available through routes outside the Old Park that have been historically used for that purpose. Therefore, the use of snowmachines is not authorized by section 1110(a) for such travel. Further, Congress did not authorize subsistence activities in the Old Park. In addition, the National Park Service has determined that the use of even a few snowmachines in the Old Park would be detrimental to the resource values of the area. Therefore, because no usage is authorized in the Old Park by section 1110(a) the Old Park remains closed to all snowmachine use in accordance with 36 CFR 2.18.

(3) *Where can I operate a snowmachine in Denali National Park and Preserve?* You can use a snowmachine outside of the Old Park for traditional activities or travel to and from villages and homesites and other valid occupancies as authorized by 43 CFR 36.11(c), or when lawfully engaged in subsistence activities authorized by § 13.46.

(4) *What types of snowmachines are allowed?* The types of snowmachines allowed are defined in § 13.1(q) under *snowmachine* or *snowmobile*.

(5) *What other regulations apply to snowmachine use?* Snowmachine use is governed by regulations at § 2.18(a) of this chapter, traffic safety, § 2.18(b) of this chapter, state laws, and § 2.18(d) and (e) of this chapter, prohibited activities; and 43 CFR 36.11(a)(2) adequate snow cover, and 43 CFR 36.11(c) traditional activities.

(6) *Who determines when there is adequate snow cover?* The superintendent will determine when snow cover is adequate for snowmachine use. The superintendent will follow the procedures in §§ 1.5 and 1.7 of this chapter to inform the public.

(7) Nothing in this section shall limit the authority of the superintendent to restrict or limit uses of an area under other statutory authority.

Dated: June 7, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–14754 Filed 6–16–00; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH–132–2; KY–116–2; KY–84–2; FRL–6717–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio and Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We are determining that the Cincinnati-Hamilton moderate ozone nonattainment area (Cincinnati-Hamilton area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by its extended attainment date. The Cincinnati-Hamilton area includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. This determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1996 to 1998 ozone seasons that demonstrate that the ozone NAAQS has been attained in the area, as well as the most recent 3-year period of data from 1997–1999, which shows the area is continuing to attain. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements, along with certain other related requirements of Part D of Title 1 of the Clean Air Act (CAA), are not applicable to the Cincinnati-Hamilton area.

We are also approving an exemption for the Cincinnati-Hamilton area from the nitrogen oxides (NO_X) requirements as provided for in section 182(f) of the CAA. Section 182(f) establishes NO_X requirements for ozone nonattainment areas. However, it also provides, in subsection 182(f)(1)(A), that these requirements shall not apply to an area if the Administrator determines that additional NO_X reductions would not contribute to attainment of the ozone NAAQS in that area. Because the Cincinnati-Hamilton area is currently attaining the ozone NAAQS without benefit of additional NO_X reductions, we are granting the area a NO_X exemption. As a result, the Cincinnati-Hamilton area will no longer be subject to the section 182(f) NO_X requirements; however, all NO_X controls previously approved for the area by EPA must continue to be implemented.

We are also approving the State of Ohio Environmental Protection Agency's (OEPA) and the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet's (Cabinet) requests to redesignate the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS. The original redesignation request from OEPA, dated June 28, 1999, was received on July 2, 1999, and completed on December 22, 1999. The Cabinet's redesignation request to EPA was dated October 29, 1999. In approving these redesignation requests, EPA is also approving, as revisions to the Ohio and Kentucky State Implementation Plans, the States' plans for maintaining the 1-hour ozone standard for the next 10 years.

EFFECTIVE DATE: This action will be effective on July 5, 2000.

ADDRESSES: Copies of the OEPA's and the Cabinet's submittals and other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. The reference file numbers are OH–132, KY–116 and KY–84.

United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

United States Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Planning Section, 61 Forsyth Street SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT:

William Jones, Environmental Scientist, United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6058, (jones.william@epa.gov).

Allison Humphris, Environmental Scientist, United States Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Planning Section, 61 Forsyth Street SW, Atlanta, Georgia 30303, (404) 562–9030, (humphris.allison@epa.gov).

Table of Contents

Whenever ''we,'' ''us,'' or ''our'' are used we mean EPA.

I. What Is the Background for These Actions?

See proposed rulemaking published January 24, 2000 (65 FR 3630). On March 17, 2000 (65 FR 14510), EPA reopened the public comment period until March 24, 2000.

Prior to the January 24, 2000 proposal to redesignate the area, EPA approved two 1-year extensions of the area's attainment date (62 FR 61241, November 17, 1997; 63 FR 14673, March 26, 1998) making its new attainment date November 15, 1998. The area attained the 1-hour standard by its extended attainment date (November 15, 1998).

II. What Comments Did We Receive and What Are Our Responses?

Comments in support of the rulemaking action are not summarized below. The adverse comments and EPA responses to them are provided below.

Comment 1: The Ohio Chapter of the Sierra Club requested a 30-day extension, beyond February 23, 2000, of the public comment period due to the proposal's alleged technical complexity and the unavailability of their Conservation Chair during the last week of the comment period.

Response 1: EPA reopened the comment period until March 24, 2000. See 65 FR 14510, dated March 17, 2000.

Comment 2: The commenter believes that the air quality protections provided by designation of the area as nonattainment are needed to address continued adverse health effects from poor air quality. EPA has adopted a more stringent air quality standard based on an 8-hour average rather than 1-hour average ozone concentrations. The 8-hour average standards have been ''suspended'' by the Circuit Court of Appeals of the District of Columbia. The court stated that it accepted EPA's findings that tighter standards were needed to protect public health. The commenter claims that an important factor in the litigation is that even the 8-hour standard is insufficient to protect public health with an adequate margin of safety. Thus, the commenter implies that attainment of the 1-hour ozone standard is insufficient to protect public health.

The commenter does not analyze air quality in relation to the 1-hour standard, the 8-hour standard, or any other criteria. Instead, as evidence of poor air quality, the commenter cites analyses by the Natural Resources Defense Council. The comments highlight the deaths attributable to inhalation of particulate matter. The comments also reference Cincinnati Health Department estimates of '' 'about 5000 sublethal cases per year' of temporary respiratory problems due to ozone levels.'' The commenter concludes that ''lifting restrictions imposed by nonattainment status would violate the spirit if not the letter of the Act by increasing the exposure of the public to [unsafe levels].''

Response 2: EPA continues to believe that implementation of the 8-hour average ozone standard it adopted in 1997 would provide a more appropriate level of protection against ozone's adverse impacts. EPA is pursuing Supreme Court review of the Circuit Court's ruling, *American Trucking Assoc.* v. *EPA,* 175 F.3d 1027, modified on rehearing 193 F.3d 4 (D.C. Cir. 1999), with hopes of being able to apply the full legal authority of the Clean Air Act to mandate attainment of the revised standard. EPA does not believe that the Cincinnati-Hamilton area's status with respect to the 8-hour standard is relevant to the issues in this rulemaking, as this rulemaking concerns a redesignation under the 1-hour standard, not a designation made under the 8-hour standard, for which designations have yet to be made.

Comment 3: The commenters note the impact of poor air quality in Hamilton County (the county containing the City of Cincinnati) on the African-American community, and request that EPA ''consider the racial, ethnic and economic composition of local communities in relation to volatile organic compound (VOC) emissions, ozone formation, and ozone accumulation.'' The commenters allege that redesignating the area as attainment would violate President Clinton's Executive Order 12898.

Response 3: The commenters imply that the area is not meeting the standard for ozone. EPA's rulemaking action here determines not only that the Cincinnati-Hamilton area is attaining the 1-hour standard for ozone, but that its State Implementation Plan and maintenance plan provide for attainment and maintenance of the standard throughout the area.

The commenters assert that African-American and low-income residents in the center-city are exposed to higher ozone levels than other residents. The air quality data for the entire Cincinnati-Hamilton area, however, reflects levels below the ozone NAAQS. Further, commenters' Appendix 1 indicates that ''ozone monitors in the north and northwest suburbs have traditionally measured the highest ozone levels'', whereas the monitors near the communities referenced by the commenters have measured comparatively lower levels of ozone.

We therefore find that the rulemaking at issue here is consistent with Executive Order 12898 and does not impose any disproportionately high and adverse human health or environmental effects on minority and low-income populations.

Comment 4: The commenters allege that the State Implementation Plan (SIP) is inadequate in addressing population and economic growth impacts in this region.

Response 4: The maintenance plan adequately takes into account growth and population impacts on emissions in the Cincinnati-Hamilton area. Both Ohio's and Kentucky's emissions projections for point sources use Bureau of Economic Analysis (BEA) industrial employment projection data broken down by Standard Industrial Classification (SIC) to ''grow'' the point source emissions into the future.

The average annual growth rates used to project point sources in the Ohio portion of the area were between -0.05 and 2.8 percent. The emissions projections for area sources are grown using BEA industrial employment data broken down by SIC for some area source categories. Other area source categories are projected using projected population data for the area. The growth rates used for area source projections were around zero to just over one percent per year.

In Kentucky, the growth rates for point sources were around a half percent decrease to around a four percent increase in growth per year. The ranges for area sources in Kentucky were from around zero to around three percent per year.

The mobile source emissions projections were made by the Ohio-Kentucky-Indiana Metropolitan Council of Governments (OKI), which is the local metropolitan planning organization. They used a travel demand model, and MOBILE5a–H (EPA's mobile source emissions factor model), along with post-processing programs to calculate emissions for the

area. The OKI travel demand model uses demographic and land use data for each of 1003 Traffic Analysis Zones and capacity and free-flow speed characteristics for each roadway segment in the transportation network to produce a ''loaded'' highway network with forecasted traffic volumes with revised speeds (based on specified speed/capacity relationships). Complete sets of population, household and employment forecasts were prepared for 2010 based on the 1990 Census and projections from the Ohio Department of Development and Kentucky State Data Center. The modeling process used to develop this 2010 emissions data was calibrated using the latest demographic and land use data available. The transportation network used in this analysis includes the existing highway and transit network plus all capacity-related highway projects included in OKI's financially-constrained 2020 Metropolitan Transportation Plan as amended in June 1999. The emissions projections in the area do take into consideration growth and changes in population.

A comparison was made of the change in volatile organic compound and nitrogen oxides emissions in the maintenance plan for the Cincinnati-Hamilton area versus the statewide emissions estimates used in the Tier 2 rulemaking. ''Data Summaries of Base and Future Year Mass and Modeling Inventories for the Tier 2 Final Rulemaking, Detailed Report,'' EPA420–R–99–003, September 1999. In the maintenance plan the area-wide VOC emissions decreased 11% between 1996 and 2005.[1] This compares to statewide emissions decreases of 25% and 13% between 1996 and 2007 for Ohio and Kentucky, respectively. In the maintenance plan the area-wide NO_X emissions decreased 8% between 1996 and 2005. This compares to statewide emissions decreases of 47% and 45% between 1996 and 2007 for Ohio and Kentucky, respectively.

The statewide NO_X emissions were projected lower in the EPA report mainly due to projected emissions reductions required by EPA rules affecting Electric Generating Units. If the reductions from Electric Generating Units were not included in the statewide projections then the statewide NO_X emissions reductions would be around 10% and 6% for Ohio and Kentucky, respectively. This projection without crediting Electric Generating Units reductions compares well with the estimates in the maintenance plans. The maintenance plans did not include the Electric Generating Units reductions in projections of future emissions. Overall, this shows that the states' estimates of future NO_X emissions in the maintenance plan are higher than what would be expected to occur due to population and economic growth.

