following Ohio counties designated as nonattainment for ozone: Cuyahoga, Geauga, Lake, and Lorain Counties. In addition, Medina County, although redesignated to attainment on June 12, 1984 (49 24124), was included in the 1979 SIP for the Cleveland area, was included in the demonstration area in the State's submittals that are the subject of today's rulemaking, and is therefore considered part of the Cleveland urban area for this rulemaking.

On July 27, 1979, the Ohio Environmental Protection Agency (OEPA) submitted initial SIP revisions to USEPA for the Cleveland and Cincinnati urban ozone nonattainment areas with amendments submitted to USEPA on September 13, 1979; December 28, 1979; January 16, 1980; April 24, 1980; and September 17, 1980. In these SIP revisions, the State of Ohio could not demonstrate attainment of the national ambient air quality standard (NAAQS) for ozone by December 31, 1982, in the Cleveland and Cincinnati urban areas. OEPA requested and USEPA approved an extension of the attainment date until December 31, 1987. USEPA conditionally approved the 1979 plan revisions in separate actions on October 31, 1980 (45 FR 72122) and June 18, 1981 (46 FR 31881). Those actions lifted the construction ban previously in effect under 40 CFR 52.24 (1984).

In June of 1979, Kentucky submitted an initial SIP revision for the Boone, Campbell, and Kenton Counties ozone nonattainment areas. The State requested and USEPA approved an extension of the attainment date for the ozone standard in this area until December 31, 1987. USEPA conditionally approved the initial plan revision on January 25, 1980 (45 FR 6092). USEPA disapproved the SIP on September 19, 1980 (45 FR 62506) because of a failure by the State or Counties (other than Boone) to adopt legal authority for the inspection and maintenance (I/M) program required as a condition to receiving an extension of the attainment date under § 172 of the Act. This disapproval reimposed the construction ban in Campbell and Kenton Counties. USEPA subsequently established funding restrictions under section 176(a), and 316(b), 45 FR 81752 (December 12, 1980). The SIP for Boone County was approved on November 30, 1981 (46 FR 58060).

In late 1981 and early 1982, Ohio and Kentucky reevaluated certain ozone air quality data and modeling for the Cleveland and Cincinnati areas. Ohio and Kentucky concluded that these areas could achieve the ozone NAAQS under the existing SIPs by the end of 1982, and that an extension of the attainment date to 1987 was no longer necessary.

Consequently, on September 23, 1982 (Cincinnati) and on November 9, 1982 (Cleveland) Ohio EPA and on September 27, 1982, the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) submitted demonstrations to show that the ozone standard would be attained in the Cleveland and Cincinnati urban areas by December 31, 1982. Ohio also requested that the 5-year extension for meeting the NAAQS which USEPA had granted for Ohio on October 31, 1980, be rescinded for these areas. USEPA reviewed the State's submittals and preliminarly determined that all of the modeling and emission inventory requirements discussed in the 1982 SIP policy published on January 22, 1981 (46 FR 7182), had been met. Therefore, on February 3, 1983 (48 FR 5118), USEPA proposed to approve the ozone and CO attainment demonstrations and to rescind the 1987 extension.

However, after USEPA received Ohio's and Kentucky's submittals and after USEPA had published its proposed rulemaking, exceedances of the ozone standard were recorded at several sites in both the Cincinnati and Cleveland areas. These exceedances occurred in 1983 and thus indicated that the existing SIPs did not assure attainment by the end of 1982. Therefore, on July 25, 1984 (49 FR 29973) USEPA reopened the comment period as to the ozone SIP for the Cleveland and Cincinnati urban areas and proposed action as follows:

1. USEPA proposed to disapprove Ohio's and Kentucky's demonstrations that their SIPs assured attainment of the ozone NAAQS in the Cincinnati and Cleveland areas by December 31, 1982, and Ohio's request for rescission of the original attainment date extension; and

2. USEPA proposed to disapprove Ohio's and Kentucky's SIP, as a whole, for failure to meet the Part D requirements of the Clean Air Act. These requirements are further specified in USEPA's January 22, 1981 **Federal Register** (46 FR 7182), and include Reasonably Available Control Technology for all subject stationary sources, Transportation Control Measures, Vehicle Emissions Inspection and Maintenance Programs and a demonstration that the SIP provides for attainment as expeditiously as practicable, but no later than December 31, 1987).

The basis for the disapproval of the attainment demonstration, as discussed in the notice of proposed rulemaking, is repeated here in Section II Air Monitoring Data, and Section III Compliance Data.

II. Air Monitoring Data

At the time of the February 3, 1983, proposed rulemaking, USEPA had preliminarily determined that Ohio's and Kentucky's ozone SIPs successfully demonstrated attainment of the ozone standard (120 parts per billion, 1-hour average) by December 31, 1982.

Although a limited number of exceedances occurred in 1981 and 1982, it appeared that all the emission reductions required by the Ohio SIP and projected to occur by December 31, 1982, would provide for attainment by that date. However, since the publication of the initial proposed rulemaking, in particular during the summer of 1983, a significant number of ozone standard exceedances occurred at several sites in both the Cincinnati and Cleveland areas. Based on these data, USEPA has concluded that an ozone nonattainment problem continues to exist beyond the end of 1982 in both of these areas despite the existence of modeled demonstrations of attainment in the 1982 SIPs. The peak 1983 ozone concentrations for the Cincinnati and Cleveland areas are summarized in the table below:

Peak 1983 Ozone Concentrations in the Cleveland and Cincinnati Ozone Nonattainment Areas for Sites With Three or More Exceedances

Site	Peak ozone concentrations (ppb)				
	Maximum	2nd maximum	3rd maximum	4th maximum	Number of exceedances
Cincinnati:					
Grooms Road	170	152	150	150	7
Middletown	128	127	126	123	3
Batavia	190	140	136	132	4
Lebanon	152	135	132	192	5
Dayton, Kentucky	162	148	147	144	6
Cleveland					
Painesville	158	151	141	139	7
Eastlake [1]	140	137	137	137	8

[1] Eastlake was established as a new monitoring site in 1983.

Several individuals have submitted comments on data which has been recorded during 1984. In the Cincinnati area, the Middletown monitor recorded two exceedances in 1984 (values of 147 ppb, and 140 ppb), and several other sites recorded one exceedance. In the Cleveland area, the Painesville monitor recorded three exceedances in 1984 (values of 145 ppb, 138 ppb, and 126 ppb), and the Eastlake monitor recorded two exceedances (values of 140 ppb and 135 ppb). These data are available in the rulemaking docket, although the Agency did not relay, in its July 25, 1984, rulemaking notice, on these data. Nevertheless, these data support USEPA's conclusion that the existing SIP did not assure attainment by the end of 1982 in the Cleveland and Cincinnati areas, based on essentially the same rational used for the 1983 data as described in the July 25, 1984, notice.

III. Compliance Data

As an additional check on the demonstrations of attainment, the USEPA requested the OEPA to assess Volatile Organic Compound (VOC) emission control compliance for 1983. This was done to evaluate the possibility that a lack of compliance rather than inadequate SIP demonstrations of attainment could be an explanation of the 1983 standard exceedances. OEPA responded to this request in an October 13, 1983 data submittal.

These data were combined with the data from the final SIPs to determine the impact on non-compliance on the 1983 VOC emissions. Based on these data, EPA concludes that the excess emissions attributable to stationary source non-compliance with the Ohio Reasonably Available Control Technology (RACT I and II) regulations represent 7.3 percent of the 1983 Cincinnati nonattainment area VOC emissions and 2.8 percent of the Cleveland nonattainment area 1983 VOC emissions.

The impact of non-compliance was reviewed by EPA in terms of the peak 1983 ozone data. If the degree of VOC emission control had been adequate, no more than one ozone standard exceedance at each site should have occurred. Therefore, the second-high ozone concentration at each site is the critical concentration for assessing the relative, potential impact of non-compliance.

From the above table, it can be seen that the highest second-high ozone concentrations were 152 parts per billion (ppb) in Cincinnati (Grooms Road site) and 151 ppb in Cleveland (Painesville site). These concentrations significantly exceed the design ozone concentrations (137 ppb in Cincinnati and 128 ppb in Cleveland) uses in Ohio's final 1982 SIPs. Although day-specific input data are not available for 1983, it is reasonable to assume that any ozone modeling conducted for the worst-case 1983 concentrations would lead to modeled VOC emission reduction requirements in excess of those adopted in the 1982 SIPs (14.3 percent in Cincinnati and 9 percent in Cleveland). It is clear that attainment of the ozone standard would not have occurred in 1983 even if 100 percent compliance had been attained.

IV. Public Comments

USEPA reviewed all public comments received on USEPA's proposed action on Ohio's and Kentucky's 1982 Ozone SIP even though several of the letters were submitted to USEPA prior to the official comment period. Each of the issues raised in the comments is addressed below. For some comments, a more detailed discussion of the comments submitted and USEPA's response is contained in the USEPA's technical support document which is in the docket of this rulemaking action. Copies of the technical support document are available from the Region V office listed above.

