

another Federal Agency's internal reorganization and address change. There is no known impact on the public.

b. Review Under the Regulatory Flexibility Act

These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the economic impact of these changes to permit regulations will have no impact on the public, and accordingly, certifies that this proposal will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for the Regulations in 33 CFR parts 320-330. We have concluded based on the minor nature of these editorial changes to the permit regulations that these amendments will not have significant impact to the human environment, and preparation of an environmental impact statement is not required.

d. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

e. Submission to Congress and the GAO

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Corps has determined that submittal of this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office is not required. This rule reflects a change in agency organization and its relocation, corrects outdated materials in Department of the Army regulations. This is not a major rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 325

Administrative practice and procedure, Environmental protection,

Intergovernmental relations, Navigation, Water pollution control, Waterways.

For the reasons set out in the preamble, we are amending 33 CFR part 325, as follows:

PART 325—[AMENDED]

1. The authority citation for Part 325 continues to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

§§ 325.2 and 325.3 [Amended]

2. In 33 CFR 325.2(a)(9) (i) and (iii) and 325.3(d)(2)(ii) remove the words "Charting and Geodetic Services N/CG222, National Ocean Service, NOAA, Rockville, Maryland 20852" and add in their place the words "National Ocean Service, Office of Coast Survey, N/CS261, 1315 East West Highway, Silver Spring, Maryland 20910-3282".

Appendix A—Permit Form and Special Conditions [Amended]

3. In Appendix A—Permit Form and Special Conditions, under heading B. Special Conditions, special condition #5, remove the words "The Director, National Ocean Service (N/CG222, Rockville, Maryland 20852)" and add in their place the words "National Ocean Service, Office of Coast Survey, N/CS261, 1315 East West Highway, Silver Spring, Maryland 20910-3282".

Dated: May 1, 1997.

Approved.

For the Commander:

Charles M. Hess,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

[FR Doc. 97-12433 Filed 5-12-97; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MN41-01-7266a; FRL-5820-8]

Designation of Areas for Air Quality Planning Purposes; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is approving the St. Paul Park Area redesignation request submitted by the State of Minnesota on October 31, 1995. Minnesota requested that portions of Dakota and Washington Counties (the areas surrounding the Ashland Petroleum Company) be redesignated to

attainment for the National Ambient Air Quality Standard (NAAQS) for sulfur dioxide (SO₂). All future references to the areas surrounding the Ashland Petroleum Company will be made using St. Paul Park. Subsequent to this approval, Dakota and Washington Counties are each designated attainment in their entirety.

DATES: This "Direct final" is effective July 14, 1997 unless EPA receives adverse or critical comments by June 13, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the revision request are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Todd Nettesheim at (312) 353-9153 before visiting the Region 5 Office.)

Written comments should be addressed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Todd Nettesheim, Air Programs Branch, Regulation Development Section (AR-18J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, (312) 353-9153.

SUPPLEMENTARY INFORMATION:

I. Background

The NAAQS for SO₂ consist of two standards: a primary standard for the protection of public health and a secondary standard for the protection of public welfare. The primary SO₂ standard consists of a 24-hour maximum of 0.14 particles per million (ppm) and an annual arithmetic mean ambient SO₂ concentration of 0.030 ppm. The secondary standard consists of a 3-hour maximum ambient SO₂ concentration of 0.5 ppm. (40 CFR 50.2-50.5)

Monitored violations of the primary SO₂ NAAQS from 1975 through 1977 led the Minnesota Pollution Control Agency (MPCA) to recommend EPA to designate Air Quality Control Region (AQCR) 131 as nonattainment for the SO₂ NAAQS. The AQCR 131 includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties in the State of Minnesota. On March 3, 1978, EPA published the designation of AQCR 131 as a primary nonattainment area for SO₂ based on these initial exceedences (43 FR 8962).