This rough comparison indicates that the maintenance plans do not underestimate the affects of population and economic growth. The maintenance plans' estimates of future emissions more than adequately account for any future population or economic growth in the Cincinnati-Hamilton area. The states' estimates of future growth provide a margin of safety, are appropriate, reasonable and meet EPA standards for maintenance plans.

Comment 5: The commenter is concerned that the state of Ohio is inadequately enforcing the Clean Air Act. The commenter indicates that it has identified some indications that Ohio is failing in implementation and enforcement of the SIP. For example, the commenter states that the air quality monitor in Middletown has demonstrated that air quality standards for ozone have been exceeded. AK Steel of Middletown is the fourth largest emitter of VOCs (9006.2 tons per year) in Ohio according to an EPA analysis of data accumulated between 1990 and 1995. The commenter claims, however, that EPA sector facility indexing project data shows that for all of 1997 and for the first two quarters of 1998, the most recent quarters on the database, AK Steel was out of compliance with SIP and National Emission Standards for Hazardous Air Pollutants requirements. The commenter states that no penalties, enforcement actions, or schedules of compliance are listed in the database and that there have been no news releases by Ohio EPA announcing any recent enforcement actions. A similar situation is alleged to have occurred with the local power plant, Cinergy Beckjord, which the commenter assumes to be one of the larger emitters in the region. The commenter asserts that the facility is now being sued by EPA for apparently skirting the CAA for many years despite supervision by the State of Ohio. The commenter objects to EPA's acceptance of Ohio's SIP as protective of the 1-hour ozone NAAQS given alleged lax or ineffective monitoring and enforcement of Hamilton County's largest polluters by state authorities and their designates.

Another commenter argues that the maintenance plan is also not approvable because it lacks enforcement programs and commitments of resources as required by the Clean Air Act. 42 U.S.C. 7410(a)(2)(E). The commenter claims that EPA simply assumes that the various measures relied on for future emission reductions will continue to be implemented. Without explicit commitments of legal authority and resources to implement all of those measures, the commenter argues that the maintenance plan is not approvable.

Response 5: Regardless of any alleged implementation issues, the area is attaining the 1-hour ozone standard. In fact, the entire state of Ohio is now in attainment for ozone. The commenter noted that the ozone monitor in Middletown has recorded exceedances of the NAAQS. The monitoring data for the area show that during the 1997–1999 time period, an exceedance occurred once in 1997 and once in 1999. This averages out to 0.67 expected exceedances during the 1997–1999 time period. This is below 1.0 and shows that the monitor is monitoring attainment of the 1-hour ozone standard.

The CAA requires the area to have a fully approved SIP and to have met all of the applicable requirements of the CAA. The area's SIP satisfies these requirements as described in EPA's proposed rulemaking published on January 24, 2000 (65 FR 3630). The measures that Ohio is relying on to maintain the 1-hour ozone standard have been approved into the SIP and are state and federally enforceable. See references to approved SIP in the January 24, 2000 proposed rulemaking. The state must continue to implement these measures as provided for in the federally approved SIP.

Ohio has committed to select and implement the maintenance plan contingency measures within 12 months of a violation of the 1-hour ozone standard. See April 14, 1995 letter from Donald Schregardus, OEPA to David Kee, EPA, for further information. The commenter provided no evidence that the maintenance plan fails to satisfy section 110(a)(2)(E). The CAA does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for and applicable to the SIP as a whole also applies to the maintenance plan.

Redesignation to attainment for ozone does not suspend the implementation of the existing VOC Reasonably Available Control Technology (RACT) rules for the sources in the area. These rules will continue to be in place to provide for maintenance of the 1-hour ozone standard.

In 1980, EPA approved the Ohio ozone SIP as meeting all of the requirements of section 110, which

[1] Area-wide emissions projections for 2007 were not available for the maintenance plan.

included section 110(a)(2)(F), the predecessor of current section 110(a)(2)(E). See 40 CFR 52.1873. EPA has consistently interpreted section 107(d)(3) as permitting the Agency to rely on prior approvals of SIP provisions when reviewing redesignation requests. A memorandum to its Regional Offices from John Calcagni, Director of the Air Quality Management Division, dated September 4, 1992, (Calcagni Memorandum) describes procedures that EPA regions should use to evaluate requests to redesignate areas to attainment status. The memo states:

''An area cannot be redesignated if a required element of its plan is the subject of a disapproval * * *. However, this does not mean that earlier issues with regard to the SIP will be reopened. Regions should not reconsider those things that have already been approved and for which the Clean Air Act Amendments did not alter what is required.''

EPA does not need to reconsider the issue of whether the Ohio SIP meets section 110(a)(2)(E) requirements prior to redesignation. *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984 (6th Cir. 1998).

Even if violations subsequently occur, this does not conclusively establish that state enforcement is so inadequate as to make the state enforcement program deficient under the Clean Air Act. EPA has not yet made such a finding, and even if the area is redesignated, EPA retains authority to make a finding of failure to implement under section 173(b) of the Clean Air Act or to require a SIP revision under section 110(a)(2)(H) if it concludes that state implementation and enforcement is deficient. The State would thus remain subject to EPA authority to improve its enforcement even after the area is redesignated. For purposes of redesignation, the area has a fully approved SIP.

In addition, EPA notes that in response to petitions filed by the commenter and others (also referred to in Comment 16), EPA is currently conducting a comprehensive review of the programs cited in those petitions as amended and supplemented. Any implementation deficiencies EPA finds in this review will be addressed and corrected in contexts apart from the redesignation procedure that is the subject of this rulemaking. See also Responses 16 and 24. EPA also recently advised the state of Ohio that, ''as amended by the Ohio Legislature and interpreted by Ohio's Attorney General, Ohio's Audit Privilege and Immunity Law should not present a barrier to continued authorization of federal environmental programs in Ohio.'' Letter dated June 18, 1999 from Steven A. Herman, Assistant Administrator to Betty D. Montgomery, Attorney General, State of Ohio, and Christopher Jones, Director, OEPA.

Comment 6: The commenter claims that the legal requirements for redesignation have not been met. The prerequisites for redesignating a nonattainment area to attainment are set forth in section 107(d)(3)(E) of the CAA, 42 U.S.C. 7407(d)(3)(E). Section 107(d)(3)(E)(i) of the CAA prohibits a redesignation to attainment unless EPA determines that the area has attained the ozone NAAQS. The commenter states that although EPA's Aerometric Information Retrieval System (AIRS) data does not show NAAQS violations in 1996–1998, EPA has not determined that the area has attained the standard, nor can it do so.

In its recent rulemaking adopting Tier 2 Motor Vehicle Emission Standards, EPA listed the Cincinnati-Hamilton area as ''certain or highly likely to require additional emission reductions in order to attain and maintain the 1-hour ozone NAAQS.'' 65 FR 6698, 6710 (February 10, 2000). The commenter alleges that EPA cannot determine that this area has attained the standard when it has explicitly found that the area requires additional emission reductions to attain and maintain the NAAQS. Further, the commenter states that EPA has not shown that emission reductions from the Tier 2 motor vehicle and gasoline sulfur standards will be substantial enough, or occur soon enough, to produce timely attainment and maintenance.

EPA's own projections, the commenter argues, undermine any claim that the recent absence of violations is due to permanent and enforceable emission reductions.

According to the commenter, moreover, any emissions benefits attributed to the Tier 2 standards and gasoline sulfur requirements must be offset by reductions that EPA's projections assumed would occur from the NO_X SIP call and other measures that cannot yet be credited because they are not enforceable as things stand now, and that EPA cannot approve the maintenance demonstration without first conducting new modeling to account for the foregoing concerns. Furthermore, any such modeling (or reanalysis of existing data) must be subject to full public notice and comment before final EPA action on the redesignation proposal.

Response 6: The Cincinnati-Hamilton area has monitored attainment of the 1-hour ozone standard for both the 1996–1998 and 1997–1999 time periods. The area is well monitored. There are 10 ozone monitors in operation throughout the seven county area. This monitoring clearly demonstrates that the air quality in the area has improved and that the area is attaining the 1-hour ozone standard. Also, see discussion for Table 3 in response below summarizing the air quality data from 1987 to 1999. The fact that attainment has lasted over a four-year period is strong evidence that it is attributable to emission reductions and not merely favorable meteorology.

Any emissions and ozone modeling system used to predict future ozone involves approximations and uncertainties at each stage: historical emission inventory estimation, growth and control projection, transport modeling, and photochemical modeling. Model predictions are best treated as indicators of risk, rather than as absolute forecasts. In the Tier 2 rulemaking, we used a regional ozone modeling system to predict ozone in many cities, as part of an interpretative process to characterize the risk that there would be nonattainment in a large and geographically broad number of areas. While ozone predictions and the characterization of the risk of nonattainment in individual areas was a step toward reaching a conclusion about risks across the group of areas, that characterization was not an Agency finding of violations for any specific area.

In the Tier 2 rulemaking, no area was characterized as being highly likely to require more emission reductions for attainment and maintenance unless the ozone modeling predicted a future exceedance and actual air quality data indicated nonattainment between 1995 and 1998. An area with monitored attainment in 1995 to 1998 was at worst characterized as having a moderate risk of future nonattainment, and only if it came within 10 percent of having a NAAQS violation in the 1995 to 1998 period. At the time, we used 1995–1998 (two three-year periods), so the Cincinnati-Hamilton area was included in the list of areas highly likely to need more reductions. The Tier 2 modeling did not have available to it the 1999 air quality data which shows that the area is continuing to attain the ozone standard. With the 1999 data, application of the same method would result in it being characterized as having only a moderate risk of needing additional emission reductions to avoid nonattainment sometime in the 2007 to 2030 period. A moderate risk of nonattainment is not inconsistent with EPA approval of the maintenance plan.

In the Tier 2 method, we also deferred to local attainment demonstration and weight of evidence conclusions wherever they existed and indicated attainment by 2007, moving even areas with both predicted 2007 exceedances and actual 1995–1998 violations to a ''significant risk'' list in those cases where we had proposed approval of an attainment demonstration, based on weight of evidence considerations, without requiring additional emission reductions. In the case of the Cincinnati-Hamilton area, there is no local modeling or weight of evidence analysis indicating future attainment, but there is data showing attainment now, and emission inventory projections that show that total NO_X and VOC emissions decline between 1996 and 2007. Actual local data showing attainment over four years, combined with a downward trend in total emissions, is an even stronger basis for not relying completely on the Tier 2 ozone modeling.

With respect to maintenance of the 1-hour ozone standard, the Tier 2 modeling showed a downward trend in ozone from 1996 to 2007 in the Cincinnati-Hamilton area, even without Tier 2 reductions. The Tier 2 reductions are the type of additional reductions that will help ensure maintenance for the next 10 years.

Comment 7: Pursuant to section 107(d)(3)(E)(ii) of the Clean Air Act, EPA cannot redesignate an area to attainment unless EPA ''has fully approved the applicable implementation plan for the area.'' The commenter contends that EPA has yet to fully approve the applicable implementation plan for the Cincinnati-Hamilton area. The commenter maintains that among other things, EPA has yet to fully approve the moderate area ozone SIP for this area and has also failed to fully approve the following specific SIP elements required by the Clean Air Act:

A. *Attainment demonstration:* The Clean Air Act requires the moderate area SIP submittal to include an attainment demonstration based on photochemical grid modeling or other analytical method determined by EPA to be at least as effective. 42 U.S.C. 7502(c)(1), (c)(6), 7511a(b)(1), 7511a(j). EPA has not approved an attainment demonstration for this area as required by the CAA.