A. Responses to Comments Regarding Procedural and Legal Issues

Comment: The State of Ohio [1] and other commenters believe that USEPA must approve its SIP revisions because the plan "provides for attainment" by the end of 1982. Ohio commented that the "unambiguous language" of Section 172(a) of the Clean Air Act and the legislative history clearly indicate that the requirement in section 172(a)(i) to provide for attainment means to prospectively demonstrate achievement of applicable NAAQS, and that "the Act does not contemplate that USEPA would hinge its approval of a SIP upon whether attainment is actually achieved by the attainment deadline." Ohio noted that USEPA has agreed with the interpretation of section 172(a)(1) in a policy statement published at 48 FR 50686 and an associated Guidance Document which discusses USEPA's views of the legal consequences for areas with approved State implementation plans which fail to meet a December 31, 1982, attainment deadline. Ohio cited rulemaking for Richmond, Virginia, as an example of USEPA taking the actions recommended by Ohio, viz. approving the SIP as prospectively providing for attainment, simultaneously rescinding the extension of the attainment deadline, and then addressing post-1982 violations not by rescinding SIP approval but rather by calling for a new SIP revision. Finally, the State and other commenters asserted that USEPA has proposed to find, and allegedly continues to find, that the SIP adequately demonstrates prospectively that achievement of the standard is "provided for" by 1982. Another commenter stated that disapproval "would fail to account for a critical distinction between good faith planning and predicting literal events."

Response: USEPA agrees that for a State to obtain approval, it need only show that its plan assures timely attainment and maintenance, in a "prospective or planning sense". Here,

[1] The comments submitted by the State of Ohio were submitted both during the public comment period and in an earlier submission under a petition for rulemaking pursuant to section 553(e) of the Administrative Procedures Act. This action and USEPA's responses as published today represent the Agency's response to both the public comment and the petition.

however, the 1983 air quality data provide direct evidence that the States forecast of attainment by the end of 1982 was incorrect and hence that the plan is not adequate. Although USEPA believes that the State planned in good faith to achieve the standard by 1982, USEPA cannot ignore the more recent evidence that the prediction, inherent in this plan, is in error.

USEPA does not agree with Ohio that the Act requires it to ignore such evidence. In its November 1983 sanctions policy, USEPA interpreted Part D as requiring States merely to establish certain plans, as opposed to requiring States actually to attain the relevant NAAQS by certain deadlines. Hence, USEPA concluded that once it had fully approved a SIP as satisfying Part D it could not subsequently impose sanctions for a failure of the SIP to bring about actual attainment because the State would have discharged its planning obligations. In using the phrase "prospective or planning sense" in the policy, USEPA was referring merely to this interpretation of Part D. USEPA did not intend, by that phrase, to suggest that it must ignore the actual effects of a SIP in evaluating whether the SIP would assure timely attainment. Indeed, in order to rationally evaluate a SIP as a plan, USEPA must take all relevant information into account, including whether the SIP, in fact, did what the State said it would do. Nothing in the Act requires or allows USEPA to blind itself to such evidence.

The Agency was not free to take Ohio's recommended approach in dealing with the Ohio revisions. In Richmond, Virginia, and in other cities covered by the cited policy, USEPA published final approval of the plan prior to the passage of the 1982 deadline and prior to receipt of any evidence that the standard would not be achieved at the end 1982. The final rulemaking for Richmond was published on May 3, 1982, and so the 1983 air quality data were obviously not available when USEPA was judging the attainment demonstration. In contrast, USEPA had strong evidence of post-1982 violations in both Cleveland and Cincinnati prior to any final rulemaking. It should also be noted that Richmond, Virginia, did not in fact receive an extension of its attainment deadline and, for this reason as well, presented a different set of circumstances from Cleveland and Cincinnati.

Comment: Numerous commenters argued that USEPA may not delay final rulemaking on SIP revisions. Further, they contend that, had USEPA not delayed its rulemaking, the Agency would have approved Ohio's SIP revisions prior to the receipt of the 1983 exceedances. These commenters than conclude that USEPA must now approve these SIP revisions.

Ohio EPA reviewed section 110(c)(1) of the Clean Air Act, and concluded that this portion of the Act requires USEPA to promulgate SIP revisions within 6 months of the date by which SIP revisions are required, unless the State has submitted an acceptable revision itself. The State maintains that USEPA must act now in the same manner as it would have acted within 6 months of the due date for the SIP revision. In the State's view, USEPA must, therefore, act now to approve the SIP, and ignore any evidence that could not have been available prior to January 1, 1983. The State claims that USEPA's "inexcusable delay" exposes Ohio to the "risk of irreparable harm."

Other commenters pointed to section 110(a)(2) of the Act as evidence that USEPA must approve or disapprove SIP revisions within 4 months of the due date of the plan. One of these commenters uses logic similar to the State's to argue that air quality data which were not available in this 4-month time frame may not be considered in rulemaking.

The State also comments that the USEPA made a "willful and conscious decision" to delay action in order to review 1983 air quality data. The State bases this comment on a statement in the technical support document produced for USEPA's July 25, 1984, proposal to disapprove. In this document, it was stated that, despite the fact that USEPA reviewed the SIP and public comments and found that "the 1982 SIPs did successfully demonstrate attainment" by the end of 1982, "it was decided by USEPA to review 1983 ozone data for these areas prior to final rulemaking."

Response: USEPA cannot agree with the State of Ohio and other commenters in their assertion that USEPA must take action to approve or disapprove 1979 or 1982 SIP revisions within 4–6 months of receipt. First, the Agency rejects Ohio's assertion that USEPA is required to promulgate a Part D ozone plan for the State within a set period of time following submittal of a plan by the State. Second, only original State plans submitted pursuant to section 110(a)(1) of the Clean Air Act, 42 U.S.C. section 7410(a)(1), were to be reviewed by USEPA within 4 months.

Subsequent revisions to the State plans, on the other hand, are governed by section 110(a)(3)(a), which imposes no statutory deadline for review. In light of the absence of a mandatory review deadline for revisions submitted subsequent to the initial SIPs, the Agency contends that its obligation under the Statute is to act within a reasonable time, as determined by the Administrator.

The chronological record of USEPA's actions supports the fact that USEPA has acted within a reasonable time:

May 24, 1982—Ohio submitted draft Cincinnati SIP
June 9, 1982—Ohio submitted draft Cleveland SIP
June 25, 1982—USEPA commented on draft Cincinnati SIP
July 9, 1982—USEPA commented on draft Cleveland SIP
September 23, 1982—Ohio submitted final Cincinnati SIP
November 9, 1982—Ohio submitted final Cleveland SIP
February 3, 1983—USEPA proposed approval of both SIPs, and opened a comment period extending to March 21, 1983
April 18, 1983—At the request of the TriState Air Committee, USEPA extended the public comment period to May 5, 1983
June 24, 1983—A draft final rulemaking package was transmitted within USEPA from Region V to Headquarters
June 28, 1983—USEPA was already aware of multiple exceedances at sites in both Cincinnati and Cleveland.

This chronology also illustrates that USEPA had within its possession information suggesting that the forecast of 1982 attainment was incorrect before final rulemaking could have been published. USEPA could not proceed with rulemaking to approve the Ohio plan and ignore available contradictory information.

Regarding the statement quoted from the technical support document, it is important to note that this statement was made on November 22, 1983, well after reports of 1983 violations had been received. This statement does not indicate any pre-ozone season decision to postpone rulemaking for purposes of obtaining 1983 air quality data, but instead recorded USEPA's decision, after obtaining those data, that the Agency needed to review all available information to determine the veracity of reports that approval of the 1982 attainment demonstration could no longer be justified.

USEPA does not believe that the above schedule represents "inexcusable delay." Most of the time between June 28, 1983, and the date of revised rulemaking was spent confirming the accuracy of early reports of 1983 exceedances, and discussing with the State how to remedy the SIP and thereby avoid SIP disapproval. In addition, the "irreparable harm" cited by the State is no more than the consequences spelled out in the Clean Air Act for any failure on the part of the State to take necessary actions on its SIP (e.g., for section 176(a), to make "reasonable efforts" to submit a mandated SIP revision). Even if USEPA's delay was unreasonable or its deadline for action was 4–6 months, there is no authority in the Clean Air Act for USEPA to remedy the delay by approving a plan it knows is unapprovable. In short, the Act does not allow USEPA to correct a mistake in processing with another mistake in substance.

Comment: Numerous commenters state that USEPA's action is inconsistent with its actions regarding other major metropolitan areas. For example, the State submitted air quality data for several cities which experienced violations of the ozone air quality standard in 1983. These commenters argued that it is inappropriate for USEPA to require Ohio to meet all requirements for areas with extended attainment deadlines and yet not to require other areas to meet these same requirements, even though these other areas also had violations after 1982. Many commenters focused on the inconsistency that inspection and maintenance (I/M) is being required in the Cincinnati and Cleveland areas and is not being required in other areas with post-1982 violations.

Response: The difference in treatment is based on a difference in circumstances. USEPA had given final approval for the SIPs for the other areas cited by the State of Ohio, but USEPA had not given final approval to the Cleveland and Cincinnati SIPs when the 1983 air quality data became available. The other cities all had 1979 SIPs which demonstrated attainment by 1982 and, therefore, were never granted extensions of the attainment deadline. For Cincinnati and Cleveland, the 1979 SIP demonstrated that attainment would not occur by 1982 and so at the request of Ohio USEPA extended the attainment deadline to 1987. USEPA's continuation here of the deadline extension, means that the concomitant SIP requirements (e.g., I/M) in section 172 of the Act remain applicable.

Comment: The State of Ohio expressed several procedural concerns related to consideration of whether 1983 violations were attributable to abnormal meteorological conditions. First, the State noted that on June 11, 1984, roughly 6 weeks prior to publication of proposed rulemaking, USEPA was notified of Ohio's contention that 1983 violations were attributable to abnormal meteorological conditions and yet, USEPA ignored this contention. Second, the State believes that it was "especially egregious" to deny this contention without having attempted any analysis of the issue. Third, the State believes that USEPA must abide by the State's determination as to whether air quality data are representative.