During 1980, the MPCA submitted an SO₂ State Implementation Plan (SIP) revision which the EPA approved in 1981. In 1983, the MPCA requested redesignation to attainment for all of AQCR 131 except for an area surrounding the emission sources in the Pine Bend Area of Dakota County. The redesignation request was made this way because all of AQCR 131, except the Pine Bend Area, demonstrated monitored attainment of the SO₂ NAAQS for 2 years following EPA approval of the AQCR 131 SO₂ SIP. EPA delayed action while they reassessed their nonattainment policy.

During 1986 and 1987, the MPCA submitted SO₂ SIP revisions for the St. Paul Park Area, the Pine Bend Area, and the rest of AQCR 131. From 1988 through early 1990, the MPCA and EPA focused on resolving issues in the Pine Bend Area. EPA suspended actions on SO₂ SIPs during 1990 pending the passage of the Clean Air Act (Act) Amendments of 1990.

On December 22, 1992, Minnesota submitted an SO₂ SIP revision for the St. Paul Park Area. EPA required changes to the SIP before it could be approved. Minnesota submitted the required changes on September 30, 1994. EPA approved the St. Paul Park SO₂ SIP on January 18, 1995 (60 FR 3544).

II. Evaluation Criteria

Title I, section 107(d)(3)(D) of the Act, as amended in 1990, authorizes the Governor of a State to request the redesignation of any area within the State from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act. An area can be redesignated to attainment if all of the following conditions are met:

- (1) EPA has determined that the NAAQS have been attained;
- (2) The applicable implementation plan has been fully approved by EPA under section 110(k) of the Act;
- (3) EPA has determined that the improvement in air quality is due to permanent and enforceable reductions;
- (4) The State has met all applicable requirements for the area under section 110 and Part D of the Act; and
- (5) EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A of the Act.

III. Summary of State Submittal

The following paragraphs discuss how the State's redesignation request for

the St. Paul Park Area address the Act's requirements.

A. Demonstrated Attainment of the NAAQS

As explained in the April 21, 1983, memorandum "Section 107 Designation Policy Summary" from the Director of the Office of Air Quality Planning and Standards (OAQPS), eight consecutive quarters of data showing SO₂ NAAQS attainment are required for redesignation. A violation of the SO₂ NAAQS occurs when more than one exceedence of the SO₂ NAAQS is recorded in any year (40 CFR 50.4). Minnesota's October 31, 1995, submittal includes ambient monitoring data showing that the St. Paul Park Area has met the SO₂ NAAQS from 1989 to 1994, which is more than enough time of clean air to promulgate a redesignation to attainment. Additionally, preliminary monitoring data for the period of 1995 to 1996 indicate that the SO₂ NAAQS are still being met. The highest monitored SO₂ values during this time have been well below the SO₂ standards. The initial exceedences of the SO₂ NAAQS in the St. Paul Park Area occurred between 1976 and 1978; while, the only other possible exceedences in this area occurred in 1987 and 1988. In both 1987 and 1988, the 75 percent sampling criteria for SO₂ was not met at the monitor located by the City Garage near Seventh Avenue and Fifth Street. A monitor in the St. Paul Park Area was then established across the street at 649 Fifth Street on February 28, 1989. There have been no exceedences of the SO₂ NAAQS at this monitor, and no additional SO₂ exceedences have been recorded in the Aerometric Information and Retrieval System database through June 1996.

Dispersion modeling is also required to demonstrate attainment of the SO₂ NAAQS. A September 4, 1992, EPA policy memorandum titled "Procedures for Processing Requests to Redesignate Areas to Attainment" (the Calcagni memo) explains that additional dispersion modeling is not required in support of an SO₂ redesignation request if an adequate modeled attainment demonstration was submitted and approved as part of the fully implemented SIP, and no indication of an existing air quality deficiency exists. This required modeling data was submitted to EPA with SIP revisions on December 22, 1992. The modeled demonstration evaluates the SO₂ source's impact and provides the areas

of expected high concentration of SO₂ based on current meteorological conditions at the Ashland Petroleum Company. The modeling data demonstrate modeled attainment of the SO₂ NAAQS in the St. Paul Park Area with all control measures in operation.

