test methods, new source performance standards, and national emission standards for hazardous air pollutants. Also, the Governor requested that all existing State regulations approved in the SIP be replaced with the October 1, 1979 codification of the ARM as in effect on March 30, 1994. EPA is replacing all of the previously approved State regulations, except ARM 16.8.1302 and 16.8.1307, with those regulations listed in paragraph (c)(39)(i)(A) of this section. ARM 16.8.1302 and 16.8.1307, as in effect on April 16, 1982 and as approved by EPA at 40 CFR 52.1370(c)(11), will remain part of the SIP.

(i) Incorporation by reference.

(A) Administrative Rules of Montana (ARM) Sections 16.8.201–202, 16.8.301–304, and 16.8.401–404, effective 12/31/72; Section 16.8.701, effective 12/10/93; Section 16.8.704, effective 2/14/87; Section 16.8.705, effective 6/18/82; Section 16.8.707, effective 9/13/85; Sections 16.8.708–709, effective 12/10/93; Sections 16.8.945–963, effective 12/10/93; Sections 16.8.1001–1003, effective 9/13/85; Section 16.8.1004, effective 12/25/92; Sections 16.8.1005–1006, effective 9/13/85; Section 16.8.1007, effective 4/29/88; Section 16.8.1008, effective 9/13/85; Section 16.8.1101, effective 6/16/89; Section 16.8.1102, effective 2/14/87; Section 16.8.1103, effective 6/16/89; Section 16.8.1104, effective 3/16/79; Section 16.8.1105, effective 12/27/91; Sections 16.8.1107 and 16.8.1109, effective 12/10/93; Sections 16.8.1110–1112. effective 3/16/79; Section 16.8.1113, effective 2/14/87; Section 16.8.1114, effective 12/10/93; Sections 16.8.1115, 16.8.1117, and 16.8.1118, effective 3/16/79; Sections 16.8.1119–1120, effective 12/10/93; Sections 16.8.1204–1206, effective 6/13/86; Sections 16.8.1301 and 16.8.1303, effective 4/16/82; Section 16.8.1304, effective 9/11/92; Section 16.8.1305, effective 4/16/82; Section 16.8.1306, effective 4/1/82; Section 16.8.1308, effective 10/16/92; Section 16.8.1401, effective 10/29/93; Section 16.8.1402, effective 3/11/88; Section 16.8.1403, effective 9/5/75; Section 16.8.1404, effective 6/13/86; Section 16.8.1406, effective 12/29/78; Section 16.8.1407, effective 10/29/93; Section 16.8.1411, effective 12/31/72; Section 16.8.1412, effective 3/13/81; Section 16.8.1413, effective 12/31/72; Section 16.8.1419, effective 12/31/72; Sections 16.8.1423, 16.8.1424, and 16.8.1425 (except 16.8.1425(1)(c) and (2)(d)), effective 10/29/93; Section 16.8.1426, effective 12/31/72; Sections 16.8.1428–1430, effective 10/29/93; Section 16.8.1501, effective 2/10/89; Section 16.8.1502, effective 2/26/82; Section 16.8.1503, effective 2/10/89; Sections 16.8.1504–1505, effective 2/26/82; Sections 16.8.1701–1705, effective 12/10/93; and Sections 16.8.1801–1806, effective 12/10/93.

3. Section 52.1384 is amended by removing and reserving paragraph (a) and adding a new paragraph (c) to read as follows:

§ 52.1384 Emission control regulations.

* * * * *

(c) The provisions in ARM 16.8.1425(1)(c) and (2)(d) of the State's rule regulating hydrocarbon emissions from petroleum products, which were submitted by the Governor of Montana on May 17, 1994 and which allow discretion by the State to allow different equipment than that required by this rule, are disapproved. Such discretion cannot be allowed without requiring EPA review and approval of the alternative equipment to ensure that it is equivalent in efficiency to that equipment required in the approved SIP.

§ 52.1386 [Removed and reserved]

4. Section 52.1386 is removed and reserved.

[FR Doc. 95–17212 Filed 7–17–95; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 52

[UT24–1–7036a; FRL–5260–9]

Withdrawal of the Determination of Attainment of Ozone Standard for the Salt Lake and Davis Counties Ozone Nonattainment Area; Utah; and the Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On June 8, 1995, EPA published a direct final rule (60 FR 30189) determining the applicability of certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA) for the Salt Lake and Davis Counties ozone nonattainment area. This action was published without prior proposal. Because EPA has received adverse comments on this action, EPA is withdrawing the June 8, 1995, direct final rulemaking action pertaining to the Salt Lake and Davis Counties area.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 Phone: (303) 293–1814.