B. *All Reasonably Available Control Measures (RACM):* EPA has not approved a demonstration that the SIP provides for implementation of all reasonably available control measures as expeditiously as practicable. 42 U.S.C. 7502(c)(1). The commenter argues that EPA has no authority to waive this requirement, which applies in addition to the requirement to demonstrate timely attainment.

C. *RACT:* The Clean Air Act requires the SIP to mandate Reasonably Available Control Technology for all VOC sources within the nonattainment area, including all sources covered by Control Technique Guideline (CTG) documents. 42 U.S.C. 7502(c)(1), 7511a(b)(2). EPA has not fully approved the SIP as meeting this requirement, and concedes that the requirement has not been met with respect to the Ohio portion of the nonattainment area. 65 FR 3636. The commenter argues that EPA is without authority to waive this explicit requirement for SIPs, and cannot deem it to be met by the state's commitment to adopt such measures in the future if needed as maintenance plan contingency measures. The CAA makes clear that RACT (including, specifically, RACT specified in Control Technique Guidelines (CTGs)) is a minimum level of control technology that must be included in all moderate area SIPs. It is not an optional control strategy that can be deferred until ''needed'' for attainment or maintenance. For these reasons, the commenter challenges the legal validity of EPA's prior guidance suggesting that unimplemented and ''unneeded'' RACT might be moved to an area's maintenance plan as a contingency measure.

Further, the commenter declares, even the prior guidance requires that RACT be fully adopted, submitted, and approved by EPA before redesignation: it does not allow a state to defer adoption of RACT requirements. The commenter contends that EPA's justification for making an exception to the requirement for full adoption here is irrational and meritless. The fact that the RACT rules are supposedly not needed for attainment and maintenance is a factor that was assumed in the original guidance as well, otherwise there would have been no basis for even considering the idea of allowing deferred implementation.

Equally irrelevant, says the commenter, is EPA's claim that greater emission reductions can be achieved by other contingency measures in the area's maintenance plan. The commenter argues that EPA was aware of this possibility as well at the time of its prior guidance, and that the purpose of requiring full adoption prior to redesignation was to provide assurance that this mandatory level of control already required in almost all other ozone nonattainment areas would no longer be deferred where additional emission reductions were clearly needed, and would be subject to immediate implementation (rather than requiring potentially years of state rulemaking and EPA reviews). As it is, Ohio has not committed to ever adopt the full range of mandated VOC RACT, only to consider it as one contingency measure option in the maintenance plan.

Response 7: The Cincinnati-Hamilton area has satisfied all applicable ozone requirements and has a fully approved ozone SIP. In acting on a redesignation request, EPA may rely on any prior SIP approvals plus any additional approvals it may perform in conjunction with acting on the redesignation. EPA is fully approving any remaining portions of the SIP that must be approved prior to redesignation in conjunction with this action. Therefore, the Ohio SIP is fully approved. See ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992, page 3. The Calcagni memorandum allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions.

In response to comment 7A on the attainment demonstration, an attainment demonstration is not required under EPA's attainment determination policy. EPA has explained at length in other actions its rationale for the reasonableness of that interpretation of the Clean Air Act and incorporates those explanations by reference here. See, for example, 61 FR 20458 (Cleveland-Akron-Lorain, Ohio)(May 7, 1996); 60 FR 36723 (July 18, 1995)(Salt Lake and Davis Counties, Utah); 60 FR 37366 (July 20, 1995), 61 FR 31832–33 (June 21, 1996)(Grand Rapids, MI).

EPA also reiterates its position set forth in the proposed rulemaking. Subpart 2 of part D of Title I of the CAA contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding Reasonable Further Progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA has interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions

concerning RFP, attainment demonstrations, or section 172(c)(9) contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 in the same manner. (See *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996))

The attainment demonstration requirements of section 182(b)(1) are that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA.'' If an area has in fact monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I. As EPA stated in the Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached'' (57 FR 13564). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of section 172(c)(9) of the CAA. EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date'' (57 FR 13564).

The state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's AIRS.

EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in EPA's AIRS) for the Cincinnati-Hamilton moderate ozone nonattainment area from the 1996 through 1998 ozone seasons. This data is summarized in Table 3. Monitoring data for 1999 show the area continues to attain the 1-hour ozone NAAQS. On the basis of this review, EPA determines that the area has attained the 1-hour ozone standard during the 1996–98 period, as well as the 1997–1999 period (the most recent three-year time period of air quality monitoring data), and therefore is not required to submit an attainment demonstration and a section 172(c)(9) contingency measure plan and does not need any other measures to attain the 1-hour ozone standard.

In response to comments 7 B and C, no additional RACM controls beyond what are already required in the SIP are necessary for redesignation to attainment. The General Preamble (57 FR 13560, (April 16, 1992)) explains that section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM as expeditiously as practicable. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area's attainment demonstration. Because attainment is reached no additional measures are needed to provide for attainment.

The suspension of the attainment demonstration requirements pursuant to our determination of attainment includes the section 172(c)(1) RACM requirements as well. The General Preamble treats the RACM requirements as a ''component'' of an area's attainment demonstration. See reference above. Thus, the suspension of the attainment demonstration requirement pursuant to our determination of attainment applies to the RACM requirement, since it is a component of the attainment demonstration.

As discussed in the proposed rulemaking, Ohio has completed adoption of stationary source RACT requirements for the Cincinnati-Hamilton moderate ozone nonattainment area. EPA has approved these RACT regulations in prior rulemakings. See rulemakings for Ohio dated April 25, 1996 (61 FR 18255), September 7, 1994 (59 FR 46182) and October 23, 1995 (60 FR 54308). The requirement for RACT based on new CTGs in Ohio is satisfied by the listing of new CTGs in the maintenance plan as contingency measures. See discussion in EPA's proposed rulemaking on this action. EPA's rationale has been explained at length in the Grand Rapids, Michigan redesignation actions of proposed and final rulemakings dated April 2, 1996 (61 FR 14522), June 21, 1996 (61 FR 31833–31834, 31843–31847), and is incorporated by reference here.

Ohio has demonstrated that the Cincinnati-Hamilton area does not require the new CTG RACT rules for either attainment or maintenance. If EPA were to require the State to fully adopt these rules prior to redesignation, the State would still be entitled to have the rules become a part of the contingency measures in the maintenance plan upon approval of the redesignation. EPA's policy allows that even those measures which have been adopted may be moved into the area's maintenance plan as contingency measures if they are not yet implemented and not necessary for maintenance of the standard. September 17, 1993 Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, entitled, ''SIP Requirements for Areas Submitting Requests for Redesignation to Attainment'', Detroit redesignation with respect to Stage I (March 7, 1995, 60 FR 12459).

Consequently, requiring full adoption prior to redesignation would not lead to implementation of the measures, and would not impose a minimum level of technology as the commenter suggests. The only difference between the commenter's approach and EPA's is that EPA, as in the case of Grand Rapids, is permitting Ohio to place a commitment to adopt measures, rather than fully adopted measures, in its maintenance plan. This approach is fully consistent with EPA's longstanding practice, set forth in the September 1992 Calcagni memorandum, that in general, contingency measures need not be fully adopted. EPA believes that this approach is also consistent with the requirements of the CAA.

EPA has previously addressed the issue of whether Clean Air Act requirements, such as RACT, must be implemented after an area has been redesignated, and whether EPA's longstanding policy of allowing states to convert mandatory control measures to contingency measures is authorized. See, for example, redesignation of Detroit dated March 7, 1995 (60 FR 12459, 12470). The CAA contains many requirements that States must adopt certain measures, including RACT, specifically for nonattainment areas. Those requirements do not by their own terms continue to apply to an area after it has been redesignated to attainment.

Moreover, nothing in section 175A itself suggests that these requirements must continue to be met in redesig-

nated areas. Section 175A(d) is specifically and clearly applicable to contingency provisions and their inclusion in a section 175A maintenance plan. Section 175A(d) establishes that SIP revisions submitted under section 175A must contain contingency provisions, as may be necessary, to assure that the state will promptly correct any violation of the ozone NAAQS that occurs after redesignation to attainment. It further requires that these contingency provisions include a requirement for the state to implement all measures with respect to the control of ozone precursor emissions that were in the nonattainment SIP before the area was redesignated. This provision clearly demonstrates that section 175A(d) contemplates that there may be unimplemented control measures in the SIP prior to redesignation that will be shifted into the maintenance plan as contingency measures. Nothing in section 175A suggests that the measures that may be shifted into the contingency plan do not include programs mandated by the Act when the area was designated nonattainment. As section 175A(a) requires that measures be adopted and implemented to ensure maintenance, it indicates that measures may not be converted to contingency provisions unless the State demonstrates that the standard will be maintained in the absence of the implementation of such measures. Ohio has shown that it can maintain the standard without the unimplemented measures. Thus EPA believes that its policy with respect to allowing measures to be placed into the contingency plan meets the requirements of the Act.

Comment 8: The commenter asserts that EPA has not determined that the motor vehicle emissions budget for the Cincinnati-Hamilton area SIP is adequate for attainment (and maintenance), and states that the CAA and EPA rules and guidance preclude EPA from approving an attainment demonstration SIP unless the SIP includes a motor vehicle emissions budget that EPA determines to be adequate.

Response 8: The commenter is correct that EPA rules and guidance preclude the final approval of an attainment demonstration, maintenance plan or other control strategy SIP before the mobile source emission budget in the plan meets the adequacy criteria in the transportation conformity rule. EPA posted the Ohio maintenance plan SIP to EPA's adequacy web site on January 7, 2000 and the Kentucky maintenance plan SIP to the adequacy web site on November 29, 1999.

The adequacy web site at *www.epa.gov/oms/transp/conform/adequacy.htm* is available to the public to allow notice and comment on the adequacy of mobile source emission budgets in submitted control strategy SIPs. The comment period on the maintenance plan SIPs has closed without receipt of any negative comments. Letters of adequacy have been issued and will be posted on the web site. EPA found the mobile source emission budgets adequate on April 27, 2000, and May 24, 2000, for Ohio and Kentucky respectively.

As a general matter, it should be noted that EPA also proposes and approves transportation conformity budgets through the regular **Federal Register** notice and comment process. The public therefore has several opportunities to comment on the approvability of mobile source emission budgets: First, at the state level during the state public comment period on the SIP; second at the federal level during the adequacy posting of the submitted SIP; and third during the **Federal Register** proposed approval of the SIP with mobile source budgets. In some cases, the proposed approval and the adequacy posting may occur at the same time or concurrently. The adequacy and approvability of the mobile source budget is evaluated during this time frame and before the final approval of the control strategy SIP with approved budgets.

The public should note, however, that not all submitted SIP budgets will be posted on the adequacy web site and go though the adequacy process, although all budgets must meet the adequacy criteria in the transportation conformity rule before being approved. The adequacy process is available so that budgets can be found adequate and be used for conformity purposes before the SIP is approved.

If a control strategy SIP with a budget has already been approved for an area and a new SIP with a new budget is submitted that covers the same requirements and time frame as the approved SIP, then the new SIP would not be posted for adequacy because the new submitted budget could not replace the approved budget without full **Federal Register** notice and comment. For example, when Ohio wants to allocate the safety margin in a maintenance plan to the mobile source emissions budget in the current maintenance plan, the new maintenance plan budget would not need to be posted to the adequacy web site because an approved maintenance plan budget would already be in place. The new SIP submittal with the new budget does, however, go through full notice and comment rulemaking before the budget can be used for transportation conformity.

