

today's rule, EPA continues to interpret section 182 as generally requiring I/M programs to have fully adopted rules. However, EPA here is reinterpreting the relevant statutory sections to permit an exception to this general requirement for areas otherwise qualifying for redesignation to attainment. Based on this interpretation, the SIPs for states that otherwise qualify for redesignation may receive full approval, not conditional approval under section 110(K)(4), if they contain legislative authority for, and a commitment to adopt, an I/M program in their contingency plan. Thus, the court's holding in *NRDC v. EPA* is not implicated here.

Without these amendments, states that are being redesignated to attainment would have to adopt a full I/M program for the purpose of obtaining full approval of their SIPs as meeting all applicable SIP requirements, which is a prerequisite for approval of a redesignation request. Once redesignated, these areas could discontinue implementation of this program (assuming it was not needed for maintenance of the ozone or CO standard) as long as it was converted to a contingency measure meeting all the requirements of EPA redesignation policy. Section 175A(d) provides that each plan revision contain contingency provisions necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area to attainment. These provisions must include a requirement that the state will implement all measures which were contained in the SIP for the area before redesignation. There are four possible scenarios under which an area can submit a redesignation request: (1) Areas without operating I/M programs; (2) areas with operating I/M programs that continue operation without upgrades; (3) areas with operating I/M programs; and (4) areas with operating I/M programs that are discontinued. A detailed explanation of each scenario is in the proposal.

NRDC commented that the CAA does not authorize conversion of I/M programs to contingency measures and that section 175A imposes a mandatory duty on an area that is redesignated to continue the emission control programs the area adopted prior to redesignation. NRDC further argued that failure to adopt regulations will result in more air pollution.

EPA disagrees. Section 175A requires that the state "promptly" correct any violation of the standard, but does not mandate that the contingency measures be fully adopted programs. In contrast,

section 172(c)(9) requires that contingency measures for nonattainment plans "take effect in any such case without further action by the State or the Administrator." Since 175A contains no such requirement that the contingency measures take effect without further action, it is clear that Congress did not intend to require contingency measures under section 175A to contain fully adopted programs. If an area did not require adoption or implementation of an I/M program in order to otherwise qualify to be redesignated to attainment, EPA believes it would be a wasteful exercise and impose needless costs to force states to go through full adoption of regulations only to have these regulations used as a contingency measure once the redesignation is approved.

In today's action, it should be understood that, pursuant to section 175A(c), while EPA considers the redesignation request, the state shall be required to continue to meet all the requirements of this subpart. This includes the submission of another SIP revision meeting the existing requirements for fully adopted rules and the specific implementation deadline applicable to the area as required under 40 CFR 51.372 of the I/M rule. If the state does not comply with these requirements it shall be subject to sanctions pursuant to section 179. Because the possibility for sanctions exists, states which do not have a solid basis for approval of the redesignation request and maintenance plan shall proceed to fully prepare and plan to implement a basic I/M program that meets all the requirements of subpart S.

The SIP revision must demonstrate that the performance standard in either 40 CFR 53.351 or 40 CFR 51.352 will be met using an evaluation date (rounded to the nearest January for carbon monoxide and July for hydrocarbons) seven years after the trigger date. Emission standards for vehicles subject to an IM240 test may be phased in during the program but full standards must be in effect for at least one complete test cycle before the end of the five year period. All other requirements shall take effect within 24 months of the trigger date. Furthermore, a state may not discontinue implementation of an I/M program until the redesignation request and maintenance plan (that does not rely on reductions from I/M) are finally approved. If the redesignation request is approved, any sanctions already imposed, or any sanctions clock already triggered, would be terminated.

### Paperwork Reduction Act

Today's rule places no information collection or record-keeping burden on respondents. Therefore, an information collection request has not been prepared and submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act U.S.C. 3501 *et seq.*

### Judicial Review

Under section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia within sixty days of publication of this action in the **Federal Register**.

### Administrative Designation and Regulatory Analysis

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a significant regulatory action under the terms of Executive Order 12866 and is, therefore exempt from OMB review. This rule would only relieve states of some regulatory requirements, not add costs or otherwise adversely affect the economy.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government