SUPPLEMENTARY INFORMATION: On June 8, 1995, EPA published a direct final rule determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA), as amended 1990, for the Salt Lake and Davis Counties, Utah, ozone nonattainment area were no longer applicable. This determination was based on the area having attained the National Ambient Air Quality Standard (NAAQS) for ozone based on three years of ambient air quality monitoring data (60 FR 30189). The direct final rule was published, without prior proposal, in the **Federal Register** with a provision for a 30 day comment period. In addition, EPA published a proposed rule, also on June 8, 1995, which announced that this direct final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of the date of publication of the direct final rule in the **Federal Register** (60 FR 30217). EPA received adverse comments within the prescribed comment period. With this notice, EPA is withdrawing the June 8, 1995, direct final rulemaking action (60 FR 30189) pertaining to the Salt Lake and Davis Counties' ozone nonattainment area. All public comments that were received will be addressed in a final rulemaking action based on the proposed rule (60 FR 30217).

List of Subjects in 40 CFR Part 52

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

Dated: July 13, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–17756 Filed 7–17–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[UT24–1–7128; FRL–5261–1]

Determination of Attainment of Ozone Standard for Salt Lake and Davis Counties, Utah, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 8, 1995, the EPA published a direct final and proposed rulemakings determining that the Salt Lake and Davis Counties, Utah, moderate ozone nonattainment area had attained the ozone National Ambient Air Quality Standard (NAAQS). Based on this determination, the EPA also determined that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of part D of Title 1 of the Clean Air Act (CAA), as amended in 1990, are not applicable to the area so long as the area continues to attain the ozone NAAQS. The 30-day comment period concluded on July 10, 1995. During this comment period, the EPA received two comment letters in response to the June 8, 1995, rulemaking. This final rule summarizes all comments and EPA's responses, and finalizes the EPA's determination that the area has attained the ozone standard and that certain reasonable further progress and attainment demonstration requirements as well as other related requirements of part D of the CAA are not applicable to these areas as long as the area continues to attain the ozone NAAQS.

EFFECTIVE DATE: This action is effective July 18, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for inspection at the following address: United States Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, Telephone Number (303) 293–1814.

SUPPLEMENTARY INFORMATION:

I. Background Information

On June 8, 1995, the EPA published a direct final rulemaking (60 FR 30189) determining that the Salt Lake and Davis Counties moderate ozone nonattainment area has attained the NAAQS for ozone. In that rulemaking, the EPA determined that, as a consequence of that determination, the requirements of section 182(b)(1) concerning the submission of a 15 percent reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard. In addition, the EPA determined that the sanctions clock started on January 19, 1994, for this area for failure to submit the section 182(b)(1) reasonable further progress requirements and section 172(c)(9) contingency measures would be stopped since the deficiencies on which it was based no longer exist.

At the same time that the EPA published the direct final rule, a separate notice of proposed rulemaking was published in the **Federal Register** (60 FR 30217). This proposed rulemaking specified that EPA would withdraw the direct final rule if adverse or critical comments were filed on the rulemaking. The EPA received two letters containing adverse comments regarding the direct final rule, within 30 days of publication of the proposed rule, and is withdrawing the direct final rule in a separate notice published in this **Federal Register**.

The specific rationale and air quality analysis the EPA used to determine that the Salt Lake and Davis Counties ozone nonattainment area had attained the ozone NAAQS and is not required to submit State Implementation Plan (SIP) revisions for reasonable further progress, attainment demonstration and related requirements are explained in the direct final rule and will not be restated here.

This final rule contained in this **Federal Register** addresses the comments which were received during the public comment period and announces EPA's final action regarding these determinations.

II. Public Comments and EPA Responses

Two letters were received in response to the June 8, 1995, proposal and direct final **Federal Register** notices. One was a joint comment from the Utah Chapter of the Sierra Club and the Wasatch Clean Air Coalition (Wasatch Coalition) and the other was from the Citizens Commission for Clean Air in the Lake Michigan Basin (Citizens Commission). The following discussion summarizes and responds to the comments received.

Comment 1.: According to the Sierra Club and Wasatch Coalition, the procedure used by EPA unlawfully circumvents the formal redesignation process required by section 107(d) of the CAA. The commentors stated that Utah has not met the technical and legal requirements for redesignation of the Salt Lake and Davis Counties nonattainment area to attainment for ozone and that, as a result, EPA's finding that certain CAA requirements do not apply is illegal and inappropriate. According to the commentors, EPA may not redesignate an area to attainment unless the criteria of section 107(d)(3) of the CAA have been satisfied and EPA may not allow nonattainment areas to avoid requirements by meeting only one of the five criteria of section 107(d)(3) (the requirement that a nonattainment area has attained the standard). The commentors assert that Part D expressly defines attainment or nonattainment exclusively by reference to the section 107(d) redesignation process and that the statutory provisions of Part D at issue are tied expressly to the formal designation process of section 107(d). The commentors conclude that the ozone nonattainment plan provisions of Part D apply expressly to areas classified under section 181, which include all areas designated nonattainment under section 107(d), and that all of the requirements of section 182(b) apply to all areas designated nonattainment and classified as moderate under section 181. The commentors also contend that an area may be excused from sanctions only on the basis of redesignation to attainment under section 107(d).