B. Fully Approved SIP

The SIP for the area must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply to the area. EPA's guidance for implementing section 110 of the Act is discussed in the General Preamble to Title I (57 FR 13498, April 16, 1992). The SO₂ SIP for the St. Paul Park Area met the requirements of section 110 of the Act and was approved by EPA on January 18, 1995 (60 FR 3544).

C. Permanent and Enforceable Reductions in Emissions

The St. Paul Park Area attainment of the SO₂ standards can be attributed to the permanent and enforceable control measures implemented at the Ashland Petroleum Company. SO₂ emission limits and operating restrictions are imposed on the Ashland Petroleum Company by means of a non-expiring Administrative Order. This Order was submitted to EPA in the 1992 SIP submittal and was approved on January 18, 1995, which rendered the Order enforceable. The regulations are permanent and any future revisions to the rules must be submitted to and approved by EPA.

The Calcagni memo says that States should estimate the percent reductions from the year that determined the design value in SO₂ emissions. The original SO₂ violations that resulted in AQCR 131 (which includes the St. Paul Park Area) being designated nonattainment occurred between 1975 and 1977. However, it would be unrealistic to go back approximately 20 years to compare SO₂ reductions. In addition, reliable data from the mid-1970's is not readily available. Therefore, improvements in air quality were measured based on reductions in SO₂ emissions since the June 30, 1987, SIP submittal for the St. Paul Park Area.

The June 30, 1987, SIP submittal included a permit for the Ashland Petroleum Company, while the 1992 SIP submittal included the Administrative Order. The following table illustrates the reductions made as a result of the 1992 SIP submittal.

Type of equipment	Permit limit	Administrative order limit	Percent SO2 reduction
SRU/SCOT	500 lb/hr	15 lb/hr	97%.
FCC	800 lb/hr	793.65 lb/hr	Negligible.
All oil-fired sources	1.6 lb/MMBtu	0.9 lb/MMBtu	44%.
All gas-fired sources	0.0234 lb/MMBtu	Same	None.

SO2 emissions from the Ashland Petroleum Company were modeled with all these post-Administrative Order control measures in place. The resulting data showed modeled attainment of the SO2 NAAQS. The Administrative Order has been approved at the State and Federal level, and is non-expiring. Consequently, the reductions in emissions in the St. Paul Park Area are permanent and enforceable.

D. Fully Approved Maintenance Plan

Under section 107(d)(3)(E) and section 175A of the Act, the State must submit a SIP revision to provide for a maintenance plan in order for an area to be redesignated to attainment. Section 175A of the Act sets forth the maintenance plan requirements for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the area is redesignated as well as contain such additional measures, if any, as may be necessary to ensure maintenance. Eight years after the redesignation date, the State is required to revise its SIP to provide for maintenance of the standard in the affected area for an additional ten-year period (section 175A(b) of the Act).

In addition, the maintenance plan should contain such contingency measures as the Administrator deems necessary to ensure prompt correction of any violation of the NAAQS (section 175A(d) of the Act). The Act provides that, at a minimum, the contingency measures must include a requirement that the State will implement all measures contained in the nonattainment SIP prior to redesignation. Failure to maintain the NAAQS and triggering of the contingency plan will not necessitate a revision of the SIP unless required by the Administrator, as stated in section 175A(d) of the Act.

EPA redesignation policy stated in the September 4, 1992, memorandum lists the five core provisions that a plan must contain in order to ensure maintenance of the standards: (1) an attainment inventory, (2) a maintenance demonstration, (3) a monitoring network, (4) verification of continued attainment, and (5) a contingency plan.

The following paragraphs will discuss Minnesota's submittal with regard to EPA's requirements to ensure maintenance of the standards.

1. Attainment Inventory

The State is required to develop an attainment inventory to identify the level of emissions in the area at the time of redesignation. However, the attainment inventory associated with this redesignation will be the actual inventory at the time the St. Paul Park Area attained the standard because Minnesota has made an adequate demonstration that air quality has improved as a result of their December 22, 1992, SIP submittal. Minnesota's air dispersion modeling included in the 1992 SIP submittal contains the emission inventory of SO2 sources in the St. Paul Park Area. The modeling methodology and predicted SO2 concentrations based on the SO2 emissions inventory in the 1992 SIP submittal are summarized in the following sections.

