UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 17 1993

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992

FROM: Michael H. Shapiro
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I. Purpose

The purpose of this memorandum is to address State requests to redesignate from nonattainment to attainment of the ozone and CO NAAQS under section 107. Specifically at issue are requests submitted on or after November 15, 1992 where outstanding Clean Air Act (Act) requirements have not been met. This memo provides guidance on the statutorily-mandated control programs that must be in the EPA-approved SIP if EPA is to approve the redesignation request. The Act's requirements for redesignation and a list of EPA's redesignation policy and guidance are included in Attachments A and B. In the future, further guidance may be provided for redesignations submitted after November 15, 1993.

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II. Policy Summary

Section 107(d)(3)(E)(v) of the Act as amended (amended Act) provides that the State must have met all applicable requirements of section 110 and part D in order to be redesignated. Furthermore, section 107(d)(3)(E)(ii) provides that the State must have a fully-approved SIP for the area seeking redesignation.

The EPA is interpreting these section 107 provisions to require satisfactory completion of the current Act planning requirements. Specifically, before EPA can act favorably upon any State redesignation request, the statutorily-mandated control programs of section 110 and part D (that were due prior to the time of the redesignation request) must have been adopted by the State and approved by EPA into the SIP.

Thus, with respect to redesignation requests submitted on or after the Act's deadline for submittal of the required programs, States must generally adopt and provide for implementation of their regulations for all of the programs that were due. States must submit these plans to EPA for incorporation into the SIP.[1] This would include such requirements as emissions inventories and/or emission statements. Such requirements must be met in order for the area to have a fully-approved SIP that meets all requirements applicable to the area under section 110 and part D.

The amended Act, however, also provides that upon redesignation, a State may move measures from the implemented SIP to the contingency plan portion of the SIP if the State demonstrates that such measures are not needed for maintaining the NAAQS. Many areas sought redesignation at or about the same time they were required to adopt and implement the requirements due on November 15, 1992. In many instances, the State will be able to immediately move these measures to the contingency plan without implementation.

III. Exceptions to Policy

The EPA decided to review the requirements to determine if something less than full adoption of these regulations would be acceptable under the Act for areas seeking redesignation. Exceptions to this policy on the States' need to complete the full planning and adoption process for the November 15, 1992 mandated programs are very limited. The language in the Act allows a degree of flexibility in only four program areas. These are: (1) basic inspection and maintenance (I/M), (2) annual updates of vehicle miles traveled (VMT) forecasts and annual

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[1]Note that this represents a departure from earlier guidance for part D new source review (NSR) regulations.

estimates of actual VMT for CO nonattainment areas, (3) nitrogen oxides (NOx) reasonably available control technology (RACT), and (4) small business programs (SBP).

These exceptions are only applicable in areas for which EPA approves a redesignation. The States should be aware that if EPA denies a redesignation request, rules submitted in accordance with this guidance may also be disapprovable. Finally, because EPA anticipates issuing onboard regulations by January 1994, States seeking redesignation of areas classified as moderate may have some flexibility with respect to the Stage II requirement.

Our guidance for State submittals covering these four programs is described in the following paragraphs.

Basic I/M

For areas where maintenance plans do not rely on implementation of a basic I/M program immediately following redesignation, the I/M component of the SIP should include:

1. Legislative authority for basic I/M such that implementing regulations can be adopted without any further legislative action.

2. A provision in the SIP providing that basic I/M be placed in the contingency measures portion of the maintenance plan upon redesignation.

3. An enforceable schedule and commitment by the Governor or his designee for adoption and implementation of a basic I/M program upon a specified, appropriate triggering event.

Note that, for purposes of consideration of a redesignation request submitted after November 15, 1992, the commitment as described in the I/M regulation (see 57 FR 52950, November 5, 1992) is not sufficient to meet the Act's requirement for a fully-approved SIP.

In addition, please note that, EPA's final I/M regulations in 40 CFR part 51 require a fully-adopted I/M program by November 15, 1993. At this time, our preliminary interpretative guidance on basic I/M in this memo is not discussed in the I/M regulations. Therefore, EPA is proceeding to establish this interpretation through regulatory action, thus enabling EPA to accept legislative authority and a commitment to adopt and implement basic I/M regulations for those areas being redesignated to attainment.

VMT Forecasting

The VMT forecasting SIP for CO should include:

1. Annual forecasts of VMT (i.e., average daily VMT for the peak 3-month CO seasons for 1993, 1994, and 1995 in moderate areas above 12.7 ppm, and until 2000 in serious areas).

2. An enforceable commitment by the Governor or his designee to estimate actual annual VMT for each of these years (by September 30 of the following year) and to update the forecast of the VMT in the remaining years.

3. A request that the commitment be moved to the contingency plan portion of the SIP upon redesignation, becoming a contingency provision triggered by a specified triggering event.

4. Adopted contingency measures to reduce CO emissions. The implementation of such measures is contingent upon either: (a) an annual estimate of actual VMT or updated forecast of VMT exceeding the previous forecast for that year, or (b) the area failing to attain by the CO attainment deadline. These contingency measures must meet the requirements of section 187(a)(3) as interpreted by the April 16, 1992, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," including the requirement that no further action by the State is needed for them to take effect.