Response to Comment 1: In response, EPA first notes that with this action, EPA is neither redesignating the Salt Lake and Davis Counties nonattainment area, nor avoiding the redesignation requirements of section 107(d). All of those requirements remain in effect and must be satisfied for EPA to approve the pending redesignation request for the Salt Lake and Davis Counties area. What EPA is doing is making a determination that since the area is attaining the standard, which is a factual determination, certain provisions of the CAA, whose express purpose is to achieve attainment of the standard, do not require SIP revisions to be made by the State for so long as the area continues to attain the standard. In sum, this action is not and does not purport to be a redesignation to attainment pursuant to section 107(d). Consequently, the criteria of section 107(d)(3) do not apply to this action.

EPA disagrees with the commentors' analysis of the language and structure of the CAA. EPA's statutory analysis was

explained in detail in the June 8, 1995, direct final rule and in the May 10, 1995, memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, referred to in the June 8, 1995, **Federal Register** notice. EPA will not recount that analysis here, but will respond to the arguments presented by the commentors regarding the statutory language and structure of Part D of Title I of the CAA as it relates to EPA's action.

In sum, EPA's legal rationale is based upon the statutory definition of ''reasonable further progress'' in section 171(1), the concept that additional reductions are not needed to attain the standard in an area already attaining the standard, and the language of section 172(c)(9) requiring contingency measures ''if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part.'' As the commentors acknowledge, section 171(1) defines ''reasonable further progress'' as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.''

The commentors, however, assert that EPA is ignoring the definition of ''nonattainment area'' in section 171(2). The commentors then proceed to argue that as Part D ozone requirements are linked with the classification under section 181 of areas designated nonattainment for ozone under section 107(d), EPA cannot excuse ozone nonattainment areas from full compliance with section 182 unless all requirements of section 107(d)(3) are met.

In response, EPA first notes that the commentors appear to equate the designation of an area as attainment or nonattainment with the factual issue of whether an area, regardless of its designation, is attaining the standard. These are two distinct issues, however. Title I of the CAA, including Part D, contains provisions that distinguish between the concept of whether an area is attaining a standard and an area's designation as attainment or nonattainment.

Indeed, section 107(d)(3) itself clearly demonstrates the distinction as only one of the five criteria for redesignation of a nonattainment area to attainment is the determination that the area ''has attained the national ambient air quality standard.'' (Section 107(d)(3)((E)(i).) Plainly, the CAA clearly contemplates that there will be areas designated nonattainment that are attaining the standard as there could be a nonattainment area that meets the air quality criterion for redesignation to attainment without satisfying the other criteria. Such an area would need to remain designated nonattainment even though it was attaining the standard.

A provision of Part D that demonstrates the distinction between attaining the standard and the designation of an area as attainment or nonattainment is section 182(f), which authorizes EPA to waive NOx reduction requirements that apply to ozone nonattainment areas by virtue of their designation and classification if EPA determines that the NOx reductions would ''not contribute to attainment of the'' standard. EPA has interpreted and applied this provision on numerous occasions to waive NOx emission reduction requirements for areas that have attained the standard since such reductions in areas that have already attained the standard would not contribute to attainment. *See, e.g.*, 60 FR 3760 (January 19, 1995) (final action on NOx waivers for Toledo and Dayton, Ohio). Thus, that provision clearly contemplates that areas designated nonattainment that have attained the standard may have certain specified requirements waived.

In sum, the CAA clearly does not equate the factual issue of whether an area is attaining the standard with the area's designation status as attainment or nonattainment. It expressly contemplates situations in which areas designated nonattainment may be attaining the standard. Thus, the definition of ''nonattainment area'' in section 171(2), which provides that, for purposes of Part D, a nonattainment area means an area that ''is designated 'nonattainment' with respect to [a particular] pollutant within the meaning of section 107(d)'' does not detract from EPA's interpretation of the language of section 171(1) defining ''reasonable further progress'' requirements in terms of reductions for the purpose of ''ensuring attainment.''

EPA agrees with the commentors' basic conception of the Part D ozone nonattainment area requirements, which is that the classification of an area designated nonattainment for ozone determines the set of requirements of subpart 2 to which the area is subject. For example, areas such as the Salt Lake and Davis Counties area that are classified as moderate pursuant to section 181 are subject to the requirements of section 182(b), while areas that are classified as serious are subject to the requirements of section 182(c).

The question at issue in this rulemaking concerns the substance of some of those requirements. As a general matter, section 182(b)(1) and section 172(c)(9) apply to moderate ozone nonattainment areas. However, in this rulemaking EPA is interpreting section 182(b)(1) and 172(c)(9) such that they do not impose SIP submission requirements on an area classified as a moderate ozone nonattainment area that is attaining the ozone standard for so long as the area continues to attain the standard. This is not a waiver of requirements that by their terms clearly apply; it is a determination that certain requirements are written so as to be operative only if the area is not attaining the standard. If, prior to the redesignation of such an area to attainment, the area violates the ozone NAAQS, that determination will no longer apply. That area, by virtue of its continuing designation and classification as a moderate ozone nonattainment area, will once again be faced with an obligation to submit SIP revisions pursuant to sections 172(c)(9) and 182(b)(1).