The modeling results provided below demonstrate that Minnesota's attainment inventory included in their 1992 SIP submittal is sufficient to meet the SO2 standards in the future.

2. Maintenance Demonstration

The State is required to demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.

In the 1992 St. Paul Park SIP submittal, a modeled attainment demonstration was included to show that the reductions in emissions as a result of this SIP would be sufficient to attain the applicable NAAQS. The St. Paul Park Area's related maintenance demonstration is based on the same modeling that was included in that 1992 SIP submittal. A summary of the air quality model used by Minnesota in the 1992 SIP submittal and the resulting ambient SO2 concentrations expected from the application of various control strategies are contained below. Details of the modeled demonstration are

contained in the proposed action on the St. Paul Park SIP (59 FR 45653).

Dispersion modeling for the 3-hour, 24-hour, and annual standards was conducted according to modeling guidance in effect at the time. The Industrial Source Complex Short-Term (ISCST) model was run using the regulatory option switch. SO2 impacts were calculated over a 4 km by 4 km area with 100 meter resolution (i.e., 1,681 receptors). Other (non-St. Paul Park) larger Twin Cities SO2 sources were modeled explicitly while other (non-St. Paul Park) smaller Twin Cities SO2 sources including area sources were accounted for using a background SO2 concentration of 8 µ/m3 (0.003 ppm). This simple terrain SO2 modeling indicates maximum second-highest 3-hour and 24-hour SO2 concentrations of 1186.26 and 332.16 µ/m3 (0.45 and 0.127 ppm), and maximum annual SO2 concentrations of 79.6 µ/m3 (0.030 ppm). All three of these modeled maximum SO2 concentrations fall at or below the SO2 NAAQS.

Complex terrain dispersion modeling for 24-hour averaging time was performed using the COMPLEX1 model in VALLEY mode modified for urban conditions (i.e., stability E and urban wind profile coefficients). This complex terrain SO2 modeling indicates maximum second-highest 24-hour SO2 concentrations of 195 µg/m3 (0.074 ppm). Because the COMPLEX1/VALLEY model 24-hour concentration was less than ISCST model result, the simple terrain (ISCST model) results were used for establishing the SO2 emission limits in the Ashland Petroleum Company Administrative Order.

In either the modeled approach or the attainment inventory approach, the maintenance demonstration requires the State to project emissions for the 10-year period following redesignation. This requirement is used for the purpose of showing that emissions will not increase over the attainment inventory. The St. Paul Park Area's emissions inventory is contained in the air dispersion modeling for Minnesota's 1992 SIP revision submittal. According to this inventory, there is approximately a 10 percent growth margin for the 3-hour and 24-hour standards and approximately a 1 percent growth margin for the annual standard.

3. Monitoring Network

In accordance with 40 CFR Part 58, after an area has been redesignated to attainment, the State must continue to operate an appropriate air quality network to verify the attainment status of the area. The current SO₂ monitoring network in the St. Paul Park Area will remain operating in accordance with this regulation.

4. Verification of Continued Attainment

Each State should ensure that it has the legal authority to implement and enforce all measures necessary to attain and maintain the NAAQS. Descriptions of the MPCA's authority to enforce the orders were included in previous SIP submittal as letters from the Minnesota Attorney General's office.

Regardless of whether the maintenance demonstration is based on a showing that future emission inventories will not exceed the attainment inventory or on modeling, the State submittal should indicate how the State will track the progress of the maintenance plan. This is necessary because emission projections made for the maintenance demonstration depend on assumptions of point and area source growth.

Minnesota plans to use their permitting program to track the progress of the maintenance plan. The permitting program will be able to monitor the growth in the St. Paul Park Area by keeping track of new permit applications, keeping track of requests for permit amendments, and observing the annual emission inventories that all facilities with permits must submit to the MPCA. In order to thoroughly monitor the growth in the area with their permitting program, Minnesota has lowered their potential to emit threshold for SO₂ sources needing a permit to 50 tons per year (the Federal limit is 100 tons per year).