Response: Under most circumstances, it is not necessary to adjust the number of expected exceedances. If a State wishes to make adjustments to that number of expected exceedances, the State must supply detailed justification of these adjustments. (See Section IV.D of this notice for a discussion of the issues which must be addressed by such a justification.) The June 11, 1984 Ohio letter did not supply a specific, scientific rationale for making such adjustments. In this context, USEPA believed that the most appropriate procedure for soliciting comments on this and other issues would be to publish proposed rulemaking based on unadjusted 1983 air quality statistics and then to review the various relevant comments (including the comments submitted June 11, 1984) received prior to publishing final rulemaking. Discussion in Section IV.D of this document (Meteorology and Air Quality Issues) shows that the State's contentions have been addressed.

Finally, while the State is responsible for submitting justification for adjusting data, USEPA bears ultimate responsibility for independently assessing this justification in its evaluation of the approvability of SIPs.

Comment: Several resolutions and a few other comment letters were submitted which stated that USEPA should approve the SIP because it proposed approval on February 3, 1983, and received no negative public comments to justify failing to approve the SIP. Another commenter stated that USEPA should not base its action on information which was not available during the public comment period. This commenter adds that "at the very least, the comment period should be reopened in order to include the data and other comments on the data." (This comment was made before the supplemental proposed rulemaking on July 25, 1984, was published.)

Response: USEPA notes that it did receive negative comments on both the Cleveland and Cincinnati ozone SIPs, although the Agency did not find these comments sufficient to justify disapproving these SIPs. More significantly, and as discussed earlier, USEPA determined that consideration of the 1983 ozone data was necessary to ensure that the modeled demonstration was consistent with the actual air quality status of the areas at issue, despite the fact that some of this information was received after the close of the comment period. USEPA agrees that it was advisable to reopen the comment period to solicit comments on the use of the 1983 air quality data, which is why USEPA published the July 25, 1984, supplemental notice of proposed rulemaking.

Comment: The Cincinnati Area Council of Governments requested that USEPA defer final rulemaking for a year "so that the existing 1982 SIP could be revised." This commenter nevertheless acknowledges that "only the State of Ohio has the statutory authority" to make such a request.

Response: In separate remarks made during the public comment period, the State commented that it "is not in a position at this time to withdraw its 1982 demonstration of attainment." The State submittal did not request any deferral of final rulemaking, and in fact criticized USEPA for previous delays in publishing final rulemaking on the State's attainment demonstration.

Comment: The State of Kentucky commented that 1 year of air quality data is not as reliable as the "predictions of proven models using more data gathered over an extended time period." The State then commented that given the long-term nature of the SIP planning and implementing process, USEPA should simply request a mid-course correction, rather than outright disapproving the SIP.

Response: In this case, USEPA finds the direct evidence of monitored violations to be more convincing than the indirect evidence of a modeling analysis using prior monitoring data predicting no violations. This is particularly true when the monitoring data base used to assess whether attainment actually occurred is expanded from 1 year to 3 years. It has been noted elsewhere in this notice that data from the most recent 3-year period, i.e., 1982 to 1984, indicates that both Cincinnati and Cleveland continue to experience violations of the ozone standard even after 1982, a conclusion which is at odds with the model predictions based on 1979 to 1981 air quality data. As for the recommendation that USEPA simply request a midcourse correction, this may be considered to be exactly what USEPA is doing. USEPA is only at this time disapproving the attainment demonstrations and rescission request. USEPA is not at this time taking final action disapproving the SIP for failure to meet the requirements of the Clean Air Act. (See section V of this notice).

Comment: A member of Congress commented that approval of the SIP would help the various groups concerned with Cleveland air quality to work together to implement cost-effective controls, whereas SIP disapproval could lead to court action and further delay.

Response: USEPA must judge the approvability of SIPs in accordance with the Clean Air Act requirements. Commitments made by the State of Ohio to adopt the necessary control measures will hopefully obviate the need for ligitation and any associated delay in meeting air quality goals.

Comment: A commenter stated that the Clean Air Act is not clear on requirements for attainment areas developing problems after 1982.

Response: While the commenter may be correct, this comment is not relevant to this rulemaking, since Cincinnati and Cleveland have never been designated attainment and never had an approved demonstration of attainment by 1982. Further, the Clean Air Act is very clear on the requirements for areas which received an attainment date extension beyond December 31, 1982, as is the case for the Cleveland and Cincinnati areas.

Comment: The State of Ohio and other commenters believe that Ohio's withdrawal of its extension request results automatically in termination of the designation of Cleveland and Cincinnati as "extension" areas.

Response: Congress could not have intended to provide for an automatic voiding of an extension whenever a State chooses to withdraw a previously requested, and granted, extension of the attainment date. Such an interpretation of the Clean Air Act would defeat the basic statutory scheme for extension areas as set forth by Congress. As a result, those requirements imposed on extension areas and intended by Congress would not be achieved. USEPA can, however, review requests to rescind extensions to determine if in fact they are justified. Any action by USEPA to rescind an extension would be the subject of a separate rulemaking process and would require, in the case of Ohio, revisions to Part 40 of the Code of Federal Regulations (CFR) § 52.783, Attainment Dates for National Standards. Therefore, consistent with the requirements of the Clean Air Act, extensions will remain in effect until changes through the rulemaking process are made.

Comment: One commenter noted that under 40 CFR Part 51, USEPA promulgated regulations for the development of SIPs. Because Ohio is being judged by something outside of the scope of the requirements in Part 51, USEPA must first revise Part 51 before final action can be taken on the Ohio SIP. The commenter also noted that the Agency was in direct conflict of its policy in 40 CFR 56 concerning regional consistency, because other areas have not been subject to the same additional review.

Response: USEPA does not agree with the commenter that Part 51 is the exclusive repository of the standards by which the Agency reviews all SIPs. Although requirements for SIP submissions are detailed in Part 51, it does not include the additional requirements imposed by the provisions of the 1977 Clean Air Act Amendments (e.g. Section 110 and Part D). Those requirements were detailed in an April 4, 1979 (44 FR 20372) **Federal Register** entitled *General Preamble for Proposed Rulemaking on Approval of Plan Revision for Nonattainment Areas.* The General Preamble supplemented all future proposals on revisions to the SIPs for nonattainment areas by identifying the major considerations that will guide USEPA's evaluation of the submittals. In addition, subsequent guidance was issued regarding extension areas on January 22, 1981 (46 FR 7182) and November 2, 1983 (48 FR 50686). Each of those **Federal Registers** includes additional standards by which USEPA judges the approvability of SIP revisions required by the 1977 Clean Air Act Amendments.

USEPA also cannot agree with the commenter's claim that the Agency is inconsistent in its treatment of other areas. All other areas have also been subject to these same review requirements.

Comment: One commenter stated that USEPA has sufficient authority under Sections 110 and 113 of the Clean Air Act to correct any existing conditions which would lead to air quality deficiencies, without the use of Section 172. The commenter contends that USEPA is taking action under the wrong provision of the Act.

Response: Section 172 of the Act provided the authority by which a State such as Ohio could request and USEPA could approve an extension of the attainment date to no later than December 31, 1987. Section 172 also requires that the plan developed for the extension area include the implementation of certain additional measures and outlines each of those measures.

The State of Ohio submitted the ozone attainment demonstration pursuant to section 172 and USEPA has evaluated it under the framework requested by the State. Additionally, assuming the State wants to continue to avoid the imposition of sanctions, section 172 is the correct provision under which to submit and evaluate the ozone SIP.

Comment: One commenter noted that USEPA's proposed action is invalid as USEPA has not complied with the important provisions of the Regulatory Flexibility Act and has not provided a "Regulatory Impact Analysis".

Response: USEPA is merely acting upon the States' request to rescind a previously requested extension and a 1982 attainment demonstration which was submitted to support the State's contention that an extension was no longer required. USEPA has only the choice of either approving or disapproving the States' submissions and must consider all the facts. USEPA is not assembling a regulatory program nor is it imposing any further requirements (other than those already in effect) in Ohio or Kentucky. Therefore, for the Agency to conduct an analysis of the costs of staying with the current SIP requirements is pointless and is not required under the Regulatory Flexibility Act.

Additionally, there are no new construction nor federal funding restrictions associated with today's action. Any future construction or funding restrictions that might result from Ohio's or Kentucky's failure to submit an approvable ozone SIP for either the Cleveland or Cincinnati areas would be the subject of a separate rulemaking action and the impact, if any, on small entities would be discussed therein. Therefore, USEPA concludes that today's action will not have significant economic impact on a substantial number of small entities.

B. Sanctions Issues

Comment: There were several comments regarding sanctions. Briefly they ranged as follows: One commenter raised concern that Cincinnati and Cleveland are being threatened with sanctions, although the situation is not a result of any reluctance on their part in reducing reactive hydrocarbon emissions. Other commenters asserted that the construction moratorium specified in section 110(a)(2)(I) of the Act unfairly penalizes stationary sources. Other commenters were concerned with the impact sanctions would have on economic recovery efforts in the State of Ohio. Other commenters expressed concern over sanctions under section 316(b) of the Act whereby USEPA has discretion to limit funds for construction of sewage treatment facilities in any areas where a State does not have in effect a plan that accommodates emissions associated with sewage treatment facilities. Another commenter stated that when USEPA proposed its sanctions policy, Cincinnati was not one of the areas identified as being subject to this policy, therefore, the public was deprived of the opportunity to make comments on this policy. Another commenter stated that Part D penalties are not applicable because the Clean Air Act does not contain provisions that regulatory review be completed but only requires the State action be completed. Another commenter expressed concern that this action would perpetuate sanctions in Campbell and Kenton Counties, Kentucky.

