

1992 shows an exceedance rate of less than 1.0 per year of the O<sub>3</sub> NAAQS in the Tampa area. (See 40 CFR 50.9 and Appendix H). In addition, there have been no ambient air exceedances in 1993, 1994 or to date in 1995 for O<sub>3</sub>. Because the Tampa area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the Tampa area has met the first statutory criterion of attainment of the O<sub>3</sub> NAAQS. Florida has committed to continue monitoring in this area in accordance with 40 CFR part 58.

## 2. Meeting Applicable Requirements of Section 110 and Part D

On May 14, 1981, EPA fully approved Florida's SIP for the Tampa area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act (46 FR 26640). The 1990 Amendments, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the SIP to ensure that it contains all measures that were due under the 1990 Amendments prior to or at the time the State submitted its redesignation request. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation request to be approved, the state has met all requirements that applied to the subject area prior to the submission of a complete redesignation request. Requirements of the CAA that come due subsequently continue to be applicable at those later dates (see section 175A(c)) and, if the redesignation is disapproved, the state remains obligated to fulfill those requirements.

### A. Section 110 Requirements

Although section 110 was amended by the 1990 Amendments, the Tampa SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, (see 57 FR 27936 and 23939, June 23, 1993), many are duplicative of other requirements of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

### B. Part D Requirements

Before Tampa may be redesignated to attainment, it also must have fulfilled the applicable requirements of part D.

Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). The Tampa area was classified as marginal (See 56 FR 56694, codified at 40 CFR 81.530). Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, and is subject to requirements of subpart 2 of part D.

### B.1. Subpart 1 of part D—Section 172(c) Plan Provisions

Under section 172(b), the Administrator established that States containing nonattainment areas shall submit a plan or plan revision meeting the applicable requirements of section 172(c) no later than three years after an area is designated as nonattainment, i.e., unless EPA establishes an earlier date. EPA had not determined that these requirements were applicable to classified O<sub>3</sub> nonattainment areas on or before February 7, 1995, the date that the State of Florida submitted a complete redesignation request for the Tampa area. Therefore, the State was not required to meet these requirements for purposes of redesignation. EPA has determined that the section 172(c)(2) reasonable further progress (RFP) requirement was not applicable to the Tampa redesignation. Also the section 172(c)(9) contingency measures and additional section 172(c)(1) non-RACT reasonable available control measures (RACT) beyond what may already be required in the SIP are no longer necessary.

The section 172(c)(3) emissions inventory requirement has been met by the submission and approval (in this action) of the 1990 base year inventory required under subpart 2 of part D, section 182(a)(1).

As for the section 172(c)(5) NSR requirement, EPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. See memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment. The rationale for this view is described fully in that memorandum,

and is based on the Agency's authority to establish *de minimis* exceptions to statutory requirements. See *Alabama Power Co. v. Costle*, 636 F.2d 323, 360–61 (D.C. Cir. 1979). However, the State of Florida does have a fully approved part D NSR rule.

Finally, for purposes of redesignation, the Tampa SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, were satisfied. As noted above, EPA believes the SIP satisfies all of those requirements.

### B.2. Subpart 1 of Part D—Section 176 Conformity Plan Provisions

Section 176(c) of the CAA requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)).

EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118), and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 51.851 of the general conformity rule, the State of Florida is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, the State of Florida is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by