The frequency of these monitoring activities will depend on the timing of requests for new permits and permit amendments. Facilities operating under permits must submit their emission inventories in the spring of every year.

Furthermore, future emissions are not predicted to increase for several qualitative reasons. First, the Clean Fuel Fleets Project initiated by Minnesota's refineries is producing diesel fuel with 0.05 percent sulfur instead of the standard 0.5 percent sulfur. This will decrease SO₂ emissions for companies using this cleaner fuel. Second, Minnesota has a "registration permit" rule that encourages facilities to reduce emissions, thereby avoiding the need for a Title V permit. Third, Minnesota

intends to require dispersion modeling of all major (Part 70) SO₂ sources with a potential to emit at least 100 tons per year. The final reason relates to the possible overestimate of predicted SO₂ concentrations due to the use of conservative stack base elevations for many of the smaller SO₂ emissions sources (i.e., the Mississippi River elevation which is the lowest point in the Twin Cities area).

The incentives to reduce SO₂ emissions, Minnesota's permitting program, requirements for dispersion modeling, and the overestimates of predicted SO₂ concentrations jointly illustrate that SO₂ emissions are not likely to increase in the St. Paul Park Area. These factors will also provide for continued attainment of the SO₂ NAAQS in the St. Paul Park Area.

5. Contingency Plan

Section 175A of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of that area. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9). For the purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered. The plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. As a necessary part of the plan, the State should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented.

The General Preamble to the Implementation of Title I of the Act published in the **Federal Register** on April 16, 1992 (57 FR 13498), states that SO₂ SIPs present "special considerations" when referring to contingency plans. As stated in the Preamble, the modeling of SO₂ sources is considered reliable for predicting the amount of SO₂ emitted from sources in the nonattainment area. There is not such confidence with other pollutants. Also, the Preamble states that control measures for SO₂ emissions are "well understood and far less prone to uncertainty." Therefore, it would be unlikely for an SO₂ area to implement

emission controls but fail to attain the NAAQS. For the reasons stated above, EPA concluded that contingency measures in SO₂ SIPs where a comprehensive program exists in the State "to identify sources of violations of the SO₂ NAAQS and to undertake an aggressive follow-up for compliance and enforcement" need not submit contingency plans with their SO₂ SIPs.

MPCA does have comprehensive enforcement and compliance programs that meet the above stated requirements.

The attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan submitted for the St. Paul Park Area constitute sound maintenance plans and satisfy EPA's requirements.

E. Part D and Other Section 110 Requirements

EPA approved the SO₂ SIP revision for the St. Paul Park Area on January 18, 1995, after having concluded that the plan satisfied the requirements of Part D and section 110 of the Act. Once the SO₂ nonattainment area is redesignated to attainment, the Part D new source review program requirements will not apply. However, the sources in the area will now be required to comply with the prevention of significant deterioration (PSD) program. Minnesota has been delegated the Federal PSD program as published in the Code of Federal Regulations at 40 CFR 52.1234 (1994).

1. Section 176 Conformity Requirements

Section 176 of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that individual Federal actions will conform to the overall air quality planning goals in the applicable State SIP. Section 176 further provides that the State's conformity revisions must be consistent with the Federal conformity regulations promulgated by EPA under the Act. The requirement used by Federal agencies to determine conformity is defined in 40 CFR part 93 subpart B ("general conformity").

EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating redesignation requests under section 107(d) of the Act. The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in

the absence of federally approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment, and must implement conformity under Federal rules if State rules are not yet approved, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluation of a redesignation request. Consequently, the SO₂ redesignation requests for the St. Paul Park Area may be approved notwithstanding the lack of fully approved general conformity rules. Refer to EPA's action in the Tampa, Florida, ozone redesignation finalized on December 7, 1995 (60 FR 627428).

