program and the levels of emissions reductions will depend upon what waiver rates result.

C. Population Requirements for Basic I/M

1. Summary of Proposal

EPA requested comment on whether it should change the minimum population cut-off for basic I/M programs. Currently, basic I/M programs are required in moderate ozone and carbon monoxide non-attainment areas with a 1990 Census-defined population of 50,000 or more. EPA considered raising this threshold to 200,000 or more.

2. Summary of Comments

The majority of responses to the proposed amendment were generally supportive. Some commenters indicated that the issue did not affect them since they were in the OTR (Ozone Transport Region) and therefore required enhanced testing regardless of whether or not the population cut-off was increased. Many of the commenters who supported the change did so with a proviso: that the rule be applied only to areas that were not currently included in I/M and that were in moderate attainment areas. Two parties indicated that the proposed amendment should only apply if an area can demonstrate that the absence of I/M would not impact downwind areas. A few supported the change because they viewed it as added flexibility for the states.

Commenters opposed to the amendment suggested that EPA had not offered a reasonable explanation for this change and that areas with less than 200,000 people deserved clean air protection. They argued that the amendment would only serve to encourage states to opt-out of OTR to avoid compliance.

3. Response to Comments

EPA proposed this amendment to grant states further flexibility in designing I/M programs to meet local needs. Areas under 200,000 population which are still in nonattainment are required to achieve whatever ozone reductions are needed to meet reasonable further progress or attainment requirements. While exempted from the mandatory basis I/M requirement under this amendment, such areas would have to achieve those reductions from other programs, or implement an I/M program, at the state's discretion.

EPA concludes that the 200,000 population cut-off for basic programs is authorized by the Act because sections 182(a)(2)(B)(i) and 182(b)(4) require implementation only of an I/M program no less stringent than that required under pre-1990 EPA I/M guidance. EPA's pre-1990 I/M guidance required implementation of basic I/M programs only in urbanized areas of 200,000 population. It is true that some moderate areas would not be required to implement I/M programs if their population were under 200,000, despite the fact that section 182(b)(4) requires a basic I/M program in all moderate areas. However, the basic program that is required is a program that applies only to areas of 200,000 or more population. The issue of whether Congress meant to expand the geographic scope of basic I/M programs by requiring them in all moderate areas was presented to the court in litigation on the 1992 I/M rules. The court ruled that the statutory language ''does not, in our view, compel the conclusion that Congress sought silently to alter any preexisting exclusions for basic I/M programs, particularly when Congress explicitly incorporated the preexisting guidance by reference.'' Further, the court concluded that ''the requirement that states submit implementation plans for those moderate areas not covered in the previous statute does not by its term affect the scope of I/M programs *within* those areas''. *Natural Resources Defense Council, Inc.* v. *EPA*, 22 F.3d 1125, 1141–2. Consequently, EPA believes that although basic I/M programs are required for all moderate areas, they need only be implemented in urbanized areas with populations of 200,000 or more within such moderate areas.

Basic I/M is prescribed to solve local problems. Questions arising from the transport of ozone and CO downwind across state boundaries may be answered by referring to section 184 of the Clean Air Act.

As to the effects on OTR areas, states will not be encouraged to opt out to avoid compliance. Rather, the SNPRM discussed previously outlines the OTR-low enhanced performance standard which gives states more flexibility and incentive to remain in the OTR.

D. Test-and-Repair Discount and Program Equivalency

1. Summary of the Issue

Although today's action does not address the credit allowances for test-and-repair networks and the question of equivalency with test-only networks, the issue has become a point of contention as some states seek more flexibility in program design. A notable quantity of the comments received on today's rulemaking dealt expressly with this issue.

2. Summary of Comments

Commenters in support of the default discount stressed that SIP credits must be based on real quantifiable emissions reductions and that they supported the default discount and would also support data that showed an even greater discount for a test-and-repair network. Another commenter strongly supported the default discount, adding that the undisputed performance disadvantage of ''test-and repair'' systems should persuade EPA to keep the current credit structure. Another group commented that their independent data analysis of two states, one with a test-only system and one with a test-and-repair system, showed conclusively that the test-and-repair system was achieving significantly less emission reductions than the test-only system and that the default discount used by the EPA accurately reflected the loss of emission reductions for the test-and-repair system.

Commenters opposed to the default discount claimed that test-only I/M does not work as well as EPA claims and that test-and-repair programs are unfairly discounted by their comparison to an inflated estimate of test-only effectiveness. Some commenters added that past performance has shown that test-and-repair could be as effective as test-only and should be credited accordingly. The California I/M Review Committee was frequently cited along with studies by Georgia Tech, and others as scientific evidence that the audit data upon which EPA studies were based was somehow flawed.

3. Response to Comments

It should first be noted that in the original I/M rule EPA had proposed granting ''provisional equivalency'' to test-and-repair programs for purposes of initial SIP submission and approval, requiring program evaluation to assure that programs meet the performance standard. Comments by state agencies and others at that time were compelling and strongly against provisional equivalency. They argued that because both state and EPA evidence showed that test-and-repair programs were inferior to test-only programs, in terms of emissions reductions, it would be inadequate and probably illegal for EPA to grant them full credit. They suggested that to grant provisional equivalency without proven success would be irresponsible and would allow ineffective and costly programs to continue while air quality improvement would suffer. EPA acknowledged these