Moreover, other requirements of part D that are not written in such a way as to require submissions only if an area is not attaining the standard continue to apply solely by virtue of the area's classification and designation as a moderate ozone nonattainment area. For example, the Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) requirements of section 182(a)(2) and 182(b)(2) apply regardless of whether an area is attaining the standard. Similarly, the requirements of part D new source review (e.g., sections 182(a)(2)(C) and (b)(5)) continue to apply to areas designated nonattainment solely by virtue of their continuing nonattainment designation.

In sum, EPA disagrees with the commentors' view that this rulemaking is a de facto redesignation to attainment without complying with all of the redesignation requirements of section 107(d)(3)(E). The Salt Lake and Davis Counties area remains a moderate ozone nonattainment area and remains subject to the requirements of the CAA applicable to such areas pursuant to sections 172(c) and 182(b). These include requirements such as VOC RACT and part D new source review, whose applicability is linked solely to the area's status as a designated ozone nonattainment area that has been classified as moderate. What EPA is determining is that the SIP submission requirements of section 182(b)(1) regarding 15% reasonable further progress and attainment demonstration

plans and of section 172(c)(9) regarding contingency measures to be implemented in the event an area fails to make reasonable further progress or attain the standard by the attainment date can and should be interpreted not to apply for so long as the area continues to attain the standard. Whether the Salt Lake and Davis Counties nonattainment area may be redesignated to attainment pursuant to section 107(d)(3)(E) is a matter still pending before EPA and is not the subject of this rulemaking action.

EPA also disagrees with the commentors' contentions regarding sanctions. The basis for the initiation of a sanctions clock in this instance was a finding that plan revisions required by the CAA were not submitted (*see* section 179(a)). If EPA determines that the requirement that led to that finding no longer applies, then the basis for the initiation of the sanctions clock no longer exists and mandatory sanctions under section 179 should not apply 18 months after the finding as they would if the deficiency (the failure to make a required SIP submission) that led to the finding still existed.

Comment 2: The Sierra Club and Wasatch Coalition commented that EPA's procedure violates an important policy goal of the CAA—the assurance that standards will be maintained in the future. According to the commentors the four criteria, other than having attained the standard, that must be satisfied for an area to be redesignated to attainment are intended to assure continued attainment of the standard. The commentors stated that if EPA exempts Salt Lake and Davis Counties from the RFP and contingency plan requirements there may be little incentive for the State to proceed with redesignation of the area and the additional requirements would not be met. In addition, the commentors contend that the State is having difficulty demonstrating that the NAAQS will be maintained over the next 15 years due to anticipated growth and that some current emission reductions are not due to permanent and enforceable requirements. According to the commentors, EPA's proposed action regarding the section 182(b)(1) and section 172(c)(9) requirements and sanctions would circumvent the preventive approach of the CAA. The commentors assert that the nonconservative approach of having the excused requirements being retriggered in the event of a violation is inappropriate and inconsistent with congressional intent since it does not assure that adequate controls are in place to prevent violations; it relies on correcting inadequate programs only after harm occurs, which will result in residents being required to breathe unhealthy air that should have been prevented.

Response to Comment 2: As discussed above, this proceeding is not a redesignation and EPA is not required to apply the criteria of section 107(d)(3)(E) in determining whether the Salt Lake and Davis Counties nonattainment area has attained the standard for purposes of determining whether the area is presently required to submit SIP revisions pursuant to sections 182(b)(1) and 172(c)(9). That does not mean that EPA is not concerned with the area's ability to continue to maintain the NAAQS in the future.

First, as discussed above, EPA's action applies only to certain requirements. It does not relax any existing SIP control measures, e.g., VOC RACT requirements. Those requirements will continue to apply, as well as federal requirements such as the federal motor vehicle control program, which will produce additional emission reductions in the future due to fleet turnover, and Reid Vapor Pressure (RVP) requirements. These measures have produced permanent and enforceable emission reductions in the period leading to the area's attainment of the standard and will continue to produce such emission reductions.

Second, EPA's action is contingent upon the area continuing to attain the NAAQS. Unless the area is redesignated, it will remain an ozone nonattainment area, subject to the risk that if a violation occurs it will have to adopt and implement a 15% VOC emission reduction plan and a plan that demonstrates attainment pursuant to section 182(b)(1), as well as the section 172(c)(9) contingency measures. Thus, if it turns out that the existing SIP control measures and other requirements are not adequate to prevent a violation, additional control measures will be required.