Comment 9: The commenter argues that the SIP does not include conformity procedures as required by the CAA, and that EPA has no authority whatsoever to waive this mandatory requirement for SIPs. The commenter contends that the CAA allows redesignation to attainment only where EPA has fully approved the implementation plan and only where the state ''has met all requirements applicable to the area'' under section 110 and part D.

Response 9: The State of Ohio and the State of Kentucky have met the statutory requirement for submitting approvable general conformity procedures. EPA approved the Ohio general conformity rules effective on May 10, 1996 (61 FR 9644). EPA approved the Kentucky general conformity rules effective on July 27, 1998 (63 FR 40044).

Section 176(c) provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA requires EPA to promulgate. The Federal general conformity regulations were finalized on November 30, 1993, and the Federal transportation conformity regulations were finalized on November 24, 1993. The Federal general conformity regulations have remained the same since that time, but the Federal transportation conformity regulations have been amended several times since 1993.

EPA conditionally approved the Ohio transportation conformity rules on May 16, 1996 (61 FR 24702). Ohio met the condition of the approval by submitting rule changes within the specified one year time frame. The Federal transportation conformity regulations were amended on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendments: Flexibility and Streamlining). Ohio submitted new transportation conformity rules on October 6, 1999, in response to the 1997 changes to the Federal transportation conformity regulations. However, the Ohio rules will need to be revised again due to the March 2, 1999 court decision (*Environmental Defense Fund* v. *Environmental Protection Agency,* U.S. Court of Appeals District of Columbia Circuit, No. 97–1637) which rescinded several sections of the Federal transportation conformity rule and asked EPA to revise several sections of the Federal rule. Kentucky submitted transportation conformity rules in 1994,

but EPA has not acted upon the rules and the rules must be revised to be consistent with the amendments and court rulings.

EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Clean Air Act continues to apply to areas after redesignation to attainment, since such areas would be subject to a Section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See, for example Grand Rapids redesignation at 61 FR 31835–31836 (June 21, 1996).

EPA has explained its rationale and applied this interpretation in numerous redesignation actions. See, Tampa, Florida and Cleveland-Akron-Lorain redesignations 60 FR 52748 (December 7, 1995), and 61 FR 20458 (May 7, 1996), respectively. Consequently, EPA may approve the ozone redesignation request for the Cincinnati-Hamilton area notwithstanding the lack of a fully approved conformity SIP.

Comment 10: The commenter asserts that neither the states nor EPA have shown that air quality improvements are due to permanent and enforceable emission reductions, as required by 42 U.S.C. 7407(d)(3)(E)(iii). The commenter takes issue with the finding that this criteria is met because the states have adopted measures that have produced some emission reductions. The commenter believes EPA has not demonstrated that these reductions are responsible for the area's improved air quality or the absence of violations, claiming that the only way to reliably make such a showing would be through photochemical grid modeling. No such modeling is presented or discussed in this proposal.

The commenter states that given the complex chemistry and meteorology of ozone formation, the combination of NO_x and VOC emission reductions that might be attributable to the cited measures could just as easily lead to increases in ozone concentrations. The lack of violations in 1996–1998, the commenter states, could just as well be due to weather patterns or changes in transport of ozone precursors. Without modeling to determine the actual impact of adopted and enforceable controls, the commenter finds EPA's claim to be speculative.

Response 10: We disagree with the commenter. We believe that photochemical grid modeling is not necessary to show that the improvement in air quality is due to permanent and enforceable emissions reductions. Our policy does not specify that photochemical grid modeling must be done in ozone nonattainment areas to meet this requirement. See General Preamble for the Interpretation of Title I of the CAA Amendments of 1990, 57 FR 13496 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992); ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; and ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

Our policy allows an area to meet this requirement by showing how its ozone precursor emissions changed due to permanent and enforceable emissions reductions from when the area was not monitoring attainment of the 1-hour ozone NAAQS to when it reached attainment.

Reductions in ozone precursor (volatile organic compounds and nitrogen oxides) emissions have brought many areas across the country into attainment. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the ozone standard. See redesignations for Charleston (59 FR 30326, June 13, 1994; 59 FR 45985, September 6, 1994), Greenbrier County (60 FR 39857, August 4, 1995), Parkersburg (59 FR 29977, June 10, 1994; 59 FR 45978, September 6, 1994), Jacksonville/Duval County (60 FR 41, January 3, 1995), Miami/Southeast Florida (60 FR 10325, February 24, 1995), Tampa (60 FR 62748, December 7, 1995), Lexington (60 FR 47089, September 11, 1995), Owensboro (58 FR 47391, September 9, 1993), Indianapolis (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), South Bend-Elkhart (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), Evansville (62 FR 12137, March 14, 1997; 62 FR 64725, December 9, 1997), Canton (61 FR 3319, January 31, 1996), Youngstown-Warren (61 FR 3319, January 31, 1996), Cleveland-Akron-Lorain (60 FR 31433, June 15, 1995; 61 FR 20458, May 7, 1996), Clinton County (60 FR 22337, May 5, 1995; 61 FR 11560, March 21, 1996), Columbus (61 FR 3591, February 1, 1996, Kewaunee County (61 FR 29508, June 11, 1996; 61 FR 43668, August 26, 1996), Walworth County (61 FR 28541, June 5, 1996; 61 FR 43668, August 26, 1996), Point Coupee Parish (61 FR 37833, July 22, 1996; 62 FR 648, January 6, 1997), and Monterey Bay (62 FR 2597, January 7, 1997). Most of the areas that have been redesignated to attainment for the 1-hour ozone standard have continued to attain it. Areas that are not maintaining the 1-hour ozone standard have a maintenance plan to bring them back into attainment.

Reductions in ozone precursor emissions have been shown in photochemical grid modeling to reduce ambient ozone concentrations in areas across the country. Between 1990 and 1996 area-wide VOC and NO_X emissions in the Cincinnati-Hamilton area decreased by 18% and 6%, respectively. These emissions reductions are due to the Federal Motor Vehicle Emissions Control Program, fleet turnover of automobiles, implementation of Stage II vapor recovery program, implementation of VOC RACT, Federal requirements for lower Reid vapor pressure gasoline, use of reformulated gasoline in Kentucky, ceased operation and improved technology at facilities in Kentucky, and partial implementation of vehicle emission testing (E-Check) in Ohio.

Additional programs have been implemented in Kentucky since the 1996 attainment year. These programs include Stage II vapor recovery, vehicle emission testing program, and increased rule effectiveness of Stage I vapor control. Additional Federal rules such as architectural coatings, traffic paints, auto body refinishing, and commercial/consumer products rules have become effective.

Between 1990 and 1999 area-wide VOC and NO_X emissions decreased by 24% and 9%, respectively. Ozone air quality monitoring data show that the

design value [2] changed from 0.157 parts per million (during the 1987–1989 time period) to 0.124 parts per million (during the 1996–1998 time period). This shows that reductions in ozone concentrations correspond to the reduction in ozone precursors emissions in the area.

The commenter claims that the combination of NO_X and VOC emissions reductions could just as easily have led to increases in ozone. This claim is shown to not be true by the actual monitoring data collected in the area showing that ambient ozone concentrations have dropped when this combination of ozone precursor reductions occurred. In other metropolitan areas, different levels of VOC and NO_X reductions have also resulted in attainment. See areas listed above in first part of this response. The Cincinnati-Hamilton area's decrease in ozone levels is consistent with what other areas have experienced. The commenter has not provided data showing that decreases in ozone precursor emissions have led to higher levels of ozone.

The commenter claims that the lack of violations during 1996–1998 could just as well be due to weather patterns or changes in transport of ozone precursors, but does not supply any evidence to support this conclusion. We use a three year period of air quality to account for changes in weather conditions. Weather conditions have a substantial effect on ozone concentrations, both in terms of increasing ozone and decreasing ozone. However, this effect is not controllable and EPA uses a three year average to account for changes in meteorology. In the case of the Cincinnati-Hamilton area, the fact that the 1997–1999 time period also shows that the area continues to be in attainment of the ozone standard increases our confidence that weather is not a controlling factor in the area's attainment.

Indeed, weather data from the National Oceanic and Atmospheric Administration shows that during the period at issue, weather conditions were not unusually favorable toward low ozone concentrations in the Cincinnati-Hamilton area. This data is summarized in Tables 1 and 2.

[2] The design value is typically the fourth highest ozone concentration recorded at a monitor over a three year period. This value is calculated for each monitor and the highest value is the design value for the area.

TABLE 1. RANKED TEMPERATURE FOR MAY TO SEPTEMBER PERIODS VERSUS 1895–1998 LONG-TERM AVERAGE

Year	Temperature rank for northern Kentucky	Temperature rank for southwest Ohio
1987	96	94
1988	62	80
1989	13	18
1993	52	58
1994	20	28
1995	67	64
1996	36	35
1997	8	6
1998	85	88
1999	78	83

TABLE 2. COMPOSITE TEMPERATURE ANOMALIES FOR MAY TO SEPTEMBER PERIODS VERSUS 1950–1995 AVERAGE

Three-year period of May-September data	Temperature anomaly for northern Kentucky	Temperature anomaly for southwest Ohio
1987–1989	0.72	0.49
1993–1995	0.21	−0.02
1995–1997	−0.30	−0.81
1996–1998	−0.02	−0.56
1997–1999	0.64	0.07

Table 1 shows the rank of the average temperatures over the May to September period for certain years compared to data from 1895 to 1998. A rank of 104 is given to the hottest year and a rank of 1 is given to the coolest year. Table 2 shows how the average temperature (in degrees Fahrenheit) over three year periods compared to a long-term average of temperature. This shows that for the 1996–1998 time period, average temperatures in Kentucky were close to the long-term average and Ohio's temperatures were only half a degree below average. The 1996–1998 period had slightly warmer average temperatures than the 1995–1997 time period and slightly cooler average temperatures than the 1993–1995 time period. During the 1995–1997 and 1993–1995 time periods, monitoring data show that the area was in violation of the 1-hour ozone standard. During the 1997–1999 time period, temperatures averaged about a half degree above average in Kentucky and were average in Ohio. Ozone monitoring data for this time period show that the area was in attainment of the 1-hour ozone standard. These temperatures are comparable to the average during the 1987–1989 time period used to classify the area as a moderate ozone nonattainment area under the Clean Air Act.

Table 1 shows how the temperature rankings have varied from year to year. Note that 1998 and 1999 are ranked higher than 1995, when the area last experienced two exceedances at a monitor during a single year.

This data shows that the weather conditions were not unusually favorable towards lower levels of ozone, and that the area has continued to attain the 1-hour standard even with weather that was slightly warmer than average and comparable to when the area was originally classified as moderate nonattainment. The combination of this analysis of the meteorological conditions in conjunction with the existence of permanent and enforceable emission reductions demonstrates that the improvement in air quality is due to permanent and enforceable emission reductions.

In light of this information, EPA believes it is reasonable not to require photochemical grid modeling. Three-year averaging addresses variations in meteorological conditions, and the commenter has presented no evidence that the three year attainment period was unusually favorable. We have looked at the weather and determined that it was not unusually favorable. It is important to note that, redesignation is not intended as an absolute guarantee that the area will never monitor future violations. This is what maintenance plan contingency measures are designed to address and correct.

Comment 11: The commenter contends that the plan does not demonstrate maintenance for ten years as required by sections 107(d)(3)(E)(iv) and 175A of the Clean Air Act. EPA proposes to find maintenance not on the basis of modeling, as required by the CAA, but on the presumption that the area will always be in attainment if emissions remain at or below estimated 1996 levels. The commenter states that such a presumption is not rationally supportable. The area violated the NAAQS in the 1995–1997 period. Therefore, the commenter reasons, holding emissions to 1996 levels does not assure attainment.