IV. Final Rulemaking Action

EPA is approving the St. Paul Park Area redesignation request from the State of Minnesota submitted on October 31, 1995. Therefore, EPA is redesignating the St. Paul Park Area in Washington and Dakota Counties to attainment. Consequently, Washington and Dakota Counties in their entirety will be designated as attainment for the SO₂ NAAQS. EPA has completed an analysis of this SIP revision request based on a review of the materials presented, and has determined that they met the requirements of the Act.

EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial issue and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the redesignation request should adverse or critical comments be filed. This action will be effective July 14, 1997 unless, by June 12, 1997, adverse or critical comments are received.

If EPA receives such comments, the actions affecting the St. Paul Park Area will be withdrawn before the effective date by publishing a subsequent document. All public comments received will be addressed in a subsequent final rule based on applicable parts of this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 14, 1997.

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

factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and Subchapter I, Part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

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

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association

with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

Dated: April 23, 1997.

Valdas V. Adamkus,
Regional Administrator.

For the reasons stated in the preamble, part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

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

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

2. Section 81.324 is amended by revising the entry for AQCR 131 in the

table entitled "Minnesota-SO₂" to read as follows:

§ 81.324 Minnesota.

* * * * *

MINNESOTA-SO₂

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 131:				
Anoka County				X
Carver County				X
Dakota County				X
Hennepin County				X
Ramsey County				X
Scott County				X
Washington County				X
* * * * *				

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 [FR Doc. 97-11994 Filed 5-12-97; 8:45 am]
 BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 76

[CS Docket No. 96-46; FCC 97-130]

Open Video Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Fourth Report and Order* adopts and modifies rules and policies concerning open video systems. The *Fourth Report and Order* amends our regulations to reflect the provisions of the Telecommunications Act of 1996 (the "1996 Act") which pertain to the filing requirements for certification applications, comments and oppositions, Notices of Intent and complaints concerning channel carriage. This item further fulfills Congress' mandate in adopting the 1996 Act and will provide guidance to open video system certification applicants, open video system operators, video programming providers and consumers concerning open video systems.

DATES: Effective upon approval of the OMB, but no sooner than June 12, 1997. The Commission will publish a document at a later date notifying the public as to the effective date. Written comments by the public on the modified information collections are due on or before June 12, 1997. Written comments must be submitted by OMB on the modified information collections on or before July 14, 1997.

ADDRESSES: A copy of any comments on the modified information collections

contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, DC 20503 or via the Internet to fain-t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Carolyn Fleming, Cable Services Bureau, (202) 418-7200. For additional information concerning the information collections contained herein contact Dorothy Conway at 202-418-0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Fourth Report and Order* in CS Docket No. 96-46, FCC 97-130, adopted April 10, 1997 and released April 15, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 1919 M Street, NW, Washington, D.C. 20554.

The *Fourth Report and Order* contains modified information collections. It has been submitted to OMB for review, as required by the Paperwork Reduction Act of 1995. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in the *Fourth Report and Order*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c)

ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060-0700.

Title: Open Video Systems Provisions.

Form Number: FCC Form 1275.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses and other for-profit entities; state, local and tribal governments.

Number of Respondents: 748. (10 OVS operators, 250 video programming providers that may request additional Notice of Intent information, file rate complaints, or dispute cases, 60 broadcast stations that may elect type of carriage and make network non-duplication notifications, 100 programming providers that may make notice of invalid rights claimed, 300 must-carry list requesters, 28 oppositions to OVS operator certifications.)

Number of Responses: 3,754. (14 certification filings/refilings, 250 requests for additional Notice of Intent information, 250 responses to requests for additional Notice of Intent information, 10 Notices of Intent, 50 rate complaints, 50 rate justifications, 60 carriage elections, 10 must-carry recordkeepers, 300 must-carry list requests, 300 provisions of must-carry lists, 1,200 notifications of network non-duplication rights to OVS operators, 100 programming provider notifications of invalid rights claimed, 1,100 OVS operator notifications to programming providers, 28 oppositions to certifications, 20 dispute case complainants, and 20 dispute case defendants.)