EPA acknowledges the concern of the commentors that EPA's approach may mean that those control measures would not be adopted and implemented as quickly as they would be if EPA continued to require the section 182(b)(1) and 172(c)(9) SIP submissions at this time. EPA believes, however, that a countervailing policy objective is to reduce the burden on states and sources of adopting and implementing additional control measures that are not necessary to attain the standard. The Salt Lake and Davis Counties nonattainment area has been in attainment of the standard since the 1991–93 period and continues to be in attainment. Indeed, no exceedances of the standard have been monitored since 1991 and only one exceedance was monitored in 1991. (For a violation to occur, the expected exceedances must amount to four over a three-year period at the same monitoring location.) In such a case, where an area has attained the standard, EPA believes it appropriate and justifiable to adopt an approach that alleviates the burdens of adopting and implementing additional control measures that do not appear necessary to achieve the objective of attaining the standard.

As noted previously, the Salt Lake and Davis Counties nonattainment area will be at risk of having to adopt a 15% reasonable further progress plan, attainment demonstration, and section 172(c)(9) contingency measures unless it is redesignated to attainment. In order to be redesignated to attainment, however, the area will have to satisfy all of the criteria of section 107(d)(3)(E), including the requirement that EPA fully approve a maintenance plan satisfying the requirements of section 175A, which requires a plan to maintain the standard for a period of 10 years after an area is redesignated. As the sufficiency of the State's maintenance plan is an issue for the proceeding that evaluates the merits of the State's pending redesignation request, and not this rulemaking, the comments regarding the adequacy of that plan will be considered in the redesignation proceeding.

EPA believes that, contrary to the suggestion of the commentors, that the State will have adequate incentives to continue to seek the redesignation of the Salt Lake and Davis Counties area to attainment. Those incentives include being able to eliminate the risk of being subject to the 15% plan requirement, rather than have to address a requirement to achieve 15% VOC emission reductions in the event of a violation. Furthermore, if the area violates the standard prior to redesignation, it will be subject to the ''bump-up'' provisions of section 181(b)(2), which require the area to be ''bumped up'' to the next higher classification (serious) and subject to additional requirements above and beyond the requirements applicable to moderate ozone nonattainment areas. This provides an additional substantial incentive for the State to satisfy the requirements for redesignation to attainment. In addition, unless an area is redesignated, part D new source review, rather than part C prevention of significant deterioration requirements, must continue to apply.

Comment 3: The Sierra Club and Wasatch Coalition disagree that the

relevant data demonstrate that the Counties have attained the NAAQS for ozone. The commentors argue that the State should have to conclusively demonstrate that the NAAQS for ozone is being met, and, in their view, the State has not done so. The commentors note that EPA has expressed concern over the number and placement of monitoring stations and that studies of the monitoring network conducted in the summers of 1993 and 1994 concluded that additional monitoring stations should be established and that existing stations were not well placed to measure maximum ozone concentrations. The commentors argue that only one year of preliminary data are available from new stations established as a result of these studies and that attainment cannot be demonstrated based on only one year of data from the new sites. The commentors also cite the complexity of meteorological patterns in the affected area, which may result in variable ozone levels at different locations at different times. Because of this meteorological complexity, the commentors argue that it is inappropriate to extrapolate a finding of areawide compliance from a few monitoring sites. According to the commentors, these problems may lead to a false conclusion of attainment throughout the nonattainment area. In the commentors' view, this concern is far more serious because data from monitoring locations is so close to the applicable standard and very small increases at different locations would indicate nonattainment with the standard. The commentors feel it is premature to conclude that the standard has been met.

The Citizens Commission expresses similar concerns regarding the air quality monitoring data upon which EPA based its proposal.

Response to Comment 3: EPA has approved the monitoring network for the Salt Lake and Davis Counties nonattainment area as meeting the requirements of its regulations. EPA has not taken any action to disapprove the network but, as described in detail below, has been working with the State of Utah to improve the quality of the network. Although EPA and the State are undertaking studies that may result in improvements to the network, that does not mean that EPA views the monitoring data showing attainment of the standard as being inadequate or unreliable. EPA continually reviews the monitoring networks to determine how they can be improved. However, the fact that a monitoring network may be able to be improved does not mean that the existing network does not meet EPA's regulations, nor does it mean that the data collected from the existing network should be ignored or discounted. EPA believes that the monitoring data fully support a determination that the Salt Lake and Davis Counties area has attained the standard. That network remains a fully approved network and EPA does not believe that there is a basis for discounting the data showing attainment of the standard since 1990.

EPA further notes that no exceedances have been monitored in the area since 1991, and only one was monitored in 1991. (Contrary to the assertion of the commentors, EPA's methodology of rounding down a monitored reading of up to .124 to .12 is not inconsistent with 40 CFR Part 50, App. H. That is EPA's long-standing approach to determining whether exceedances occur and is fully justified and appropriate.) Also, not only did the existing network fail to record an exceedance in 1994, but none of the additional monitors established as part of the ongoing studies discussed below monitored an exceedance. While those monitors have yet to be in operation a full three years, those initial results support the finding that the area has attained the standard. As a violation does not occur unless four exceedances occur at a single monitor over a three-year period, the data from the Salt Lake and Davis Counties area amply support the determination that the area has attained the standard.