The commenter avers that, even assuming the emission reductions predicted by the states for 1999 and subsequent years, there is no technical analysis in the record demonstrating that those emission levels will assure maintenance. Such a demonstration requires photochemical grid modeling that accounts for the kinds of weather conditions and transport impacts experienced on appropriately chosen design days. See 65 FR 6711 (rejecting

use of rollback analysis for making attainment and nonattainment predictions). According to the commenter, until EPA approves such a modeling demonstration, it cannot approve the maintenance plan.

The commenter argues that the history of this nonattainment area shows that EPA cannot rationally assume that emission levels correlate with ozone levels in a linear or consistent fashion; the area did not violate the ozone NAAQS in the 1992–94 period, but did subsequently violate the NAAQS when VOC emissions were supposedly lower.

Response 11: We believe that the monitoring shows that the current level of emissions is adequate to keep the area in attainment. Table 3 summarizes the number of exceedances at each monitor in the area from 1987 through 1999. This Table shows the number of expected exceedances for each monitor for each year. A monitor has to measure more than 1.0 average expected exceedances over a three year period to cause a violation of the 1-hour ozone standard.[3] See 40 CFR 50.9 and Appendix H. The Table shows that the number of exceedances have decreased from what was monitored in the late 1980's. The violation monitored during the 1995–1997 time period was just slightly above the ozone standard and significant reductions in emissions have occurred to bring this level down to attainment. Likewise, emissions have decreased from the 1992–1994 time period, increasing the likelihood that the area will maintain the 1-hour ozone standard.

Since 1996 all of the monitors in operation recorded 1.0 exceedance or less each year. This averages out to less than 1.0 exceedance on average per year. This is clearly not a violation of the 1-hour ozone standard. The last time a monitor recorded more than 1.0 exceedance was in 1995, when two exceedances were recorded at two of the monitoring sites in the area. The number of monitored exceedances has decreased as the amount of emissions has decreased.

TABLE 3.—1-HOUR OZONE NAAQS EXPECTED EXCEEDANCES IN THE CINCINNATI-HAMILTON, OHIO-KENTUCKY AREA FROM 1987 TO 1999.

Site/County	87	88	89	90	91	92	93	94	95	96	97	98	99
Middletown/Butler	0.0	6.5	0.0	2.0	0.0	0.0	1.0	0.0	2.0	1.0	1.0	0.0	1.0
Hamilton/Butler	0.0	4.1	0.0	0.0	0.0	0.0	1.0	0.0	1.0	0.0	0.0	0.0	1.0
389 Main St./Clermont	2.0	10.4	0.0	0.0	0.0	0.0	0.0	.....	.....	.....	.....	.....	.....
4430 SR 222/Clermont	.....	.....	.....	.....	.....	.....	.....	1.0	1.0	0.0	0.0	1.0	1.0
11590 Grooms Road/Hamilton	2.0	5.0	1.0	1.0	4.0	0.0	0.0	0.0	0.0	0.0	1.0	1.0	0.0
6950 Ripple Road/Hamilton	2.0	0.0	0.0	1.0	1.1	0.0	0.0	0.0	1.0	0.0	0.0	0.0	0.0
Cincinnati (0019)/Hamilton	3.0	5.0	1.2	0.0	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cincinnati (0037)/Hamilton	.....	.....	.....	0.0	0.0	0.0	0.0	0.0	1.0	0.0	0.0	0.0	.....
Cincinnati (0040)/Hamilton	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.0
Lebanon (416 S. East St.)/Warren	2.0	8.2	0.0	4.0	3.0	0.0	0.0	2.0	2.0	0.0	.....	.....	.....
Warren	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1.0	1.0	0.0
Boone	0.0	2.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Campbell	2.0	7.0	1.1	0.0	0.0	0.0	1.0	0.0	0.0	1.0	0.0	0.0	0.0
Kenton	2.0	14.1	0.0	0.0	0.0	0.0	0.0	0.0	1.0	1.0	0.0	1.0	0.0

The area has monitored attainment for both the 1996–1998 and 1997–1999 time periods. This shows that the current level of emissions is adequate to keep the area in attainment during weather conditions as in past years associated with higher levels of ozone. In addition, the CAA does not presume that the area will always be in attainment. The CAA provides that if the area were to violate the 1-hour ozone standard, then the contingency measures in the maintenance plan would be triggered. This would reduce the ozone precursor emissions and bring the area back into attainment.

Our policy allows areas to prepare an attainment emissions inventory corresponding to when the area monitored attainment. It also allows areas to project maintenance by showing that future emissions will stay below the attainment emissions inventory.[4] The attainment inventory estimates 1996 emissions, which is within the 1996–1998 time period of attainment. Emissions are projected to remain below this level for the next 10 years.

Holding emissions at or below the level of the attainment inventory is adequate to reasonably assure continued maintenance of the 1-hour ozone standard. Reductions in ozone precursor emissions have been shown in photochemical grid modeling to reduce ambient ozone concentrations in areas across the country. Photochemical grid modeling is not needed to show that the area has attained or will maintain the standard. The air quality will be maintained by keeping below the attainment emissions level, continuing to monitor ozone levels, and having maintenance plan contingency measures available. Reductions in ozone precursor emissions have brought many areas across the country into attainment.

Many of the ozone areas for which EPA has approved ozone redesignations have used an emissions inventory approach to demonstrate maintenance. The majority of areas have continued to maintain the 1-hour ozone standard using that approach. See redesignations cited in Response 10. Emissions inventories can be used to project maintenance of the 1-hour ozone standard. As previously stated, if the attainment level of emissions is not adequate to protect against a violation and the area monitors a violation, then the contingency measures in the maintenance plan would be triggered to bring the area back into attainment. There are ozone monitors located in the Cincinnati-Hamilton area to ensure that the area's air quality remains below the level set by the 1-hour ozone standard.

The comment that EPA should not assume that ''emission levels correlate with ozone levels in some sort of linear

[3] Expected exceedances take into actual monitored exceedances and account for days where there is missing data or the data was invalidated.

[4] See ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

or consistent fashion'' is in effect a recommendation that future maintenance be tested assuming meteorological conditions that are more conducive to ozone formation than the conditions that have prevailed in 1996 to 1999. No other factor is known to introduce an inconsistency between ozone and emissions. The commenter protests that the area has not submitted a maintenance demonstration based on ozone modeling, and implicitly urges that the modeling assume 1995-type conditions, or worse.[5] However, if a prospective maintenance demonstration were performed with an ozone photochemical model following EPA guidance, the modeling would be allowed to use episode days from the 1996–1998 period, not 1995. It is highly likely, if not certain, that the outcome would be a conclusion that attainment will be preserved through the required 10-year period. EPA believes this modeling guidance is reasonable and appropriate.

Comment 12: EPA has not fully approved the Stage II vapor recovery program in the Ohio portion of the nonattainment area. EPA partially disapproved the program because it can be suspended at the discretion of the Ohio EPA Director without obtaining EPA approval. 59 FR 52911 (October 20, 1994). The commenter contends that because of this discretionary suspension provision, EPA cannot credit any emissions reductions to the Ohio Stage II program, either with respect to the attainment demonstration or the maintenance demonstration.

Response 12: EPA does not agree with the conclusion of the comment. EPA can give credit for the emissions reductions because the Stage II program has been implemented in all areas where it was required in the state, including the Cincinnati-Hamilton area. EPA partially approved the Ohio Stage II plan because it contained all of the required criteria for an approvable Stage II plan. Furthermore, because EPA approved the program into the state SIP, EPA has the authority to enforce the program provisions, if necessary.

The director's discretion provision, which states that the OEPA Director may suspend the program at will, was disapproved by EPA. EPA's initial concern regarding this provision was over the potential for the OEPA Director to not implement any one or all phases of the program without first seeking EPA approval. The Ohio EPA Director, however, has not chosen to suspend the Stage II program in the Cincinnati-Hamilton area. EPA has also established through discussions with OEPA enforcement staff that the Stage II program is in operation in the Ohio portion of the Cincinnati-Hamilton area and has been for a number of years.

EPA has reviewed the state's efforts to implement the Stage II program in detail at 62 FR 61241 (November 17, 1997). We believe that Ohio understands the need for VOC emission reductions from all source categories and has implemented the Stage II program along with other VOC reduction measures to meet not only the spirit but also the letter of the ozone attainment plan. Since this measure is part of the Federally approved SIP and is being implemented, it is providing creditable emissions reductions contributing to attainment.

The Memorandum entitled, ''State Implementation Plan Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992,'' Michael Shapiro, Acting Assistant Administrator for Air and Radiation, dated October 14, 1994, states:

''Stage II vapor recovery remains an applicable requirement for moderate ozone nonattainment areas until EPA promulgates on-board vapor recovery regulations. Section 202(a)(6) of the Act provides that once onboard regulations are promulgated, the Stage II regulations required under section 182(b)(3) are no longer applicable for moderate ozone nonattainment areas. Therefore, final redesignation for a moderate nonattainment area that occurs after EPA's onboard regulations are promulgated does not have to include a Stage II SIP control program.''

On October 20, 1994, EPA partially approved and partially disapproved Ohio's SIP revision for implementation of the Stage II program (59 FR 52911). As stated in that rulemaking action, with the exception of paragraph 3745–21–09(DDD)(5), EPA considers Ohio's Stage II program to fully satisfy the criteria set forth in the EPA guidance document for such programs entitled, ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs.'' EPA promulgated onboard rules on April 6, 1994 (59 FR 16292); therefore, pursuant to section 202(a)(6) of the CAA, Stage II is no longer required, and a fully approved program is not a prerequisite for redesignation. However, the state has opted to include reductions in VOCs from the Stage II program as part of its maintenance plan. Only those Stage II provisions previously approved by EPA are part of the Cincinnati-Hamilton area maintenance plan. See also similar determinations by EPA in the redesignations of Cleveland (60 FR 31433, June 15, 1995; and 61 FR 20458, May 7, 1996) and Dayton (60 FR 22289, May 5, 1995).

Comment 13: The commenter argues that under 42 U.S.C. 7410(a)(2)(D)(i) the SIP must include provisions to prohibit emissions that will contribute significantly to nonattainment in, or interfere with maintenance by, any other state. The commenter asserts that EPA has specifically determined that emissions from Ohio contribute significantly to ozone nonattainment in downwind states, and has issued a SIP call to require additional NO_X controls in the Ohio SIP to address this problem. Ohio has not yet adopted the required SIP provisions. The commenter claims that EPA seeks to gloss over this failure by noting that the NO_X SIP call has been stayed by the D.C. Circuit. The commenter complains that EPA has proposed to allow various Ozone Transport Region States to claim credit for SIP call reductions, notwithstanding the stay. In the Washington, D.C. area, for example, the commenter asserts that EPA is proposing to approve an attainment demonstration that relies heavily on ozone reductions that will follow from compliance with the NO_X SIP call. The commenter argues that in that context, EPA discounted the significance of the court ordered stay, asserting that the SIP call rule was still on the books, and therefore must be given credence. 64 FR 70460, 70464, 70464–70465 (1999). The commenter states that EPA cannot rationally allow downwind states to claim credit for SIP call reductions, while allowing upwind states to avoid adoption of measures required for such reductions.