Response: Because USEPA is not taking action at this time on its proposal to disapprove the Ohio and Kentucky SIPs as a whole for failure to meet the requirements of Part D, today's action will not impose any additional sanctions in either Kentucky or Ohio. Therefore, most of these comments are not relevant to this action. (The commenter's concern regarding the perpetuation of sanctions in the two Kentucky counties does appear to be relevant and is discussed in more detail below.) If USEPA does, however, take final action disapproving the Ohio and Kentucky SIPs as whole and imposes sanctions, that final action will reflect a review of each of the comments above.

Comment: Several commenters argued that disapproval of the SIP will continue existing sanctions in Campbell and Kenton Counties, Kentucky, which they consider to be inequitable and unnecessary. Several points were raised in support of the argument that the sanctions are inequitable. Commenters argued that, although none of the Ohio or Kentucky Counties have implemented a vehicle emission inspection and maintenance program (I/M), only Campbell and Kenton Counties have been subjected to the sanctions. Second, they argue that, even if USEPA was justified in imposing sanctions because of the failure of the two counties to adopt I/M legal authority as part of Kentucky's 1979 SIP, the submission of an apparently approvable 1982 SIP should allow lifting of the sanctions, since this constituted a good faith effort to submit an approvable SIP. Third, they contend that the contribution of the three Kentucky Counties to the overall Cincinnati ozone problem is small; and if the counties were considered separately, they would not have an ozone problem. Finally, they argue that USEPA has no basis for requiring the counties individually to implement I/M.

Response: In response to the first point, although none of the Ohio or Kentucky Counties have implemented I/M, all of the counties except Campbell and Kenton, have complied to date with requirements that are sufficient to avoid implementation of sanctions. Specifically, areas with extensions of the attainment date were required to submit a 1979 SIP revision which had to include legal authority and an implementation schedule for I/M. Ohio and Boone Counties adopted legislation and schedules which were submitted as part of the 1979 SIP revisions which USEPA approved. Campbell and Kenton Counties chose not to adopt legal authority and, as a result, USEPA imposed sanctions in 1980. The two Counties have had and continue to have the opportunity to "catch up" with Boone County and Ohio by submitting I/M legislation and schedules, but have not yet done so. Although the two Counties evidently expected that the 1982 attainment demonstration would eliminate the need for I/M and sanctions as well, USEPA could not lift sanctions until final approval of the 1982 attainment demonstration. USEPA could lift the funding sanctions on Campbell and Kenton, if either the missing 1979 SIP elements were submitted and approved, or the demonstration that the area attained the ozone NAAQS by December 31, 1982, was approved. Alternatively, if a 1982 SIP revision, including all required elements for extension areas, such as I/M were approved, USEPA could lift the sanctions. None of these actions has occurred, thus there is no basis for lifting the sanctions on the two counties at this time.

The second point advanced by commenters is that the Counties made a good faith effort to meet the requirements of the Clean Air Act by its submission of the 1982 SIP projecting attainment by the end of 1982, and thus the sanctions should be lifted. In response, it should be noted that the construction moratorium enacted under section 110(a)(2)(I) cannot be lifted until USEPA approves a 1979 or 1982 SIP which contains all elements required by the Clean Air Act. The Section 176(a) highway funding sanctions and 316(b) sewage treatment funding sanctions were imposed because the two counties had not submitted, or made a reasonable effort to submit, a 1979 SIP. USEPA believes that, in a case such as this, the appropriate evidence of good faith effort to submit a SIP would be the adoption and submittal of legal authority and an implementation schedule for an I/M program. This is the criteria used by USEPA in lifting funding sanctions which were imposed in California at the same time and for the same reason as they were imposed in Kentucky.

It can be argued that a good faith effort was made by Kentucky to meet the SIP requirements by submission of the 1982 attainment demonstration. However, until the 1982 attainment demonstration is approved by USEPA, the 1979 SIP requirement for submission of I/M legal authority and implementation schedule remains in effect. Since Kentucky and the counties have not yet submitted these items, the funding sanctions must remain.

The third point was that the Kentucky Counties should be considered separately from Cincinnati. USEPA has recognized that ozone is an areawide problem, caused by emissions of hydrocarbons (HC) and nitrogen oxides (NO_x) over a large urban area. Because it is an areawide problem and ozone violations often occur many miles downwind of the source of precursor emissions, an areawide solution is required. Since all of the emissions in the urbanized area contribute to ozone problems, USEPA's ozone policy of April 4, 1978 (44 FR 20372) required controls in the entire urbanized area and fringe areas of development.

In the northern Kentucky case, the three counties contribute about 16 percent of the areawide HC inventory, and thus make a significant contribution to the areawide ozone problem. Even though most of the ozone violations have occurred in Ohio, as would be expected from the prevailing wind direction toward the northeast, violations have also occurred in Kentucky. In particular, six exceedances were recorded at the Dayton (Campbell County) Kentucky site in 1983. Thus, because the Kentucky counties contribute significantly to the Cincinnati ozone problem, and ozone violations have occurred in both States, there is no reason for allowing Kentucky to avoid a proportional share of the necessary HC control. Finally, it was argued that USEPA could not require the Kentucky counties individually to implement I/M. USEPA notes that it might be preferable for the State air agency or some other agency with a similar background to implement I/M. However, the decision as to which agency will be responsible for implementing I/M must be made by the State and local governments involved. USEPA's only concern is that an effective program be implemented. In Kentucky's case, the State legislature failed to adopt legal authority for a State operated program. Jefferson (a separate ozone nonattainment area) and Boone Counties subsequently adopted I/M legislation under their existing authority. The need for adoption of a program by the individual counties came about because the State legislature refused to adopt legal authority for a State-operated program, thereby leaving the authority of the various counties as the only available mechanism to implement I/M.

C. Mobile Source Emissions and Inspection and Maintenance Issues

Comment: Two Ohio state representatives urged USEPA to move toward achieving air quality standards in a reasonable way without unnecessarily burdening area residents.

Response: USEPA has no flexibility not to require I/M for any area which has been granted an extension of the December 31, 1982, attainment date.

Comment: The State of Ohio commented that "[e]ven USEPA does not suggest" that inspection and maintenance (I/M) would result in any significant improvement in air quality. The State notes that USEPA's proposal to disapprove the Cleveland and Cincinnati SIPs does not suggest that I/M might eliminate the "apparent [post 1982] exceedances, and that in fact this proposal suggests that these exceedances "could be attributed to excess VOC emissions from stationary VOC sources." The State believes that USEPA has not demonstrated that these exceedances are attributable to mobile source emissions. Other commenters individually questioned whether I/M programs in Cleveland and Cincinnati were necessary or benefical.

Response: The Clean Air Act mandates that areas which were unable to demonstrate attainment of ambient air quality standards for ozone and/or carbon monoxide by the December 31, 1982 deadline, and requested an extension to December 31, 1987, to attain the standards, must develop and implement an I/M program in the areas needing an extension. The State of Ohio was unable to demonstrate attainment of the ozone standard in the Cleveland and Cincinnati areas by December 31, 1982, and, therefore, must implement I/M programs in these areas. Ohio's comments, therefore are irrelevant.

USEPA believes, however, that Ohio's SIP demonstrates that mobile sources contribute a significant fraction of overall emissions in both Cleveland and Cincinnati and, therefore, can be said to contribute significantly to monitored exceedances. I/M programs are able to reduce hydrocarbon emissions which contribute significantly to the formation of ozone. A well run I/M program is designed to reduce 1987 light duty gasoline powered hydrocarbon exhaust emission by 25 percent.

Comment: The State commented that, by virtue of USEPA's policy for correction of deficient SIPs, USEPA has "adequate remedies" for achieving attainment of the ozone standard without having to require I/M. The State continued that it is important to distinguish between requiring I/M versus requiring attainment with I/M being simply one of several measures that might be necessary.

Response: Since USEPA finds that Cleveland and Cincinnati must continue to be considered "extension areas", the Clean Air Act dictates that an approvable SIP for these areas must include an I/M program, regardless of whether alternative means might be found to achieve the ozone air quality standard by 1987.

Comment: Some commenters believe that I/M programs are not a cost effective means of meeting ozone National Ambient Air Quality Standards. In addition, other commenters suggest alternatives to I/M for reducing hydrocarbon emissions which they believe are more cost effective and would result in greater air quality benefits.

Response: The State of Ohio requested and received an extension of time to achieve ozone and carbon monoxide NAAQS in both Cleveland and Cincinnati. Section 172 (b)(11) provides that States requesting extensions shall establish additional programs to control air pollution, including an inspection and maintenance program. The cost effectiveness of I/M may be compared with other control measures required under section 172(b)(11). The results of such analyses are that I/M cost effectiveness is in the same general range as other control measures.

Comment: The northern Kentucky counties are willing to support the Cincinnati Area State Implementation Plan for ozone by implementing measures against vehicle misfueling and/or vehicle tampering. They believe these measures could take the place of the requirement in the Clean Air Act for operating an I/M program and could be the basis for removal of section 110 sanctions in these Kentucky counties.

Response: USEPA has determined that direct correlations exist between excess automotive emissions and vehicle tampering and misfueling. It is USEPA's policy that if it can be demonstrated by the State that an anti-tampering and anti-misfueling program can achieve RACT emission reductions that this would satisfy the USEPA requirement for an I/M program provided the other requirements as specified in the July 17, 1978 memorandum from David Hawkins, former Assistant Administrator for Air, Noise and Radiation, to Regional Administrators, are present.

Comment: I/M programs have been effectively implemented in more than twenty States and should be implemented in Cincinnati.