What follows is a more detailed explanation of EPA's reviews of the ozone monitoring network and the ongoing studies being conducted to evaluate it. The Utah Division of Air Quality conducted network reviews and submitted packages of information describing reviews of the State's air monitoring network (including ozone monitoring stations) covering the period of 1991 through 1994. EPA has reviewed the submittals.

In a letter from Marshall Payne to Burnell Cordner dated September 1, 1992 regarding the State's network review submittal of May 1 and May 15, 1992, EPA concluded the network review met the requirements of 40 CFR, Part 58.20(d). In a letter from Marshall Payne to Russell Roberts dated January 13, 1994 regarding the State's network review submittal of June 2, 1993, EPA commented on the results of the 1993 saturation study and requested that the State submit a plan to revise the ozone monitoring network. The State's response to that request was dated March 4, 1994; EPA replied in a letter from Marshall Payne and Douglas Skie dated April 13, 1994. In the April 13, 1994 letter, EPA urged the State to proceed with proposed additions to the ozone network for the 1994 ozone season. The State added several ozone stations, which collected data in the 1994 ozone season.

A letter from Douglas Skie to Russell Roberts dated May 5, 1995 regarding the State's network review submittal of September 30, 1994, stated that, in general, EPA supported the modifications to the ozone network resulting from the 1993 and 1994 saturation studies. In the same letter, EPA urged the State to designate National Air Monitoring Stations both in Ogden and the Provo-Orem area. In the May 5, 1995 letter, EPA also acknowledged the State's request to discontinue the Springville ozone station due to low observed concentrations; EPA concurred that this station, having been established based upon the saturation study of 1993, had fulfilled its purpose and was no longer needed. The Salt Lake City station (610 South Second East) was discontinued late in 1994 due to permanent structural changes on the roof of the Health Department building.

The State submitted a report, ''Wasatch Front Ozone Saturation Study, Summer, 1994'' under a letter dated April 3, 1995. The report cited limitations of the passive sampling devices used in the study; those limitations impede the ability to confidently select sites for maximum concentration stations on the basis of saturation studies alone. Because of differences in meteorological conditions between 1993 and 1994, EPA contends the results of the 1994 study suggest it is important to operate a network of ozone monitoring stations with diverse exposures in the Wasatch Front. Maximum ozone concentrations were measured relatively close to the urban core of Salt Lake City, while some high concentrations may still occur in the periphery. The report suggested the possibility of establishing an ozone monitoring station on the east bench of Salt Lake City (viz., in the vicinity of Sandy and Draper, Utah). EPA has supported the plan to install such a station and has urged the State to proceed.

Concentrations of air pollutants, particularly ozone, are dynamic and air monitoring networks should continually be reviewed and transformed to ensure pollutant concentrations are accurately reflected in the national data base. EPA has, through the network review process, examined submittals bearing upon the design of the ozone network in the Wasatch Front, made comments on changes recommended in the network design, and concurred on the design of the ozone network during the period of

1991 to 1994. Results of the saturation studies of 1993 and 1994 were also reviewed by EPA. EPA expressed concerns regarding the network design during the period 1991 to 1994 and requested that the State make modifications; however, the proposed changes evolved as part of the normal process of network design review. The State took action to address the concerns and modified the network. The ozone standard has not been violated in the Wasatch Front during the period from 1991 to 1994; there have been no exceedances since 1991. It is EPA's position that the State of Utah modified, sited, and operated the ozone monitoring network consistent with 40 CFR Part 58 during those years and that the resulting data can reasonably be relied upon to characterize the ozone attainment status of Salt Lake and Davis Counties.

Comment 4: The Citizens Commission stated that the rulemaking is an abuse of agency discretion and violates sections 172(c)(9), 179(a) and 182(b)(1) of the Act. According to the commentor, EPA may suspend the applicablility of SIP requirements only through a redesignation to attainment pursuant to section 107(d)(3)(E).

Response to Comment 4: For the reasons stated above, in the June 8, 1995, **Federal Register** notice, and in the May 10, 1995, memorandum from John Seitz, the EPA does not believe that the rulemaking violates any section of the CAA. The commentor has not offered any persuasive reasoning for EPA to depart from the rationale spelled out in the previous documents. The EPA believes that since the area has attained the ozone standard, it has achieved the stated purpose of the section 182(b)(1) reasonable further progress and attainment demonstration requirements, as well as the section 172(c)(9) contingency measures requirement. As described above, this action is not a redesignation, nor does it circumvent the requirements for a redesignation under section 107(d)(3)(E).

Comment 5: The Citizens Commission stated that EPA's action is not a reasonable interpretation of EPA's nondiscretionary mandate under section 101(b)(1) to ''protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.''