Response 13: For a number of independent reasons, we view submissions under the NO_X SIP call as not being applicable requirements for purposes of evaluating a redesignation request. First, because the NO_X SIP call has been stayed, submissions under it were not due at the time the redesignation requests were submitted. Established EPA policy holds that when evaluating a redesignation request, EPA does not consider whether the state has met requirements that come due after submittal of a complete redesignation request. See page 4 of the Calcagni Memorandum. This ground alone would be dispositive. EPA also believes that even if the revisions under the NO_X SIP call were due prior to the redesignation requests, other grounds support considering these revisions to not be applicable requirements.

[5] Table 1 shows that the average temperature conditions in the area were worse in 1998 and 1999 than in 1995.

The requirement to submit revisions under the NO_X SIP call continues to apply to areas after redesignation to attainment. Therefore, the state remains obligated to submit these revisions even after redesignation, and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with the requirements of section 110 and part D that are linked with an area's nonattainment status, the NO_X SIP call requirements apply to both nonattainment and maintenance (attainment) areas. The NO_X SIP call submissions are required not to address air quality in the designated Cincinnati-Hamilton ozone nonattainment area, but to reduce emissions affecting downwind areas. They are not requirements linked with a particular nonattainment area's designation and classification.

The requirements linked with a particular area's designation and classification are the requirements that EPA believes are the relevant measures to evaluate in reviewing a redesignation request. Thus, even if it had been due prior to the filing of the redesignation request, the NO_X SIP call submission requirement could be construed not to be an applicable requirement for purposes of redesignation. This policy is consistent with EPA's existing redesignation policies regarding conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania proposed and final rulemakings, 6l FR 53174–53176 (October 10, 1996), 62 FR 24826 (May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking at 60 FR 62748, 62741 (December 7, 1995).

Comment 14: The commenter states that the CAA explicitly requires the SIP to include a preconstruction permit program for new major sources and modifications within the nonattainment area (NSR program). 42 U.S.C. 7410(a)(2)(C), 7502(c)(4)&(5), 7503, 7511, 7511(a)(2)(C), and (b)(5). EPA has not fully approved an NSR program for the Ohio portion of the nonattainment area. According to the commenter, this is not an optional program that EPA can simply waive if not ''needed'' for attainment. The Clean Air Act sets out the NSR mandate as an explicit SIP requirement, in addition to the requirement for demonstrating timely attainment.

Response 14: EPA believes that the Cincinnati-Hamilton area may be redesignated to attainment notwithstanding the lack of a fully-approved NSR program meeting the requirements of the 1990 Clean Air Act amendments. This view has been set forth by EPA in a 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.'' Also, see Grand Rapids, Michigan redesignation (61 FR 31834–31837, June 21, 1996). This policy has also been applied in redesignations of Youngstown-Warren, Columbus, Canton, Cleveland-Akron-Lorain, Dayton-Springfield, Toledo, Preble County, Columbiana County, and Clinton County, Ohio, as well as Detroit, Michigan.

EPA believes that its decision not to insist on a fully approved NSR program as a prerequisite to redesignation is justifiable as an exercise of the Agency's general 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). Under *Alabama Power Co.* v. *Costle,* EPA has the authority to establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally. In this context, the issue presented is whether EPA has the authority to establish an exception to the requirements of section 107(d)(3)(E) that EPA must fully approve a SIP meeting all of the requirements applicable to an area under section 110 and part D of title I of the Clean Air Act before redesignating the area. Plainly, the NSR provisions of section 110 and part D are requirements that were applicable to the Cincinnati-Hamilton area at the time of the submission of the request for redesignation. Thus, on its face, section 107(d)(3)(E) would seem to require that the State submit and EPA fully approve a part D NSR program meeting the requirements of the Clean Air Act before an area could be redesignated to attainment. Under EPA's de minimis authority, however, the agency may establish an exception to an otherwise plain statutory requirement if its fulfillment would be of little or no environmental value. Therefore, it is necessary to determine what would be achieved by insisting that there be a fully-approved part D NSR program in place prior to the redesignation of the Cincinnati-Hamilton area.

For the following reasons, EPA believes that requiring the adoption and full approval of a part D NSR program prior to redesignation would not be of significant environmental value in this case. Ohio assumed that NSR would not apply after redesignation to attainment, and therefore, assumed source growth factors based on projected growth in the economy and in the area's population. Ohio has demonstrated that maintenance of the ozone NAAQS will occur even if the emission reductions expected to result from the part D NSR program do not occur. The emission projections made by Ohio to demonstrate maintenance of the NAAQS considered growth in point source emissions (along with growth for other source categories) premised on the assumption that the Prevention of Significant Deterioration (PSD) program, rather than the part D NSR, would be in effect during the maintenance period. (It should be noted that the growth factors assumed may even be overestimates under PSD, which would restrain source growth through the application of best available control technology.) Under NSR, significant point source emissions growth would not occur. Thus, contrary to the assertion of the commenter, Ohio has demonstrated that there is no need to retain the part D NSR as an operative program in the SIP during the maintenance period in order to provide for continued maintenance of the NAAQS. (If this demonstration had not been made, NSR would have had to have been retained in the SIP as an operative program since it would have been needed to maintain the ozone standard.)

The other purpose that requiring the full approval of a part D NSR program might serve is to ensure that NSR would become a contingency provision in the maintenance plan required for these areas by section 107(d)(3)(E)(iv) and 175A(d). These provisions require that for an area to be redesignated to attainment, it must receive full approval of a maintenance plan containing ''such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.'' Based on this language, it is apparent that whether an approved NSR program must be included as a contingency provision depends on whether it is a ''measure'' for the control of the pertinent air pollutants.

The term ''measure'' is not defined in section 175A(d) and Congress utilized

that term differently in different provisions of the Clean Air Act with respect to the PSD and NSR permitting programs. For example, in section 110(a)(2)(A), Congress requires that SIPs include ''enforceable emission limitations and other control measures, means, or techniques * * * as may be necessary or appropriate to meet the applicable requirements of the Act.'' In section 110(a)(2)(C), Congress requires that SIPs include ''a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.'' If the term ''measures'' as used in section 110 (a)(2)(A) and (c) had been intended to include PSD and NSR there would have been no point to requiring that SIPs include both measures and preconstruction review under parts C and D (PSD or NSR). Unless ''measures'' referred to something other than preconstruction review under parts C and D, the reference to preconstruction review programs in section 110(a)(2)(C) would be rendered mere surplusage. Thus, in section 110(a)(2) (A) and (C), it is apparent that Congress distinguished ''measures'' from preconstruction review. On the other hand, in other provisions of the Clean Air Act, such as section 161, Congress appeared to include PSD within the scope of the term ''measures.''

EPA believes that the fact that Congress used the undefined term ''measure'' differently in different sections of the Clean Air Act is germane. This indicates that the term is susceptible to more than one interpretation and that EPA has the discretion to interpret it in a reasonable manner in the context of section 175A. Inasmuch as Congress itself has used the term in a manner that excluded PSD and NSR from its scope, EPA believes it is reasonable to interpret ''measure,'' as used in section 175A(d), not to include NSR. That this is a reasonable interpretation is further supported by the fact that PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR when an area is redesignated to attainment. This distinguishes NSR from other required programs under the Clean Air Act, such as inspection and maintenance programs, which have no corollary for attainment areas. Moreover, EPA believes that those other required programs are clearly within the scope of the term ''measure.''

EPA is not suggesting that NSR and PSD are equivalent, but merely that they are the same type of program. The PSD program is a requirement in attainment areas and is designed to allow new source permitting, yet contains adequate provisions to protect the NAAQS. If any information, including preconstruction monitoring, indicates that an area is not continuing to meet the NAAQS after redesignation to attainment, the requirements of 40 CFR part 51, appendix S (Interpretive Offset Rule) or a 40 CFR 51.165(b) program would apply.

EPA believes that in any area that is designated or redesignated as attainment under section 107, but experiences violations of the NAAQS, these provisions should be interpreted as requiring major new or modified sources to obtain VOC emission offsets of at least a 1:1 ratio, as presumptive that 1:1 NO_X offsets are necessary. See October 14, 1994 memorandum from Mary Nichols entitled, ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.'' In addition, permits to install cannot be issued under the PSD program unless the applicant can demonstrate that the increased emissions from the new or modified source will not result in a violation of the NAAQS.

EPA's logic in treating part D NSR in this manner does not mean that other applicable part D requirements, including those that have been previously met and previously relied upon in demonstrating attainment, could be eliminated without an analysis demonstrating that maintenance would be protected. As noted above, Ohio has demonstrated that maintenance would be protected with PSD in effect, rather than part D NSR. Thus, EPA is not permitting part D NSR to be removed without a demonstration that maintenance of the standard will be achieved.

The position taken in this action is consistent with EPA's current national redesignation policy. This policy permits redesignation to proceed without otherwise required NSR programs having been fully approved and converted to contingency provisions, provided that the area demonstrates, as has been done in this case, that maintenance will be achieved with the application of PSD rather than part D NSR.

Comment 15: A commenter states that EPA cannot lawfully or rationally grant a NO_X waiver to the Kentucky portion of the nonattainment area because EPA has not determined that NO_X reductions are unnecessary throughout the entire nonattainment area; and EPA has in fact proposed to approve NO_X RACT as a contingency measure in the Ohio portion of the nonattainment area; and EPA has determined that additional NO_X reductions are needed in Ohio to prevent ozone violations in downwind states. The commenter asserts that EPA's approval of a NO_X waiver under these circumstances, and its failure to require NO_X RACT regionwide, is irrational and violates the CAA.

Response 15: We disagree with the commenter. EPA has determined that additional NO_X reductions are unnecessary throughout the entire nonattainment area as both the Kentucky and Ohio portions have three years of quality-assured ozone monitoring data indicating attainment. Based on this data, the area has demonstrated in accordance with section 182(f)(1)(A) that additional reductions of NO_X will not contribute to attainment of the 1-hour ozone standard. Consequently, EPA is approving NO_X RACT waivers for both the Ohio and Kentucky portions of the Cincinnati-Hamilton nonattainment area.

The area's contingency plan focuses initially on implementation of VOC precursor controls in the event of control inadequacies. Moreover, the redesignation proposal specifically states that, although NO_X RACT is listed in the Ohio portion of the contingency plan, such measures will be implemented only ''if a violation of the ozone NAAQS is recorded in the Cincinnati[-Hamilton] Moderate Nonattainment Area after implementation of the selected VOC control measures'' in the contingency plan.

The CAA requires EPA to view NO_X waivers in a narrow manner. In general, section 182(f) provides that waivers must be granted if states show that reducing NO_X within a nonattainment area would not contribute to attainment of the ozone NAAQS within the same nonattainment area. Only the role of local NO_X emissions on local attainment of the ozone standard is considered in nonattainment areas outside an ozone transport region. The role of NO_X in regional attainment is addressed separately under section 110(a)(2)(D) of the Clean Air Act, which prohibits one state from significantly polluting another state's downwind areas.

Comment 16: The commenter questions the accuracy, completeness and appropriateness of Ohio's emissions inventory. See 1997 citizen Audit report of the area's compliance with the ozone standard. The commenter finds that the

use of ''previous emissions estimates'' to project emissions ten years into the future for the purpose of showing ''Maintenance Projections'' for the SIP to be highly questionable, claiming that there is no demonstration that the VOC and NO_X are stable or are being reduced.

The commenter states that they have compared emission inventory data in a number of Title V applications and draft OEPA permits (to the extent they have been made available), expecting those applications and permits to provide the most current VOC and NO_X data.