NOx RACT

Section 182(f) provides that States may request an exemption from the NOx RACT requirements. The NOx RACT requirements of section 182(f) do not apply if additional reductions of NOx would not contribute to attainment.[2] In an area that did not implement the section 182(f) NOx requirement but did meet the ozone standard, as demonstrated by adequate monitoring data consistent with EPA guidance, it is clear that the additional NOx reductions required by section 182(f) would not contribute to attainment, although they might contribute to maintenance. Therefore, EPA believes that if a State submits a redesignation request along with a section 182(f) exemption request based on monitoring data demonstrating attainment of the ozone NAAQS, further documentation is not required. The State may follow one of two approaches in making such a submittal:

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[2]Note that the section 182(f) exemption for NOx RACT and NSR requirements described in this section is applicable only for States outside an ozone transport region, since only those States fall under the section 182(f) "contribute to attainment" provision.

1. Submit a redesignation request along with a section 182(f) exemption request based solely upon monitoring data showing that the area's air quality is meeting the ozone NAAQS; and submit a maintenance plan SIP revision, which includes a NOx RACT program as a contingency measure. In lieu of adopted NOx RACT rules, such a NOx RACT program may consist of an enforceable schedule and commitment by the Governor or his designee to adopt and implement the NOx RACT rules upon a specified, appropriate triggering event.

2. An exemption request based on both ambient monitoring and urban airshed modeling consistent with EPA guidance that shows additional NOx reductions would not contribute to attainment in the area. In this case, NOx RACT rules do not have to be included as a contingency measure of the maintenance plan.

SBP

For several reasons, the Act can be interpreted as not requiring the section 507 SBP submittal in order for EPA to approve a redesignation request. The SBP submittal is required regardless of whether there are any designated nonattainment areas within the State. In addition, the SBP is not a control measure intended to contribute to the emission reductions achieved by an area; rather it is a service provided to help small businesses comply with requirements of the Act. For the above reasons, EPA is interpreting the SBP as not being an applicable requirement for any specific nonattainment area that is seeking redesignation. However, EPA will continue to ensure that States make SBP submittals in a timely fashion.

Stage II Vapor Recovery

Stage II vapor recovery remains an applicable requirement for moderate ozone nonattainment areas until EPA promulgates onboard vapor recovery regulations. Section 202(a)(6) of the Act provides that once onboard regulations are promulgated, the Stage II regulations required under section 182(b)(3) are no longer applicable for moderate ozone nonattainment areas. Therefore, final redesignation for a moderate nonattainment area that occurs after EPA's onboard regulations are promulgated does not have to include a Stage II SIP control program. For redesignation requests that are submitted before EPA promulgates onboard rules and that do not include Stage II rules for moderate areas, Regional Offices may prepare rulemaking actions proposing to approve the redesignation, if appropriate, as long as final approval occurs after EPA promulgates onboard regulations.

IV. Coordination of SIP Submittals and Redesignation Requests

If the State elects to follow the approach above, the State should submit the SIP control program as described above along with the redesignation request and maintenance plan. The EPA will review the required SIP submittal(s) against EPA policy and guidance and in coordination with the redesignation request and maintenance plan. Approvability of the redesignation is directly related to the approvability of the SIP submittals (i.e., EPA is precluded from approving a redesignation to attainment if the SIP is not approvable).

As a general policy, a State may not relax the adopted and implemented SIP for an area upon the area's redesignation to attainment. States should continue to implement existing control strategies in order to maintain the standard. However, section 175A recognizes that States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard. The type of demonstration necessary is dependent upon the pollutant for which the area has been redesignated to attainment.

In order to make such a demonstration for an area redesignated to attainment for CO, EPA believes that the State could submit a revised control strategy demonstration showing that the measure is not necessary to maintain the standard. For ozone, the State would need to submit an attainment modeling demonstration consistent with EPA's current "Guideline on Air Quality Models," showing that the control measure is not needed to maintain the standard. The EPA intends to be very cautious in approving such revisions in cases where the control measures were implemented during the time the area attained the standard; the State's demonstration should indicate an ample margin of safety with respect to maintenance of the standard.

V. Conclusion

In summary, full adoption of all of the statutorily-required programs, as well as a schedule and an enforceable commitment for an implementation date, are necessary for redesignation to attainment from nonattainment for ozone or CO if the redesignation request is submitted after the statutory due date for the program. The few exceptions to this requirement are basic I/M, annual updates of VMT forecasts, and estimates of actual VMT, NOx RACT, and SBP.

If you have any questions, please contact Sharon Reinders at (919) 541-5284, or Annie Nikbakht at (919) 541-5246.

Attachment A

Criteria For Redesignation Under Section 107(d)

Section 107(d)(3)(E) of the Act states five criteria that must be met before the Administrator may redesignate an area to attainment. The criteria are:

1. The EPA has determined that the NAAQS have been attained.

2. The applicable implementation plan has been fully approved by EPA under section 110(k).

3. The EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

4. The State has met all applicable requirements for the area under section 110 and part D.

5. The EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A.

Attachment B

The EPA policies for implementing section 107 of the Act for redesignations are contained in the following memorandums.

1. "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

2. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992.

3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

4. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992.

In the event that EPA does not approve the redesignation, the applicable I/M program requirements and guidance can be found in 57 FR 52950, November 5, 1992 and in 40 CFR part 51. The applicable VMT forecast guidance is described in the document entitled, "Section 187 VMT Forecasting and Tracking Guidance," January 1992.