Response to Comment 5: The EPA disagrees with the commentor's statement that its action violates section 101(b)(1). Section 101(b)(1) does not establish a nondiscretionary duty; it is a statement of purpose—a purpose that EPA is not disregarding in this action. The area has attained the primary ozone standard, a standard designed to protect public health with an adequate margin of safety (*see* section 109(b)(1)). EPA's action does not relax any of the requirements that have led to the attainment of the standard. Rather, its action has the effect of suspending requirements, for additional pollution reductions, above and beyond those that have resulted in the attainment of the health-based standard.

Comment 6: The Citizens Commission asserts that EPA's action violates the Administrative Procedure Act and the CAA through its reliance on unpublished memoranda and the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (April 16, 1992). According to the commentor, reliance on those documents is inappropriate and illegal since those documents were issued without opportunity for notice and comment and are not enforceable regulations. The commentor also states that EPA's action is barren of any statement of legal authority.

Response to Comment 6: EPA's reference to and reliance on those documents, all of which are either published or publicly available and a part of the record of this rulemaking, is in no way illegal under provisions of either the CAA or the Administrative Procedures Act. (The commentor cited no specific provisions of either act.) EPA agrees that such documents do not establish enforceable regulations; they do not purport to be anything but guidance. That is precisely why EPA has performed this rulemaking—a notice-and-comment rulemaking to take comment on its statutory interpretations and factual determinations in order to make a binding and enforceable determination regarding the Salt Lake and Davis Counties area. The June 8, 1995, **Federal Register** notices referred to EPA's prior policy memoranda not as binding the Agency to adopt the interpretations being proposed therein, but rather as a useful description of the rationale underlying those proposed interpretations. EPA has explained the legal and factual basis for its rulemaking in the June 8, 1995, **Federal Register** notices and afforded the public a full opportunity to comment on EPA's proposed interpretation and determination fully consistent with the applicable procedural requirements of the Administrative Procedures Act. (The procedural requirements of section 307(d) of the CAA do not apply to this rulemaking since it is not among the rulemakings listed in section 307(d)(1).)

Comment 7: The Citizens Commission states that the suspension of the contingency measure requirement is particularly inappropriate given the dubious adequacy of the monitoring network. According to the commentor, EPA's action threatens to subject citizens to acute ozone episodes to which neither the State nor EPA are likely to be able to respond effectively due to the lack of implemented measures that would otherwise have been required.

Response to Comment 7: The response to Comment 3 above contains EPA's discussion of the adequacy of the monitoring network in the Salt Lake and Davis Counties area. As noted in the response to Comment 2 above, EPA acknowledges the concerns of the commentors regarding the likelihood that additional control measures may not be adopted and implemented as quickly as if EPA continued to require their adoption and submission at this time, but believes that countervailing policy considerations exist. Moreover, EPA notes that additional emission reductions will continue to occur as existing control measures are not being relaxed and the federal motor vehicle control program will continue to produce additional reductions through fleet turnover. As the language quoted by the commentor from EPA's June 8, 1995, **Federal Register** notice indicates, EPA would take individual circumstances into account, which would include the severity of any problems, in establishing the period in which the State would have to address the SIP requirements. EPA believes that it and the State would be able to respond effectively and promptly in the event a violation occurs.

Comment 8: The Citizens Commission states that the Salt Lake and Davis Counties nonattainment area cannot be temporarily redesignated in this manner, especially solely on the basis of marginal air quality data indicating momentary achievement of the standard.

Response to Comment 8: As explained elsewhere in this notice, EPA's action is not a redesignation and is both appropriate and legally justified. Moreover, as explained above, the air quality data underlying the determination is sufficient. Finally, the data are not marginal and do not indicate ''momentary achievement'' of the standard. No exceedances have been monitored over the most recent full 3-year period and only one exceedance was monitored in 1991. Thus, the area has had clean data for an extended period of time during which emission reductions have occurred due to the

imposition of various control measures such as the federal motor vehicle control program, VOC RACT requirements, and RVP requirements.

Final Rulemaking Action

The EPA is making a final determination that the Salt Lake and Davis Counties ozone nonattainment area has attained the ozone standard and continues to attain the standard at this time. As a consequence of this determination, the requirements of section 182(b)(1) concerning the submission of the 15 percent reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard.

The EPA emphasizes that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. When and if a violation of the ozone NAAQS is monitored in the Salt Lake and Davis Counties nonattainment area (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS), the EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determination that these areas have attained the NAAQS and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and contingency measure requirement of section 172(c)(9) do not presently apply, these are no longer requirements within the meaning of 40 CFR § 52.31(c)(1). Consequently, the sanctions clock started by EPA on January 19, 1994, for failure to submit SIP revisions required by the provisions of the CAA is hereby stopped.

Specific to the Salt Lake and Davis Counties' ozone nonattainment area, Governor Michael Leavitt submitted a Redesignation Request and Maintenance Plan on November 12, 1993. On January 13, 1995, the Governor submitted revisions to that initial submittal that included revised emission inventories.