Response: USEPA agrees.

Comment: Requiring I/M may reduce the chance of developing the remainder of air pollution control programs that would be more effective in improving air quality because there would arise a struggle to gain legislative approval of an I/M program.

Response: USEPA recognizes that the State of Ohio needs to obtain additional legislative authority to fund the I/M program, and/or authority to assess fees, and establish a mechanism for program enforcement, but notes that this program is a Congressionally-mandated program which must be implemented in accordance with Part D. Other States have been successful in developing the remainder of their programs while implementing an I/M program. USEPA, therefore, believes that the State of Ohio can also continue to proceed expeditiously to meet other SIP requirements in addition to developing and implementing an I/M program.

Comment: Three parties made comments on the Boone County I/M program. In particular, allegations were made that USEPA withdrew funding from the county's I/M program, thus causing it to be dismantled. Therefore, it is charged that it would be improper for USEPA to penalize the county for failure to have I/M implemented. Also, it was noted that USEPA had allowed Cincinnati to discontinue its local I/M program.

Response: In response to the first comment, USEPA Region IV made $333,000 available to the northern Kentucky counties for I/M startup (Kentucky offered about $666,000 for the same purpose).

Boone County requested, on November 14, 1980, $27,500 to hire an I/M coordinator. This grant was awarded January 30, 1981. On March 5, 1982, Boone County requested an additional $120,500 for various startup expenses for the program. However, in June of 1982, Kentucky submitted its 1982 SIP indicating that the northern Kentucky and Cincinnati area would attain the ozone standard by the end of 1982, which would have eliminated the requirement for I/M. Because Boone County's ordinance required I/M only if it were required by Federal law, and because Boone County expressed no interest in implementing the program if it were not required, USEPA did not feel it would be appropriate to grant the full amount requested for I/M implementation. Nonetheless, recognizing the possibility that I/M might still be required if USEPA could not accept the 1982 attainment demonstration, Region IV did make a partial award of $20,000 on August 25, 1982, so that the county's I/M coordinator could be retained. This was intended to allow resumption of I/M implementation on short notice if, as later occurred, USEPA determined the program would still be required. The remaining USEPA grant funds have been, and continue to be, available at any time if Boone or the other Kentucky counties make a definite commitment to implement I/M.

With regard to the Cincinnati I/M program, Cincinnati had been experiencing significant compliance problems with its I/M program, primarily due to a low level of enforcement. Because of the low compliance rate, the program was losing money. USEPA was asked to provide a grant to subsidize continued operation of the program.

However, because the program was relatively ineffective and because the areawide program then proposed by Ohio promised to effectively meet USEPA's I/M requirements, USEPA allowed Cincinnati to drop the local program in 1981. This was because the existing I/M program was to be replaced by another, more effective program, not because I/M was no longer required.

Comment: Two commenters stated that USEPA must consider the pollution caused by the removal of catalytic converters by Lew Smith Muffler Shop and other companies. In particular, it was alleged that USEPA had stated in the case of *United States of America v. Lew Smith Muffler and Parts, Inc.*, Civil Action No. 82-223 (E.D. Kentucky) that 6 percent of the areawide HC inventory was caused by these catalyst removals. Commenters allege that had USEPA better enforced the anti-tampering requirement, the area would have met the ozone standard.

Response: First, the figure cited is erroneously interpreted. In the USEPA statement, it was estimated that the effects of tampering by Lew Smith was the equivalent of 6 percent of the reduction which would be attributable to I/M in Kenton County, not 6 percent of the total inventory in the Cincinnati area. Thus, the tampering does not negate the I/M program as alleged. While the tampering cited does contribute to a higher than necessary HC inventory, it is not of such a magnitude as to cause the exceedances of the ozone standard by itself.

USEPA does not agree that it has been "dilatory" in enforcing the anti-tampering law. The prosecution of Lew Smith Muffler Shop is evidence of this. While tampering has occurred and will probably continue to occur, USEPA is expending considerable resources to enforce the requirements of the Clean Air Act. In any case, it is the responsibility of the State and local governments to adopt the measures necessary to allow attainment of the ozone standards. A State or local government is free to adopt and enforce an anti-tampering law on its own, if it feels that such a law would contribute to reducing motor vehicle emissions.

D. Meteorology and Air Quality Issues

Comment: Numerous commenters argue that the multiple exceedances of the ozone standard recorded in 1983 were due to unusual meteorological conditions and, therefore, these exceedances should not be considered as evidence that Cincinnati and Cleveland continue to need the attainment deadline extension.

These commenters quote meteorological statistics for 1983 or cite the U.S. Department of Agriculture's declaration that Cincinnati and two Cleveland area counties were disaster areas due to dryness and high temperatures, as evidence that the 1983 meteorological conditions in these cities were unusual. In making this argument, most commenters implicitly assume that this kind of adjustment to air quality data is (or should be) acceptable. Ohio, on the other hand, is explicit in arguing that USEPA policy permits such air quality data adjustments. The State further presents two analyses which concluded that the exceedances of the ozone standard that occurred in the Cleveland and Cincinnati areas in 1983 were attributable to unusual meteorological conditions and thus should not be treated as evidence that these cities failed to attain the standard by 1982.

Response: USEPA does not support adjusting or discarding valid, quality assured ambient concentration measurements submitted by the State. In calculating air quality statistics (e.g. number of expected exceedances and design value), the "Guideline for the Interpretation of Ozone Air Quality Standards" states that the methodology employed cannot merely ignore high values for a particular year simply because they are unlikely to recur. The purpose of the standard is to protect against high values in a manner consistent with their likelihood of occurrence. This Guideline further states that the use of three years of measurements in calculating these air quality statistics should be sufficient to average the effect of year-to-year variations in meteorological conditions. Nevertheless, USEPA finds the commenters correct that, in cases where adjustments for example to the number of expected exceedances are clearly justified, it is both appropriate and permissible under Agency policy to make such adjustments as a part of control strategy planning. The USEPA's memoranda and rulemaking actions cited by the commenters suggest that the use of adjustments in calculated air quality statistics can more readily be justified for total suspended particulate matter than for ozone, reflecting a belief that particulate matter concentrations can be more directly affected by a single discrete event, whereas ozone formation is a more complex process including a combination of coincident meteorological conditions. However, if a State could provide a justification for adjusting the number of expected exceedances and/or the SIP design value, USEPA would consider accepting such adjustments.

It should be noted that, in general, the policy memoranda and rulemaking actions cited by the commenters focus on unusual meteorological events and not on unusual frequency of normal events. The distinction between unusual conditions and an unusual frequency of normal events is important since ozone concentrations should not be considered as unusual unless the meteorological conditions which led to these values were, in and of themselves, unusual. It appears that neither the State nor any other commenter has alleged that the days on which the 1983 exceedances occurred were themselves unusual. In fact, the data presented by the State suggest that the days recording exceedances experienced quite normal meteorological conditions. The commenters' concern instead is that 1983 experienced an unusual frequency of recurring meteorological events. In this context, the State must meet two tests to justify treating the 1983 air quality data as not indicating post-1982 violation of the standard. First, Ohio must demonstrate that the number of situations where meteorological conditions were conducive to high ozone during 1983 was unusual. Second, Ohio must then show that if 1983 had experienced a more typical number of occurrences of these meteorological conditions, the number of expected exceedances would be 1.0 or less. This requires development of a meteorological index comprised of parameters which reflect the meterological potential for exceedances to occur.

The State's submittal fails to identify any meteorological index (and USEPA is not aware of any index for either Cincinnati or Cleveland) which can reliably indicate whether 1983 was unusually conducive to ozone formation.

The technical support document provides a more detailed review of evidence correlating ozone formation with various parameters including temperature and rainfall. This review concludes that such parameters have a general correspondence with ozone formation but do not explain an adequate part of the variance of ozone concentrations even on a single day basis, much less the variance of ozone concentrations on a seasonal basis. Indeed, when the frequency of hot weather is compared to the frequency of exceedances (using 1983 data and using a maximum temperature at least 85° as an indicator), Cleveland experienced 52 hot days but only 13 exceedance days, and Cincinnati experienced about 80 hot days and only 17 exceedance days.

It is clear that days with high temperatures do not necessarily record high ozone concentrations. At the same time, many of the 1983 exceedances occurred on days with peak temperatures below 90°F, illustrating that high ozone concentrations do not necessarily occur on the hottest days. Thus, while the State has presented several arguments that 1983 was unusually hot and dry, the State has not provided convincing evidence that 1983 was unusually conducive to ozone formation.

In the absence of a reliable indicator of conduciveness for ozone exceedances, the State's submittal also provides no means of estimating the number of exceedances expected in a typical period. Indeed, on this issue, the State recommends discarding all 1983 violations, but provides no justification that violations would be unanticipated during a typical period.

The technical support document also finds that, even apart from the inadequacies of the State's parameterization of ozone conduciveness, the full use of this indicator still leads to the conclusion that Cincinnati and Cleveland violated the ozone standard even if adjustment were appropriate. First, such an adjustment of 1983 air quality statistics would probably show the exceedance rate well above the attainment level of 1.0 expected exceedances or less. Second, in the same way that 1983 violations indicate post-1982 nonattainment, the 1984 air quality support the same conclusion. Indeed, by Ohio's indicator, 1984 was relatively unconducive toward ozone formation, and yet sites in both Cleveland and Cincinnati have recorded multiple exceedances in 1984. Third, USEPA generally recommends using 3 years of data as a means of averaging out the meteorological variations that occur from year to year. The most recent 3 years (1982 to 1984) had an average number of days of 90°F that was almost identical to the long-term climatological means for Cleveland and Cincinnati, and yet these 3 years of data clearly suggest violations continuing after 1982 in both cities. Fourth, if the State's indicator was used, then upward adjustments would be appropriate for years other than 1983 which may be less conducive to ozone formation than would be considered usual. Particularly for Cincinnati, for which the SIP only narrowly suggested attainment by 1982, such considerations might have led to attainment not being projected to occur by 1982.