The commenter claims to have found large discrepancies between past emission data and current Title V permit to operate applications. For example, Celotex is identified as a major source for VOCs in Ohio EPA's Statement for Basis for Title V Permit. The commenter says that the Title V permit to operate indicates VOCs totaling over 100 tons per year, with no controls, but that the emission inventories used for past SIPs list at most just over 10 tons per year. The commenter states that there are no VOC controls on this facility. If past inventories are correct, then this facility is or will be emitting significantly more VOCs, which will affect ozone formation. If past inventories didn't include all the VOCs (and reviews of the files indicate this is the case) then the commenter believes the conformity budget is inaccurate.

The Formica facility is another example cited by the commenter, who states that this facility's Title V application estimated maximum emission rate for two coaters is over 3000 tons per year each. The emission inventories have varied from a high of 264 tons for one unit and a low of 11.87 for the other. The commenter contends that the Ohio EPA's local air agency has been having the facility redo stack tests ''to show compliance'' but hasn't done so for the past two years.

The commenter claims to have found similar discrepancies at other facilities, like Morton International and Cincinnati Specialties, and that some facilities do not have all their permits. The commenter complains that facilities are being allowed to repeat stack tests over and over or are not being required to retest at capacity, because they aren't running at capacity. The commenter believes that the Title V program is years behind schedule and many non-Title V permits have expired or are being held as ''non-priorities''.

The commenter overall finds a lack of an effective permitting and enforcement program which would assure the accuracy of the data used in the SIP, and thus assure compliance that the 1-hour standard can be met in future years. For more information on permit and enforcement failures, the commenter refers to the Sierra Club, OPIRG, Ohio Citizen Action and Rivers Unlimited petitions, supplemental petitions, reports and documentation submitted to EPA to revoke Ohio's authority to implement the Clean Air Act and other environmental laws.

The commenter contends that new source review for modifications is not being done, and new source permitting has not been done properly for utilities. The commenter also claims to find that major modifications have been made at Cincinnati Specialties and Celotex without undergoing NSR. The commenter claims that this issue needs to be systematically reviewed at Ohio EPA before considering a SIP or redesignation request adequate.

Response 16: We reviewed the 1990 base year emissions inventory for Ohio that was used to develop the emissions projections and approved it in a rulemaking dated December 7, 1995 (60 FR 62737). This inventory was thoroughly reviewed and deemed adequate after an opportunity for public comment. The point source emissions were based on permit information available at that time. Emissions from individual point sources can vary from year to year due to shutdowns, changes in production and other factors. In addition, the emissions inventory was prepared to estimate what a typical summer day's emissions were during 1990 instead of showing what the maximum emissions were that a source could potentially emit during that summer. This is more representative of what is actually occurring than using the maximum potential emissions. Emissions inventory projections were made following EPA guidance for projecting emissions inventories. This guidance allows areas to project their actual emissions based on projected changes in industrial employment. This is a reasonable factor to use to project future emissions for a large number of sources.

In any event, the ozone SIP for the Cincinnati-Hamilton area has been fully approved. The Title V permitting program is not an applicable SIP requirement and there is no requirement for EPA to evaluate and reassess individual permits for enforceable emission limits prior to redesignation of the area. The redesignation criteria do not include reviewing permitting programs and enforcement programs to ascertain whether or not any implementation deficiencies exist. Any failures that may be occurring are not undermining attainment, and any deficiencies that are confirmed can be addressed and corrected in other contexts. The maintenance plan is also designed to assure that attainment of the standard will be preserved.

As noted in EPA's Response to Comment 5, EPA in response to the petitions cited by the commenter, is currently conducting a comprehensive review of the implementation issues raised by the petitions. Any implementation deficiencies that EPA finds as a result of this review will be addressed and corrected in other contexts unrelated to the redesignation procedure that is the subject of this rulemaking. The issues relating to alleged standard-setting, permit and enforcement failures raised by commenters are not required to be resolved in the context of a redesignation action. Also see Response 14.

Comment 17: The commenter notes that Stage II Vapor Recovery is assumed to be in place to demonstrate conformity for the metropolitan planning organization's Transportation Improvement Program (TIP) for the approval and funding of highway projects. The commenter states that Ohio EPA's local air agency has stated in the past that they check Stage II Vapor Recovery systems when installed, but when citizens complained about leaking and broken hoses, the air agency would not investigate, saying that they had checked compliance when the systems were installed. The commenter alleges that the failure to effectively enforce Stage II and subsequently suspend Stage II, invalidates the TIP conformity analysis and makes it more likely that the region will exceed the ozone standard.

The commenter declares that transportation conformity analysis does not include induced travel and exempted projects which were in the ''pipeline'' prior to the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) legislation. Now that such projects as the Butler Regional Highway are coming online, the transportation sector will be increasing its emissions.

Response 17: See Response 12. Transportation Plans must conform with the SIP requirements before they can be found adequate. Conformity of transportation plans is not a requirement for redesignation of an area from nonattainment to attainment, and thus these comments are not germane to this rule. Conformity requirements will continue to apply to the Cincinnati-Hamilton area once it is redesignated to attainment subject to the requirement to have a maintenance plan.

Comment 18: The commenter argues that redesignation would mislead the public into thinking that Cincinnati's air does not pose a serious health risk. The commenter states that in May 1997, EPA issued ''A Special Alert for People with Asthma and Other Respiratory Problems in the Greater Cincinnati/Northern Kentucky Metropolitan Area.'' EPA warns that negative health effects are ''of concern to everyone who works, plays or spends time outdoors, even the healthiest people.'' The commenter claims that there is no reason to believe that the air quality is any safer now than it was two years ago.

The commenter claims that in 1999 there were three violations of the 1-hour standard and 77 violations of the new 8-hour standard, according to Hamilton County Department of Environmental Services (as of September 12, 1999). The commenter contends that smog alerts were also issued for 27 days, including one eight-consecutive-day period from June 6 to 13; and two five-consecutive-day periods from July 16 to 20 and July 22 to 26. All together, the commenter contends, this represents nearly one third of the summer when it was unsafe for people to breathe the air.

The CAA requires the SIPs to make RFP. The term '' 'reasonable further progress' '' means 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 commenter states that 13 exceedances of the standard show that the RFP plan was not adequate and still isn't adequate.

The commenter says that Ohio should be undertaking the measures outlined in the contingency plan since the area has not yet achieved the standard.

According to the commenter, continued efforts are needed to meet the 1-hour standard and that standard must be met before redesignation. In July 1997, EPA revised the NAAQS for ozone. The commenter states that EPA is currently phasing out and replacing the 1-hour ozone standard with the new eight-hour standard to protect against longer exposure periods. The 1-hour standard will be revoked when an area has achieved three consecutive years of air quality data meeting the 1-hour standard. Further, the commenter argues, EPA states that an area meets the ozone NAAQS if there is not more than one day per year when the highest hourly value exceeds the threshold. The commenter claims that EPA's policy refers to the ''standard'' not the technical issues of a violation being three exceedances of the standard.

Response 18: We disagree with the commenter. As shown above in Table 3 (Response 11), air quality monitors show that the area is attaining the 1-hour ozone standard. Ozone alerts were called in the area to alert the public to take steps to reduce air pollution when the area was either monitoring high levels of ozone or had the potential to start monitoring high levels of ozone. Calling an ozone alert does not necessarily mean that the standard was exceeded on a particular day. The summary of monitoring data in Response 11 shows that the number of monitored exceedances was much lower than the number of alerts called. The air quality is measured by ozone monitors and the data collected is compared to the level of the ozone standard. See 40 CFR 50.9 and Appendix H. The number of ozone alerts called is not a part of this determination. Also, see Responses 2, 11, 19 and 20.

The RFP plan was approved as adequate. See 63 FR 4188 (January 28, 1998) and 63 FR 67586 (December 8, 1998). Emissions reductions provided by this plan have helped the area to attain the 1-hour ozone standard.

Comment 19: The commenter believes that EPA should not take any action on the redesignation until the federal courts resolve the current legal questions surrounding the new standard. In any event, the commenter states, EPA and the health community recognize that the old standard is unsafe. While the commenter agrees that EPA's interpretation of the letter of the law may qualify the area to be in attainment based on the old standard, it believes that this ruling would distort the spirit and purpose of the law.

Response 19: EPA's action to redesignate the Cincinnati-Hamilton area to attainment under the 1-hour standard is not affected by the 8-hour standard or any legal questions surrounding the status of the 8-hour standard. EPA currently has a legal obligation under the Clean Air Act to act on redesignation requests. See section 107(d)(3)(D) (''Within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny such redesignation.''). See also Response 2 above.

Comment 20: The commenter maintains that the Cincinnati-Hamilton area continues to exceed the 1-hour ozone standard. In 1999, the commenter states, the standard has been exceeded three times, in 1998 four times, in 1997 three times and in 1996 three times. The commenter alleges that the standard has been exceeded 10 times in the three years being evaluated under this request, and that it has been exceeded three times since the three years being used for the purpose of showing attainment.

The commenter contends that the region was supposed to attain the standard in 1996, yet three years later the standard is still being exceeded. The commenter believes that reclassifying the area as a serious nonattainment area would result in significant and valid steps to actually reduce ozone precursors. The commenter alleges that continued failure to meet the standard three years after the required date shows that further steps must be taken.

Response 20: We evaluate attainment of the 1-hour ozone standard by comparing the data at each individual monitor to the 1-hour ozone standard. This data is summarized in Response 11. Table 3 shows that the total number of exceedances measured at each individual monitor averages less than 1.0 over the 1996–1998 and 1997–1999 time periods. EPA's interpretation of the 1-hour ozone standard, long embodied in its regulations, allows a monitor in the area to exceed the standard as long as it does not average more than 1.0 per year over a three year period. See 40 CFR 50.9 and Appendix H for EPA's interpretation of the 1-hour ozone standard. This shows that the area has attained the standard.

The commenter has erroneously combined the data from several monitors in order to imply that the area is not attaining the 1-hour ozone standard. This is inconsistent with EPA's long-standing regulations concerning the definition of compliance and how we interpret the 1-hour ozone standard. See also Response to Comment 21.

Comment 21: The commenter states that a strict reading of the CAA (section 181(a)(5)(B)) requires that not more than 1 exceedance of the national ambient air quality standard level for ozone may have occurred in the area in the year preceding the extension year (for extensions of the deadline). The Cincinnati-Hamilton area, the commenter states, has far more than one exceedance per year.

The commenter contends that it is now three years after the deadline for achieving the standard, and that the region is now well overdue for ''Reclassification Upon Failure to Attain.'' The CAA requires that ''Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's

design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme Area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—(i) the next higher classification for the area, or (ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (b).''

Response 21: We disagree with the commenter. Section 181(a)(5)(B) of the CAA governs what an area has to meet in order to receive an attainment date extension. This area has met this part of the CAA and has been given an extension of the attainment date twice. See final rule (62 FR 61241, November 17, 1997), effective December 17, 1997; and direct final rule (63 FR 14623, March 26, 1998), effective May 26, 1998. These two consecutive extensions extended the attainment date to November 15, 1998. The area attained the standard by this new deadline. Also see air quality summary in Response 11. The area was not reclassified to a higher classification since it qualified for an extension of the attainment date, having attained the 1-hour ozone standard by the deadline set by the applicable extension. In this rulemaking EPA is making this determination of attainment by the applicable attainment date, and the area is not subject to reclassification.

Comment 22: The commenter alleges that the large number of exceedances of the eight-hour standard are another indication that the regional ozone levels must be reduced. The plan for reduction should be put in place now, not just to meet regulatory deadlines but to protect public health.