Because the State submitted an Ozone Redesignation Request and Maintenance Plan SIP revision for Salt Lake and Davis Counties, in lieu of a 15 percent SIP revision, Salt Lake and Davis Counties have been subject to the motor vehicle emissions budget in the Ozone Redesignation Request and Maintenance Plan SIP revision for transportation conformity purposes (see 40 CFR 93.128(i)).

Pursuant to EPA's new May 10, 1995, policy, the State may continue to demonstrate conformity to this submitted motor vehicle emissions budget, or the State may choose to withdraw the applicability of the motor vehicle emissions budget in the Ozone Redesignation Request and Maintenance Plan SIP revision for transportation conformity purposes, through the submittal of a letter from the Governor. If the applicability of the submitted motor vehicle emissions budget is withdrawn for transportation conformity purposes, only the build/no-build and less-than-1990 tests will apply until the Ozone Redesignation Request and Maintenance Plan are approved. If the applicability of the submitted motor vehicle emissions budget is not withdrawn for transportation conformity purposes, it will continue to apply.

The EPA finds that there is good cause for this action to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of this action, which is a determination that certain Act requirements do not apply for so long as the areas continue to attain the standard. The immediate effective date for this action is authorized under both 5 U.S.C. § 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and § 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

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 economic 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. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this notice does not impose any new requirements, I certify that it does not have a significant impact on small entities affected.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rulemaking 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. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements.

The EPA has determined that this final rule action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 307(b)(1) of the Act, petitions for judicial review of this final rule action determining that the Salt Lake and Davis Counties ozone nonattainment area has attained the NAAQS for ozone and that certain reasonable further progress and attainment demonstration requirements of section 182(b)(1) and the contingency measures provisions of section 172(c)(9) no longer apply must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 1995. 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. (See CAA section 307(b)(2)).

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 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds,

Intergovernmental relations, Reporting and record keeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 13, 1995.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR part 52, Subpart TT, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart TT—Utah

2. Section 52.2332 is added to read as follows:

§ 52.2332 Control Strategy: Ozone.

Determinations—EPA is determining that, as of July 18, 1995, the Salt Lake and Davis Counties ozone nonattainment area has attained the ozone standard based on air quality monitoring data from 1992, 1993, and 1994, and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Salt Lake and Davis Counties ozone nonattainment area, these determinations shall no longer apply.

[FR Doc. 95–17755 Filed 7–17–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 3F4225/R2150; FRL–4964–7]

RIN 2070–AB78

Triasulfuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide triasulfuron [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-2-(2-chloroethoxy) phenylsulfonyl)urea] in or on the raw agricultural commodities (RACs) grass forage at 7.0 parts per million (ppm) and grass hay at 2.0 ppm. This document also increases the tolerance for kidney of cattle, goats, hogs, horses, and sheep to 0.5 ppm. Ciba-Geigy Corp. requested these tolerances in a petition submitted to EPA pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective July 18, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4225/R2150], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 3F4225/R2150]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1993 (58 FR 54354), EPA issued a notice announcing that Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (PP 3F4225) proposing to amend 40 CFR part 180 by establishing a regulation under section 408(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)) to permit residues of the herbicide triasulfuron, 3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-(2-chloroethoxy) phenylsulfonyl)urea, in or on the raw agricultural commodities (RACs) grass forage at 7.0 ppm and grass hay at 2.0 ppm. There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The petitioner subsequently amended the petition by submitting a revised Section F proposing to establish tolerances for residues of the herbicide triasulfuron in or on the RACs grass forage at 7.0 ppm, grass hay at 2.0 ppm, and to increase the established tolerances on kidney of cattle, goats, hogs, horses, and sheep to 0.5 ppm. In the **Federal Register** of May 24, 1995 (60 FR 27506), EPA issued an amended filing notice proposing these tolerances. There were no comments or requests for referral to an advisory committee recieved in response to the notice.

In the **Federal Register** of May 3, 1995 (60 FR 21734), EPA issued a document in the **Federal Register** which changed the current time-limited tolerances for residues of the herbicide triasulfuron to permanent tolerances.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. Several acute studies placing technical-grade triasulfuron in Toxicity Categories III and IV. It is not a dermal sensitizer.

2. A subchronic (90-day) feeding study in which male and female rats were fed diets containing triasulfuron yielding dose levels of 0, 9.8/12.5, 517/668, and 1,082/1,430 (male/female) milligrams/kilogram body weight/day (mg/kg/day) demonstrated a no-observable-effect level (NOEL) of 9.8/12.5 (males/ females) mg/kg/day based on decreased body weight and food intake in males and females and increased kidney atrophy and epithelial hyperplasia in females 517/668 (males/females) mg/kg/day.

3. A 1-year feeding study with male and females dogs fed diets containing triasulfuron yielding dose levels of 0, 2.5, 25, and 125/250 mg/kg/day demonstrated a NOEL of 2.5 mg/kg/day based on increased relative (organ to body weight ratio) liver weight and prostate cystic hyperplasia at 25 mg/kg/day. After 10 weeks, dogs receiving 250 mg/kg/day exhibited reduced weight