In summary, the State has not shown that 1983 was unusually conducive to ozone formation, nor has it suitably addressed the issue of how many exceedances would be expected in a typical year.

If follows that the other commenters that simply cite the State's findings have also failed to justify such an adjustment of the data. Indeed, the full use of the State's indicator of meteorological conduciveness toward ozone formation supports the conclusion that violations can be expected to continue after 1982. Finally, the designation of the Cincinnati area and parts of the Cleveland area as disaster areas by the Department of Agriculture does not justify discarding the 1983 ozone data, because it is not clear what criteria were used in making this designation, how unusual it is to meet these criteria, and, most importantly, how these criteria relate to ozone formation. Thus, the finding that violations are continuing after 1982 appears to be an appropriate conclusion.

Comment: One commenter supported the proposed USEPA position that the 1983 air quality data should not be excluded due to unusual meteorology. This commenter noted that 1982 plus 1984 by themselves recorded 12 exceedances in Cincinnati, which the commenter believed is nine more than is permitted in a 3-year period.

Response: The table below shows air quality data at selected sites in the Cincinnati area for 1982, 1983 and 1984. While these data support the commenter's conclusion that 1983 data should not be excluded, they do not entirely support the analysis leading to this conclusion. First, USEPA does not count total exceedances in an area, but rather assesses attainment of the standard on a site-by-site basis. Second, the 1982 air quality data do not provide a direct indication of whether nonattainment is expected after 1982, since considerable emission reductions occurred at the end of 1982, which is the final date for most VOC emitting sources in Ohio to achieve compliance with applicable SIP regulations and install RACT levels of controls. Based on modeling in the SIP, it appears likely that a repetition of 1982 meteorology after 1982 would result in one exceedance at the Middletown site, for example, not two exceedances. Nevertheless, the 1984 data, particularly at the Middletown site, do support USEPA's finding that the Cincinnati area continued to violate the ozone standard after 1982.

RECENT AIR QUALITY DATA IS SELECTED CINCINNATI AREA SITES

Site	Year	03 concentration parts per billion (ppb)		Exceedances
		Max	2nd Max	
Middletown	1982	160	129	2
	1983	128	127	3
	1984	147	140	2
Lebanon	1982	127	([1])	1
	1983	152	137	5
	1984	125	([1])	1
Hamilton	1982	135	127	2
	1983	([1])	([1])	0
	1984	140	135	2

[1] Concentration is not an exceedance.

Comment: Several commenters addressed 1984 ozone exceedances in the Cleveland area. These commenters reported three exceedances at the Painesville, Ohio, site (values of 145 ppb, 138 ppb, and 126 ppb). Further, data reported independently by Ohio EPA indicate that the Eastlake, Ohio, site recorded two exceedances in 1984 (values of 140 ppb and 135 ppb). However, none of these commenters believe that these exceedances support disapproving the Cleveland SIP. One commenter argues that the violations at these Lake County sites should not necessarily be attributed to emissions in the Cleveland area. This commenter provides wind data for the hours in 1984 when Painesville recorded concentrations of 120 ppb or above, and states that, based on these data and similar data for the 1983 exceedances, Painesville and Eastlake are receptor sites for ozone which is generated at various times in Cleveland, the Youngstown area, the Akron/Canton area, the Ashtabula area, and sometimes in locations long distances across Lake Erie. This commenter asked for further time to study the origins of violations in Lake County and asked that USEPA's final action be that of "no action" taken at this time. A second commenter noted that these sites were exceedances occurred are actually in Lake County (northeast of Cleveland) and not in Cleveland or Cuyahoga County, and recommended, therefore, that the SIP for Cleveland should not be disapproved. Several other commenters also urged that final action be delayed, in order to analyze 1984 air quality data.

Response: The 1984 air quality data lend support to USEPA's finding that the demonstration of attainment by 1982 should not be approved. The data submitted by the first commenter failed to provide wind data for the hours prior to the violations recorded in 1984 at Eastlake and Painesville. Therefore, USEPA supplemented the commenter's data with available wind data for these earlier hours. A review of these more complete sets of data indicate that, in fact, Cleveland area emissions were the probable cause of these ozone standard violations.

Even apart from these wind data, USESPA finds that the most plausible origins of the violations being recorded at Eastlake and Painesville are the emissions being generated in the Cleveland area. In USEPA's experience, these monitors are within the distance range and direction to record peak ozone concentrations generated by Cleveland. At the same time, none of the other origins of these violations appear to represent a plausible source of these concentrations. For example, Youngstown is about 80 kilometers southeast of Painesville (roughly 140 kilometers along the trajectory suggested by the commenter), a distance far beyond the probable location of peak Youngstown impact. Furthermore, the other cities have considerably less population than the Cleveland area, and their emission are presumably similarly smaller. For these several reasons (as discussed in more detail in the technical support document), USEPA finds that the most plausible principal cause of the violations in the Cleveland area (particularly in Lake County) are the Cleveland area emissions. Ohio's inclusion of only Cleveland area counties in its SIP indicates that the State agrees with this finding. Also, it is worth reemphasizing that the wind data available for the days of the 1984 exceedances tend to confirm this finding. In response to the second commenter, this finding indicates that the SIP for Cuyahoga County along with the other Cleveland area counties was inadequate to achieve attainment in Lake County. USEPA also notes that two exceedances were recorded in 1983 at each of two sites in Cuyahoga County (at the Westlake and E. 152nd Street monitors) suggesting that Cuyahoga County itself may have violated the standard after 1982.

USEPA cannot honor the commenter's request for more time to analyze the origins of the Painesville (and Eastlake) violations. The State of Ohio submitted a SIP indicating that exceedances at Painesville during 1979–1981 were attributable to the overall Cleveland metropolitan area. The commenter and others have had over a year to analyze 1983 data, and the commenter has also reviewed 1984 data. Despite this extensive evaluation period, USEPA has not received persuasive evidence to suggest that these violations are not attributable to the Cleveland metropolitan area. Therefore, it would be inappropriate for USEPA to delay final rulemaking on the State's attainment demonstration. Such delay would also be inconsistent with the comments of other members of the public who criticize USEPA for previous delays in rulemaking.

Comment: A commenter noted that, on January 12, 1982, Ohio petitioned USEPA to redesignate Cleveland to attainment for ozone and CO.

Response: Ohio's January 12, 1983, request does not pertain to ozone but pertains only to CO. The CO redesignation request has not been granted and, in any case, is not relevant to this rulemaking.

Comment: A commenter stated that, although air quality data suggest that attainment may not have been achieved, USEPA should establish the cause of the continued nonattainment before disapproving the SIP. The commenter believes that disapproval leaves the area without defensible guidelines for SIP development, urges USEPA to "approve the 1982 SIP, and address the air quality deficiency of 1983 in a manner consistent with promulgated rules and the goals of the Clean Air Act."

Response: USEPA finds that the cause of the continued nonattainment is that Ohio SIP did not provide sufficient reduction of the VOC emissions by December 31, 1982. However, disapproving Ohio's SIP would not leave the State "without defensible guidelines for SIP development," since the State may still follow the existing guidance for 1982 SIP development such as the guidelines published in the Federal Register of January 22, 1981 (46 FR 7182) which represents USEPA's interpretation of Clean Air Act requirements and goals.

Comment: A commenter asserted that the Cincinnati area continues to violate the ozone standard, citing as evidence, 1982, 1983 and a portion of 1984 air quality data. the commenter stated that the EKMA/OZIPP model does not realistically account for extreme ozone conducive variations in weather conditions, but added that, if the model is adjusted to account for these variations, it should also be adjusted to account for unusually mild weather conditions. Further, the commenter stated that the 1983 data provide an appropriate basis for additional air quality planning, and stated that these data clearly indicate that further controls must be instituted to attain the standard. For these reasons, this commenter supported USEPA's proposal that the Ohio SIP should be disapproved.

Response: USEPA agrees that nonattainment continued beyond 1982, and agrees that 1983 data proved an appropriate basis for additional air quality planning. USEPA adds that it recommends the use of 3 years of data in order to minimize the impact of year-to-year meteorological variations. Further discussion about the use of EKMA/OZIPP is contained in the following section.

Comment: A commenter stated that USEPA has not convincingly eliminated source noncompliance with applicable SIP VOC abatement measures (as opposed to SIP inadequacy) as the basis for the 1983 violations. (This comment was made prior to publications of proposed rulemaking discussing this issue.)

Response: USEPA ordinarily would assume that 1983 violations indicate that the SIP did not provide sufficient emission reductions to attain the standard by the end of 1982. Nevertheless, in this case, USEPA evaluated some State-submitted information on the excess emissions attributable to sources not complying with requirements for control. This analysis was discussed in the notice of proposed rulemaking and is included in Section III of this notice. Since USEPA received no contrary evidence during the public comment period, USEPA continues to find that the 1983 violations signify an inadequate SIP.

