37193–94 regarding basic I/M, upon which redesignation approval relies, are still in place.

# USEPA Response

The USEPA cannot delay approval of the redesignation, since Michigan has submitted the elements required and necessary to establish basic I/M as a contingency measure in the section 175A maintenance plan as provided for by the revisions to the national I/M rule. As presented in the July 21, 1994 proposal, the State submittal contains the essential elements listed at 59 FR 37193–94. Basic I/M, if implemented as a contingency measure, may be implemented in Wayne, Oakland, and Macomb counties and expanded to Washtenaw county.

### Comment

One commentor is concerned that expanding upgraded 2 basic I/M to Washtenaw, St. Clair, Livingston and Monroe counties is subject to potential legislative veto after the need for contingency measures is triggered. The commentor states that because Michigan's legislature can unilaterally rescind the provisions to extend basic I/M programs to Washtenaw, St. Clair, Livingston and Monroe counties (1993) Mich. Pub. Act 232 § 8(2)(c) & (d)), Michigan's provisions do not appear to meet even the relaxed standards proposed in the June 28, 1994 revisions to the national I/M rule, 59 FR 33237, as being fully self-implementing and enforceable under all circumstances. Therefore, Michigan's basic I/M SIP is not complete or approvable. Consequently, the Detroit-Ann Arbor area is not eligible for redesignation.

## USEPA Response

Sections 8(2)(c) and (d) of Michigan's Enrolled House Bill 5016 only apply if the redesignation request is disapproved and basic I/M must be implemented in the entire 7-county Detroit-Ann Arbor area (Wayne, Oakland, Macomb,

Washtenaw, St. Clair, Livingston, and Monroe counties). The 45-day notification period in section 8(2)(d) of Michigan Enrolled House Bill 5016 is only applicable, as described in section 8(2)(c), if the redesignation is not approved and the State must implement basic I/M to meet the section 182(b) requirements. Clearly, the 45-day notification period is not applicable for implementation of I/M as a contingency measure. It is important to acknowledge that only notification to the legislature is required, and that no affirmative action on the part of the legislature is necessary to allow the program to be implemented. In addition, States at any time are able to amend existing rules and/or regulations for any required program as a matter of State law. This ability is not a reason for disapproval of any State submittal because such unilateral State action would not affect the Federal enforceability of the version of the State law or regulation the USEPA had approved into the SIP. The I/M legislation for the Detroit-Ann Arbor area satisfies the requirements of the revisions to the national I/M rule.

Sections 8(2)(a) and (b) of the legislation apply if the area is redesignated, and basic I/M is implemented as a contingency measure or as a condition for approval of the redesignation request. In particular, section 8(2)(a) provides that basic I/M may be implemented as a contingency measure in Wayne, Oakland and Macomb county and also expanded to Washtenaw county, if necessary. Together, the basic I/M submittal and redesignation request and the section 175A maintenance plan for the Detroit-Ann Arbor area (1) provide for the adoption of implementing regulations for a basic I/M program, meeting the national basic I/M requirements without further legislation, (2) provide for the implementation of basic I/M upgrades as a contingency measure in the maintenance plan upon redesignation, (3) contain, as a contingency measure within the maintenance plan, a commitment by the Governor to adopt regulations to implement I/M in response to a specified triggering event, and (4) contain a commitment including an enforceable schedule for adoption and implementation of a basic I/M program, as provided in the revisions to the national I/M rule. The revisions to the I/M rule do not, however, require that the basic I/M SIP be fully selfimplementing. Consequently, contrary to the commentor's statement, the basic I/M SIP is complete and approvable and the Detroit-Ann Arbor area is eligible for redesignation.

### Comment

One commentor states that the USEPA cannot redesignate the Detroit-Ann Arbor area because Michigan's basic I/M SIP submission does not even satisfy the requirements of the USEPA's unlawful policy. In particular, the commentor argues that since the legislature could at any time amend the legislative authority, the USEPA should require the State to submit adopted regulations with a basic I/M SIP. The commentor further argues that Michigan did not submit a sufficiently specific and enforceable schedule for adoption and implementation of a basic I/M program upon a specified triggering event. The commentor also notes that if the State has not adopted the regulations necessary to implement the contingency measure, such measure will not correct any violation promptly as required by the Act and USEPA guidance.

## USEPA Response

The commentor states that the 45-day notice provided in the legislation prior to implementation of a required I/M program ensures that the legislature can repeal the legislative authority before it takes effect. This commentor's interpretation of Michigan's Enrolled House Bill 5016 is incorrect. The 45-day notification period in section 8(2)(d) of Michigan Enrolled House Bill 5016 is only applicable under the scenario described in section 8(2)(c), if the redesignation is not approved and the State must implement basic I/M to meet the section 182(b) requirements. Thus, as discussed earlier, the 45-day notification period is not applicable for implementation of I/M as a contingency measure.

The USEPA further responds that Michigan has submitted as part of the 175A maintenance plan an enforceable schedule for adoption and implementation of basic I/M as a contingency measure. Section 6.8.3 of the State's submittal indicates that adoption and implementation schedules for contingency measures would be consistent with those specified in the Act and any corresponding regulations and submitted as part of the technical urban airshed modeling (UAM) analysis. The I/M redesignation rule provides the relevant adoption and implementation schedules. If the Governor chooses I/M to be implemented as the contingency measure, under the schedule of the I/M redesignation rule Michigan incorporated by reference, the State would need to adopt I/M within one year of the trigger date. Michigan's submittal defined the trigger date as the

<sup>&</sup>lt;sup>2</sup>The Act requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B)(i) requires States to submit SIP revisions for any ozone nonattainment area which has been classified as marginal, pursuant to section 181(a) of the Act, with an existing I/M program that was part of a SIP prior to enactment of the Act or any area that was required by the Act, as amended in 1977, to have an I/M program, to bring the program up to the level required in pre-1990 USEPA guidance, or to what had been committed to previously in the SIP whichever was more stringent. Areas classified as moderate and worse were also subject to this requirement to improve programs to this level. The Detroit-Ann Arbor area, a moderate ozone nonattainment area, had in effect an I/M program pursuant to the 1977 Act. The area, therefore, was required to improve its existing I/M program to meet the basic I/M program requirements.