section 182(a)(2)(B)(i) and section 182(b)(4) as providing a degree of flexibility compared with the statutory language in section 182(c)(3), which requires enhanced I/M areas to submit a SIP revision "to provide for an enhanced program". For areas that otherwise qualify for redesignation to attainment and ultimately obtain EPA approval to be redesignated, EPA is today amending Subpart S to allow such areas to be redesignated if they submit a SIP that contains the following four elements: (1) Legal authority for a basic I/M program (or an enhanced program, as defined in this final rule, if the state chooses to opt up), meeting all of the requirements of Subpart S such that implementing regulations can be adopted without further legislation; (2) a request to place the I/M plan or upgrades, as defined in this rule, (as applicable) in the contingency measures portion of the maintenance plan upon redesignation as described in the fourth element below; (3) a contingency measure to go into effect as soon as a triggering event occurs, consisting of a commitment by the Governor or the Governor's designee to adopt regulations to implement the I/M program in response to the specified triggering event; and (4) a commitment that includes an enforceable schedule for adopting and implementing the I/M program, including appropriate milestones, in the event the contingency measure is triggered (milestones shall be defined by states in terms of months since the triggering event). EPA believes that for areas that otherwise qualify for redesignation a SIP meeting these four requirements would satisfy the obligation to submit "provisions to provide" for a satisfactory I/M program, as required by the statute.

With these amendments the determination of whether a state fulfills the basic I/M SIP requirements will depend, for the purposes of redesignation approval only, on whether the state meets the four requirements listed above. EPA believes that it is permissible to interpret the basic I/M requirement to provide this flexibility and that it should apply only for the limited purpose of considering a redesignation request to attainment.

Summary of Comments

EPA received comments from the Natural Resources Defense Council (NRDC) opposing the proposal to redesignate an area as in attainment when such an area has not yet submitted regulations for a basic I/M program. NRDC argues that the phrase 'any provisions necessary' plainly encompasses any adopted regulations

needed to implement the program. NRDC argues that EPA ignores the impact of the word "any" and claims that Congress used this term to require that the State submit "all" that is necessary to put a basic I/M program in place. NRDC further argues that without adopted regulations a SIP is incomplete and cannot be approved.

EPA disagrees with NRDC's comments. The plain language of the statute requires that each SIP include "any provisions necessary to provide for" the required I/M program. It is EPA's view that what is "necessary" to provide for the required I/M program depends on the area in question. For areas which have attained the ambient standard with the benefit of only the current program, or no program at all, EPA does not believe it is "necessary" to revise or adopt new regulations and undertake other significant planning efforts which are not essential for clean air, and which would not be implemented after redesignation occurred because they are not "necessary" for maintenance. For such areas that would otherwise be eligible for redesignation to attainment, EPA believes that a contingency plan that includes already enacted legislative authority and provides for adoption of an I/M program on an expeditious schedule if the area develops a problem is the only set of provisions necessary to provide for an I/M program.

Although for most purposes EPA will continue to interpret "provisions necessary to provide for" a basic I/M program to require full adoption and expeditious implementation of such a program it is appropriate, based on the flexible language provided in section 182(a)(2)(B)(i) and 182(b)(4) as compared with section 182(c)(3), to revise the SIP revision requirements applicable to basic I/M areas that otherwise qualify for, and ultimately

receive, redesignation.

Contrary to NRDC's assertions, a SIP revision applicable to basic I/M areas that otherwise qualify for, and ultimately receive, redesignation would meet the minimum completeness criteria without adopted regulations. EPA promulgated criteria setting forth the minimum criteria necessary for any submittal to be considered complete. 40 CFR part 51, appendix V. However, EPA recognizes that not all of the listed criteria are necessarily applicable to all of the various types of submissions which require a completeness determination. Accordingly, EPA interprets the completeness criteria to apply only those criteria that are

relevant to the particular types of submissions.

To be complete, a plan submission typically must supply the elements necessary to comply with the provisions of the CAA, including, among other things, specific enforceable measures. 40 CFR part 51, appendix V. section 2.l(d). As discussed earlier, however, EPA believes that it may provide that adopted regulations are not necessary to meet the statutory requirements of sections 182(a)(2)(B)(i) and 182(b)(4) of the CAA. EPA interprets these sections to provide that in some circumstances areas should be allowed to submit plans which lack specific enforceable measures, as long as the SIP includes provisions necessary to provide for the required program. It makes little sense for Congress to provide such flexibility under these sections, only to require that such submissions be summarily rejected on the grounds of incompleteness. A reasonable reading of the statute would give effect to both provisions by permitting areas that otherwise qualify for, and ultimately receive, redesignation to have their redesignation requests determined "complete" if the submission contains "provisions necessary to provide for" the I/M program. Thus, as long as such an area submits a SIP that contains the four elements discussed in this rule. EPA will deem that submission "complete" only for the purposes of determining whether an area seeking redesignation has met the basic I/M requirements.

NRDC also commented that Congress did not intend the phrase 'any provisions necessary' to justify a mere commitment to adopt I/M regulations at some later date. NRDC cites Natural Resources Defense Council v. Environmental Protection Agency, 22 F.3d 1125 (D.C. Cir. 1994) ("NRDC v. EPA") for further support of their argument.

As discussed in the proposal, in *NRDC* v. *EPA*, 22 F.3d 1125 (D. C. Cir. 1994) the D. C. Court of Appeals held that EPA did not have authority to construe section ll0(k)(4) to authorize conditional approval of an I/M committal SIP that contains no specific substantive measures. A premise of the case is that I/M SIP submissions are required to have fully adopted rules. In

¹ Emission inventories required pursuant to 42 U.S.C. 7511a(a)(1) for ozone nonattainment areas are also an example of a required submittal that by definition could never satisfy all of the completeness criteria. As with committal SIPs, emission inventories are not in the form of regulations and do not include other technical items identified in the completeness criteria such as emission limits or test methods. 40 CFR part 51, appendix V, section 2.1(d), (g).