E. Modeling Issues

Comment: Several commenters addressed the possibility that the 1983 exceedances are indicative of deficiencies in USEPA's SIP planning process. Most of these commenters focused on the assumption inherent in USEPA's recommended procedures that future years (e.g., the projected attainment year) will have the same meteorology as the 3-year base period (in this case 1979 to 1981). Several commenters recommended various approaches for dealing with these perceived modeling deficiencies. For example, one commenter urged that USEPA revise its procedure to account for year-to-year variations in meteorology. A second commenter felt that, if USEPA disapproved the SIP revisions and thereby admitted the deficiencies of its planning process, then USEPA could not, at the same time, approve SIPs for other urban areas which used this planning process. A third commenter felt that USEPA should not disapprove the Ohio SIP but should instead publish new guidelines for SIP planning, ask for revised SIPs for Ohio and elsewhere, and judge all SIPs accordingly.

Response: The response to these concerns in many ways parallels the response to concerns about 1983 violations being attributable to unusual meteorology (see section IV.D). In this context, USEPA would like to clarify that the EKMA/OZIPP model is designed to simulate ozone formation on individual days. Since no commenter has argued that the 1983 exceedance days individually experienced unusual meteorological events, the ability of EKMA/OZIPP to account for unusual meteorology is not an issue. A more appropriate concern would be whether the procedures for demonstrating attainment (i.e., the use of EKMA/OZIPP results) can account for an unusually high or low frequency of conditions conducive to ozone formation. However, since neither the State nor any other commenter has demonstrated that 1983 experienced this type of unusual meteorology, this is also not an issue. Nevertheless, USEPA recommends the use of a 3-year base period in SIP planning in order to minimize the impact of year-to-year meteorological variations. While the Agency is receptive to suggestions for improving modeling procedures, and is receptive to the use of improved precedures in individual plans, the commenters do not provide specific recommendations which would yield more reliable results. USEPA continues to believe that use of its recommended procedures in these areas generally provides the best available forecast of attainment prospects. Only when available evidence clearly contradicts the modeling forecast is the forecast not accepted.

Further details which relate to these comments are included in the technical support document and in the previous discussion of alleged unusual meteorological conditions experienced in 1983.

Comment: A commenter "questions USEPA's assumption that modeling data for 1983 would fail to demonstrate compliance". This commenter continued that "we should not have regulatory decisions on assumptions of what modeling would show." A second commenter stated that "the only evidence presented by [USEPA] which would suggest any SIP deficiency" is in an October 13, 1983, letter from Ohio EPA which discusses the emissions impact of sources not complying with SIP limits. This commenter stated that he did not understand how this letter supported a finding of SIP inadequacy.

Response: It appears that these commenters may not fully understand the analysis conducted by USEPA and described in the notice of proposed rulemaking. USEPA was assessing the possibility that one interpretation of the violations recorded in 1983 is that these violations indicate that the SIP was inadequate to attain the standard by 1982. An alternative interpretation is that the SIP is adequate, but these violations occurred because sources were exceeding SIP limits. The analysis in question attempted to assess the plausibility of this latter interpretation.

Section III of this notice describes USEPA's analysis of whether the 1983 violations could be attributed to sources exceeding SIP allowable emissions limits. From this analysis, USEPA concluded that the 1983 violations could not be solely attributed to excess emissions from noncomplying sources but are better interpreted as evidence that the SIP itself is inadequate to attain the standard by 1982.

USEPA agrees that higher concentrations will not necessarily lead to higher emission reduction percentages. However, in the absence of more complete information on model inputs, this assumption appears to be reasonable, particularly in the context of assessing the possibility that a more thorough analysis would show that compliance with the SIP could have averted the 1983 violations.

It must be noted that no further information has been received to contradict USEPA's proposed finding. Therefore, USEPA continues to find that the 1983 violations indicate inadequacy of the SIP rather than inadequate compliance with the SIP. In response to the second commenter, the principal evidence of SIP inadequacy was air quality data monitored after 1982. The cited information from the State was used simply to assure that indeed these air quality data indicated SIP inadequacy.

F. Miscellaneous Issues

Comment: Some comments noted that ozone is a serious threat to health. One commenter cited specific studies to support a finding that even the achievement of the current ozone air quality standard would not eliminate ozone impacts on health.

Response: USEPA agrees that ozone concentrations in excess of the air quality standard can cause adverse health impacts. However, this rulemaking is not an appropriate forum for reviewing whether the current air quality standard protects the public health with an adequate margin of safety. This rulemaking is intended to judge whether Ohio's SIP submittals meet the requirements under the Clean Air Act for areas that are violating the established standard.

Comment: A commenter urges that "the ozone attainment plan be approved, or alternatively approved at least with respect to stationary sources."

Response: The question being addressed by USEPA is whether the attainment demonstration should be approved or disapproved. This judgment must be based on emissions and emission reductions from all source types, and so the option is not available to approve just the stationary source part of the attainment demonstration. (The commenter's recommendation to approve the attainment demonstration is addressed elsewhere.)

Comment: Two citizens' organizations urged that funding be provided for public education and participation during the SIP process. One of these commenters further urged that the SIP include a strong program for public participation.

Response: Congress has not provided USEPA the authority to provide this funding. On the other hand, the Clean Air Act does require that the State provide the opportunity for public comment and participation during the SIP development process, e.g., by holding a public hearing. USEPA believes that Ohio and Kentucky have met these requirements and provided suitable opportunity for public participation in SIP development.

G. Comments on USEPA's February 3, 1983 Proposed Rulemaking

On February 3, 1983, USEPA proposed to approve the Cleveland and Cincinnati areas ozone SIPs. Comments that were received on this proposal are to some extent moot since USEPA subsequently reversed its position and is now disapproving the attainment demonstrations in these SIPs. Nevertheless, for completeness, these comments and USEPA's responses are summarized below. A more complete discussion is contained in the technical support documents.

Comment: The Attorney General for the State of New York (henceforth referred to as New York) commented that approval of the Cleveland and Cincinnati area ozone SIPs would contravene Clean Air Act section 110(a)(2)(E) by allowing sources in these areas to make it unduly difficult to achieve attainment in the New York City area. New York further argued that Stage II vapor recovery should be required in the Cleveland and Cincinnati areas as being reasonably available control technology.

Response: New York has not demonstrated that the source in the Cleveland and Cincinnati areas contribute to air quality standard violations in the New York City area on the days these violations occur. Furthermore, even if New York had made this showing, USEPA has in place policies which preclude ozone transport in excess of the standard and which provide for a reasonable allocation of controls on upwind sources and controls on sources within the relevant urban area. Also, USEPA does not currently require Stage II vapor recovery except in those areas where attainment cannot be demonstrated without such controls. Consequently, USEPA does not believe that New York's arguments represent an appropriate basis for disapproving the Cleveland and Cincinnati areas ozone SIPs.

Comment: Ohio made several comments on USEPA's February 3, 1983 proposal. Ohio noted that this proposal had failed to propose rescinding the attainment deadline extension for Geauga County, even though it proposed to rescind the extension for the rest of the Cleveland area. Ohio provided details on the transportation control measure program in the Cleveland area and asked for emission reduction credits from these measures as part of the area's growth margin. Ohio noted that the 1982 air quality data in the Cincinnati area support that area's projection of attainment by the end of 1982.

Response: USEPA is now retaining the attainment deadline extension for the Cleveland area, including Geauga County. The State has made progress on implementing its transportation control measures, although some questions remain on the enforceability of its commitments to adopt further such measures. However, Ohio's comments on the growth margin have been made moot by the finding that the present SIP does not provide any growth margin by the projected 1982 attainment date. Finally, although 1982 air quality qualitatively suggest the possibility that attainment would occur by the end of 1982, the 1983 and 1984 air quality data more clearly and directly indicate that attainment by the end of 1982 did not occur.

V. Final Action

USEPA is taking final action to: 1) Disapprove the Ohio demonstration that the Cleveland area SIP assured attainment of the ozone NAAQS by December 31, 1982; and 2) disapprove the demonstrations by Ohio and Kentucky that the Cincinnati areas SIP assured attainment of the ozone NAAQS by December 31, 1982, and 3) deny Ohio's request for rescission of the 5-year extension of the attainment deadline extension for the Cinncinnati and Cleveland areas.

In anticipation of submissions in the near future, USEPA is not at this time taking final action disapproving the Ohio and Kentucky SIPs for failure to meet the Part D requirements of the Clean Air Act as specified in USEPA's January 22, 1981, Federal Register (e.g., Reasonably Available Control Technology for all subject stationary sources, Transportation Control Measures, Inspection and Maintenance Program and a demonstration that the SIP provides for attainment as expeditiously as practicable but no later than December 31, 1987). Today's action will not result in the new imposition of any Clean Air Act restrictions.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

The Regulatory Flexibility Act, 5 U.S.C. 600 et seq., requires the Agency to prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over population of less than 50,000. As previously indicated in this notice, there are no new construction nor federal funding restrictions associated with today's action. Any future construction or funding restrictions that might result from Ohio's or Kentucky's failure to submit an approvable ozone SIP for either the Cleveland or Cincinnati area would be the subject of a separate rulemaking action and the impact, if any, on small entities would be discussed therein. Additionally, this action does not impose any further requirements (other than those already in effect) in Ohio or Kentucky. Therefore, we conclude that today's action will not have a significant economic impact on a substantial number of small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 27, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Intergovernmental relations Air pollution control, Ozone, Hydrocarbons.

Dated: March 15, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.

Subpart S—Kentucky

2. Section 52.930 is amended by adding paragraph (b)(2) as follows:

§ 52.930 Control Strategy: Ozone

* * * * *

(b) *Part D—Disapproval*

(1) * * *

(2) Northern Kentucky (Boone, Campbell and Kenton Counties) ozone nonattainment area. The demonstration of attainment of the ozone standards by the end of 1982, submitted as part of Kentucky's ozone SIP revision on June 23, 1982, (draft), September 27, 1982, and November 3, 1982, is disapproved. As a result, the extension of the attainment deadline until December 31, 1987, remains in effect, along with the related requirement to submit a SIP revision

addressing all requirements of Part D extension areas.

Subpart KK—Ohio

1. Section 52.1885 is amended by adding paragraphs (e) and (f) as follows:

§ 52.1885 Control Strategy: Ozone

* * * * *

(e) *Disapproval*—On May 24, 1982, (draft) and September 23, 1982 (final) the State of Ohio submitted a revised demonstration that attempted to show attainment by December 31, 1982, of the ozone National Ambient Air Quality Standards (NAAQS) for the Cincinnati urban area. Supplemental information was submitted on November 4, 1982, and March 16, 1983. The May 24, 1982, submittal also requested that the 5-year extension for meeting the NAAQS requested on July 29, 1979, and granted by USEPA on October 31, 1980, and June 18, 1981, be rescinded for this area. The Cincinnati urban area for ozone consists of Hamilton, Butler, Clermont and Warren Counties. The attainment demonstration and rescission request are disapproved by USEPA.

(f) *Disapproval*—On June 9, 1982, (draft) and November 9, 1982 (final) the State of Ohio submitted a revised demonstration that attempts to show attainment by December 31, 1982, of the ozone National Ambient Air Quality Standards (NAAQS) for the Cleveland urban area. Supplemental information was submitted on March 8, 1983, and March 16, 1983. The June 9, 1982, and March 8, 1983, submittals also requested that the 5-year extension for meeting the NAAQS requested on July 29, 1979, and granted by USEPA on October 31, 1980 and June 18, 1981 be rescinded for this area. The Cleveland urban area for ozone consists of Cuyahoga, Geauga, Lake, Lorain, and Medina Counties. The attainment demonstration and rescission request are disapproved by USEPA.

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[FR Doc. 86-6500 Filed 3-24-86; 8:45 am]

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40 CFR Part 57

[OAR-FRL-2990-2]

Air Programs; Nonferrous Smelter Orders Covering the Period January 1, 1983 to January 1, 1988

AGENCY: Environmental Protection Agency.

ACTION: Correction of final rule.

SUMMARY: On February 15, 1985 (50 FR 6434-93), EPA promulgated regulations establishing the minimum required contents of primary nonferrous smelter orders (NSOs) under Section 119 of the Clean Air Act. This action corrects an error in the description of the test for eligibility for an NSO. It makes clear that a primary nonferrous smelter need only pass one of two alternative financial tests contained in the regulation to satisfy the financial eligibility requirements for an NSO.

EFFECTIVE DATE: This correction is effective March 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Laxmi N. Kesari, Stationary Source Compliance Division (EN-341), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2835.

SUPPLEMENTARY INFORMATION: Section 119 of the Clean Air Act provides for the issuance of nonferrous smelter orders (NSOs) to eligible primary smelters by either the States (with EPA approval) or by EPA. An NSO permits a smelter to defer complying with its State Implementation Plan (SIP) emission limitation for sulfur dioxide during the period of the order. EPA promulgated regulations implementing section 119 on February 15, 1985. The preamble to those regulations discusses at length eligibility criteria and minimum contents for an NSO.

An important element in demonstrating eligibility for an NSO is a showing of the adverse financial impact the smelter would suffer if it had to install constant controls to meet its SIP emission limitations by the SIP compliance date. The regulations establish two alternative tests based on which this showing can be made, the Rate of Return test and the Profit Protection Test. These tests are discussed at length in the preamble to the final regulations.

EPA's intention has always been that a smelter could satisfy the financial eligibility requirements by passing either of the two tests. In its proposal of the NSO regulations on September 19, 1983 (48 FR 42050-42100), EPA explained the rationale for this. EPA concluded that the two tests would establish financial criteria sufficient to prevent closure of a smelter or other unreasonable economic consequences due to pollution control requirements, (see the discussion at 48 FR 42052-53). The Profit Protection Test was intended to serve as a safety valve for a smelter which could not pass the Rate of Return test but still would suffer unreasonable economic consequences in the form of a reduction of 50% or more in profits. (48 FR 42053) [See *Kennecott Corp.* v. *EPA*, 684 F.2d 1007 (D.C. Cir. 1982)].

Unfortunately, in one of the descriptions of the financial eligibility tests, in § 57.102(b)(3), the language appears to require a smelter to pass both financial tests to qualify for an NSO. This was clearly not EPA's intention. EPA's intention was correctly stated in Appendix A under 1.2.1 (NSO Eligibility Tests) where it states "[a]n applicant will determine financial eligibility for an NSO by passing at least one of the following two tests."

To correct this error, EPA is substituting the word "both" for "either" in § 57.102(b)(3). Because of the construction of that section, this will now correctly state that technology will be considered adequately demonstrated to be reasonably available, and thus the smelter will be ineligible for an NSO, only if it "fails" *both* tests.

EPA believes that this correction will not cause any disruption since affected parties have been interpreting the overall effect of EPA's regulations as EPA intended but this correction will eliminate the ambiguity now present.

Accordingly, FR Doc 85-3593 is corrected as follows:

§ 57.102 [Corrected]

Section 57.102(b)(3) is corrected by substituting the word "both" for the word "either."

Dated: March 17, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-6505 Filed 3-24-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-9-FRL-2990-1]

Decision To Approve Revision of North Carolina's Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of Substantial Program Revision to the North Carolina Hazardous Waste Program.

SUMMARY: North Carolina has requested approval of a substantial modification to its program. The State modified its regulatory authority in July 1985 by adopting the new definition of solid waste and resource recovery provisions which were promulgated by the Environmental Protection Agency (EPA) on January 4, 1985. EPA has reviewed North Carolina's adopted rules, considers them to be a substantial modification in accordance with § 271.21(b)(2) and believes that they are

equivalent to EPA's regulation. Thus, EPA is approving this revision to North Carolina's Hazardous Waste Program.

EFFECTIVE DATE: Approval of North Carolina's program revision shall be effective at 1:00 p.m., Eastern time on April 8, 1986.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., Chief, Waste Planning Section, U.S. EPA, 345 Courtland Street, Atlanta, Georgia 30365 (404) 347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Under EPA's current regulations, changes to the Federal program can have a profound impact on States that either are applying for or have received Final Authorization. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. States must adopt these changes if the changes expand the scope of the Federal program or make the Federal program more stringent. The "moving target" regulation (40 CFR 271.21(e)) requires modification of approved State programs when EPA changes Parts 124, 260-266, and 270. Generally, modifications must be made within one year of the date of promulgation of each new regulation.

On January 4, 1985, EPA promulgated the new definition of solid waste at 50 FR 614. This rule deals with the question of which materials being recycled (or held for recycling) are solid and hazardous wastes. This rule also provides general and specific standards for various types of hazardous waste recycling activities, explains EPA's jurisdiction over hazardous waste recycling activities, and sets forth the regulatory regime for recycling activities subject to the Agency's jurisdiction. Technical corrections to the new definition were made on April 11, 1985, at 50 FR 14216 and on August 20, 1985, at 50 FR 33541.

A State with final authorization must either adopt regulatory analogues equivalent to and no less stringent than this new rule in its entirety or show through a revised Attorney General's Statement that its current regulations are equivalent to and no less stringent than EPA's new regulations.

B. North Carolina

The State received Final Authorization for RCRA on December 31, 1984. On July 25, 1985, the North Carolina Department of Human Resources requested approval from EPA to modify its program to include the new definition of solid waste. The State adopted the redefinition of solid waste on May 3, 1985, and it became effective under State law on July 1, 1985. North Carolina submitted a copy of the newly-adopted rules and a certification from the Attorney General that the State's new regulations were equivalent and no less stringent than the Federal regulation on July 25, 1985.

C. Public Comment

On December 30, 1985, EPA published its intent to approve this revision to North Carolina's Hazardous Waste Program at 50 FR 53159. The December 30 notice announced the availability of North Carolina's adopted rules and Attorney General's certification for public review and comment and the date of a public hearing on the application. The public hearing was not held since neither EPA nor the North Carolina Department of Human Resources received a significant show of interest in holding the hearing.

EPA has reviewed North Carolina's regulation and the Attorney General's certification and believes that it is equivalent to EPA's regulation. Consequently, EPA is approving this modification to North Carolina's program.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(B), I hereby certify that this authorization will not have a significant economic impact on a substantial number of entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental Relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C., 6912(a), 6926, 6974(b).

Dated: March 3, 1986.

Sanford W. Harvey, Jr.,

Acting Regional Administrator.

[FR Doc. 86-6502 Filed 3-24-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 60339-6039]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule; correction.

SUMMARY: This document corrects sentences in the "EFFECTIVE DATES" paragraph and in the regulatory text of the emergency rule for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic published March 11, 1986, 51 FR 8325.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

In FR Doc. 86-5269, page 8325, column 1, the first sentence in the "EFFECTIVE DATES" paragraph is corrected to read: "In § 642.21, all of paragraph (a) except the last two sentences and paragraph (b) are suspended from March 6, 1986, through June 4, 1986, and new paragraphs (f), (g), and (h) are effective from March 6, 1986, through June 4, 1986".

Dated: March 20, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

§ 642.21 [Corrected]

The following correction in FR Doc. 86-5269 is also made: On page 8326, column 1, § 642.21 paragraph 3, the sentence is corrected to read "Section 642.21 is amended by suspending all of paragraph (a) except the last two sentences and paragraph (b) from March 6, 1986, through June 4, 1986, and . . . ."

[FR Doc. 86-6528 Filed 3-24-86; 8:45 am]

BILLING CODE 3510-22-M