Response 22: The 8-hour ozone standard is not the subject of this rulemaking. The Cincinnati-Hamilton area is being evaluated only with reference to the 1-hour ozone standard. See Response 2 and Response 19.

Comment 23: The commenter contends that the SIP relied on voluntary actions such as those proposed by the Regional Ozone Coalition and funded by Congestion Mitigation and Air Quality Improvement program (CMAQ) (under ISTEA) funds, and that the voluntary actions fail to meet the CAA requirements of being permanent and enforceable. Furthermore, the commenter expresses the fear that the region will no longer qualify for CMAQ funds if it is redesignated, and that the region will no longer have access to funds which have been used since 1996 to reduce the vehicle component of ozone precursors, including reduced bus fares. The reduced bus fares have been effective in increasing ridership and would likely need to continue unless such funding comes from another source. The commenter says it has no indication that these funds have been replaced or will come from other sources.

Response 23: We disagree with the commenter. The voluntary actions were not used to meet the requirement that the improvement in air quality was due to permanent and enforceable measures. Permanent and enforceable measures listed in the proposed rulemaking, such as the Federal Motor Vehicle Emissions Control Program, have provided the emissions reductions that have brought the area into attainment. The CAA does not prohibit areas from using voluntary measures to further reduce air pollution.

The State of Ohio receives CMAQ funding from the United States Department of Transportation for all of the ozone and carbon monoxide nonattainment and maintenance areas in Ohio. The CMAQ funds are allocated to the states based on the allocation formula in the Transportation Equity Act for the 21st century passed by Congress during 1998. The Cincinnati-Hamilton area currently receives CMAQ funding based on its status as a moderate ozone nonattainment area.

In general, the CMAQ funding allocation for a state is dependent on the number and size of the ozone and carbon monoxide nonattainment and maintenance areas in the State. The allocation does change slightly when an area goes from an ozone nonattainment area to an ozone maintenance area. Ozone maintenance areas are eligible for CMAQ funding. The allocation of funding to the State for a maintenance area is factored at a slightly lower level than for a nonattainment area; however, the funding is still significant. Changing the status of the area to an attainment area with a maintenance plan does not eliminate CMAQ funding. EPA believes that the CMAQ funds available to Ohio for the Cincinnati-Hamilton area will be sufficient to continue to support many of the existing air quality projects that are currently being funded.

Comment 24: The commenter opposes the redesignation because, as the commenter states, most of the permits the commenter has reviewed do not have enforceable limits. The commenter believes most ''compliance'' is determined by calculations based on unverified data, and that facilities are not required to perform stack tests to show compliance with VOC limits. (It refers to files on Cincinnati Specialties for example.) The commenter points out that the CAA states ''Such plan provisions shall include enforceable emission limitations.''

Response 24: EPA approved enforceable limits into the SIP for Cincinnati Specialties located at 501 Murray Road, Cincinnati, Ohio. See 61 FR 18256, dated April 25, 1996. The rule containing these emissions limits is found at SIP section 3745–21–09(YY). These limits apply to Cincinnati Specialties.

The ozone SIP for the Cincinnati-Hamilton area has been fully approved, and there are no criteria requiring EPA to evaluate and assess Title V permit programs or review individual permits for enforceable emission limits prior to redesignation of the area. The SIP approval and redesignation criteria do not include evaluating permitting programs to ascertain whether or not any deficiencies exist. Whatever failures may be occurring are not undermining attainment, and any deficiencies that are confirmed can be addressed and corrected in other contexts, including a finding of failure to implement under section 173(b) of the CAA or requiring a SIP revision under section 110(a)(2)(H) of the CAA. The maintenance plan is also designed to assure that attainment will be preserved.

Also see Responses 5, 14, and 16.

Comment 25: What is the NAAQS? What is the ''one-hour ozone standard''?

Response 25: Air quality standards—known as National Ambient Air Quality Standards (NAAQS)—set national standards for acceptable concentrations of specific pollutants in outdoor air that threaten public health and the environment across broad regions of the country and are emitted in relatively large quantities by a variety of sources. EPA has established air quality standards for six pollutants or classes of pollutants, including ground level ozone. The 1-hour ozone standard is set at an ambient concentration of 0.12 parts per million and is averaged over a 1-hour time period.

Ozone monitors in the Cincinnati-Hamilton area are in operation from late spring to early fall, the period of highest ozone concentrations. These monitors continuously sample and analyze the air for ozone. This data is averaged for each hour during the day and compared to the NAAQS. For further information see 65 FR 3633–3634.

Comment 26: Is this redesignation to a better or worse level?

Response 26: Redesignating an area from nonattainment to attainment changes its official listing to indicate that the area has better air quality which is meeting the relevant NAAQS.

Comment 27: Why is EPA ''determining that certain attainment demonstration requirements, along with certain other related requirements of part D of Title 1 of the Clean Air Act not applicable to the Cincinnati-Hamilton area''? Also, 65 FR 3632 of the proposed rule states that, ''EPA has interpreted the general provisions of subpart 1 of part D of Title 1 (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures.''

Response 27: These measures were intended to bring an area into attainment of the NAAQS. EPA has interpreted certain of these requirements as no longer being applicable in the Cincinnati-Hamilton area since it is in fact monitoring attainment of the 1-hour ozone NAAQS. See proposed rulemaking at 65 FR 3630. Also, see May 10, 1995 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' and Response 7, above, in this rulemaking.

Comment 28: Page 3636 of the proposed rulemaking states that ''EPA believes, however, that in the context of the particular circumstances of this redesignation, it is permissible to depart from that policy and instead accept a commitment to implement these RACT rules as contingency measures in the maintenance plan rather than require full adoption and approval of the rules prior to approval of the redesignation.'' Why do this and what exactly are these particular circumstances?

Response 28: The proposed rule at 65 FR 3636–3637 contains a discussion of the reasoning and circumstances. Also, see Response 7, above, in this rulemaking.

Comment 29: The 15 percent plan was mentioned on page 3636 of the proposed rulemaking. Why would reductions of only 15 percent be required in the area?

Response 29: Section 182(b)(1) of the Clean Air Act specifically requires a 15% reduction for areas classified as moderate and above. These reductions helped to bring the area into attainment. Additional reductions are not now needed to reach attainment of the 1-hour ozone standard since the area is attaining the 1-hour ozone standard. Also, see Response to Comment 27 in this rulemaking.

Comment 30: How exactly does the Administrator determine that NO_X reductions would not contribute to attainment?

Response 30: For the Cincinnati-Hamilton area this determination is based on air quality monitoring data showing that the area is already attaining the 1-hour ozone standard, and therefore it does not need any additional NO_X reductions to attain the 1-hour ozone standard. Also, see discussion and responses elsewhere in this rulemaking.

III. What Actions Are We Taking?

We are determining that the Cincinnati-Hamilton moderate ozone nonattainment area has attained the NAAQS for ozone by its (extended) attainment date. The Cincinnati-Hamilton area includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements (section 172(c)(1)), along with certain other related requirements, of part D of Title 1 of the CAA, specifically the section 172(c)(9) contingency measure requirement, the section 182(b)(1) attainment demonstration requirement and the 182(j) multi-state attainment demonstration requirement are not applicable to the Cincinnati-Hamilton area.

We are approving an exemption from the NO_X requirement as provided for in section 182(f) for the Cincinnati-Hamilton area.

We are approving the redesignation of the Cincinnati-Hamilton area to attainment of the 1-hour ozone standard and we are approving the section 175A maintenance plans as revisions to the Ohio and Kentucky SIPs. The States of Ohio and Kentucky have satisfied all of the necessary requirements of the Act.

IV. Why Are We Taking These Actions?

We are making a determination that the area has attained the 1-hour ozone standard by its (extended) attainment date and has continued to be in attainment since that time. EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1996–1998 ozone seasons that demonstrate that the ozone NAAQS has been attained in the entire Cincinnati-Hamilton area. EPA also is determining that based on the most recent 3 years of data from 1997–1999, the area has continued to attain the standard. EPA believes it is reasonable to interpret provisions regarding attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions, if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.,* attainment of the NAAQS is demonstrated with three consecutive years of complete, quality assured, air quality monitoring data). See May 10, 1995, memorandum from John Seitz (referenced in Response 27) and *Sierra Club* v. *EPA*, 99 F.3d 1551 (10th Cir. 1996).

Section 182(f) establishes NO_X requirements for ozone nonattainment areas which require adoption and implementation of control measures for major stationary sources of NO_X similar to those which apply to major stationary sources of VOCs. One of the control requirements applicable to major stationary sources of VOCs is RACT. Therefore, pursuant to section 182(f) of the CAA, RACT is a requirement that is also applicable to major stationary sources of NO_X in an ozone nonattainment area. However, subsection 182(f)(1)(A) further provides that these requirements shall not apply to a nonattainment area outside an ozone transport region if the Administrator determines that additional NO_X reductions would not contribute to attainment of the ozone NAAQS in that area. Under EPA guidance, a request for an exemption from the NO_X requirements may be based upon the most recent three years of monitoring data.

An EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated February 8, 1995, entitled ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions-Revised Process Criteria,'' decouples the section 182(f) exemptions from NO_X transport issues. The memorandum states that for an area that did not implement section 182(f) NO_X requirements, but did attain the ozone standard as demonstrated by ambient air monitoring data (consistent with 40 CFR part 58 and recorded in EPA's AIRS), it is apparent that the additional NO_X reductions required by section 182(f) would not contribute to attainment of the ozone NAAQS in that area.

Because the Cincinnati-Hamilton area is currently demonstrating compliance with the ozone NAAQS based on three years of complete, quality-assured, ambient monitoring data, EPA is exempting the area from the section 182(f) NO_X requirements. As discussed in detail above, EPA is also determining that the Cincinnati-Hamilton area has attained the 1-hour ozone NAAQS. Ambient air monitoring data for the 1996 to 1998 ozone seasons demonstrate that the ozone NAAQS has been attained in the area. In addition, 1999

ambient air monitoring data show that the area continues to attain the standard. Because the Cincinnati-Hamilton area has attained the ozone NAAQS, without benefit of additional NO_X reductions, EPA has determined that this exemption request satisfies the NO_X waiver test set forth in subsection 182(f)(1)(A).

We are approving the maintenance plan as a revision to the SIP because it meets the requirements of section 175A and 107(d). We are also redesignating the area because three years of ambient air monitoring data demonstrate that the ozone NAAQS has been attained, the area has continued in attainment, and the area has satisfied the other requirements for redesignation.

V. What Are the Effects of These Actions?

These actions determine that the area attained the 1-hour ozone standard by its (extended) attainment date (November 15, 1998) and that the requirements of section 172(c)(1), 182(b)(1) and 182(j) concerning the submission of the ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for reasonable further progress (RFP) or attainment are not applicable to the area. This final action also exempts the area from section 182(f) NO_X requirements for moderate ozone nonattainment areas. However, all NO_X controls previously approved for the area by EPA must continue to be implemented. No additional NO_X measures are required for purposes of attaining the 1-hour standard.

The redesignation changes the official designation of the Ohio Counties of Butler, Warren, Clermont, and Hamilton and the Kentucky Counties of Boone, Campbell, and Kenton from nonattainment to attainment for the 1-hour ozone standard. It also approves as a SIP revision and puts into place plans for maintaining the 1-hour ozone standard for the next 10 years. These plans include contingency measures to correct any future violations of the 1-hour ozone standard.

The 1-hour ozone standard mobile source budgets for the Ohio portion of the area for the purposes of transportation conformity are now 37.9 tons per summer day VOC and 52.3 tons per summer day NO_X for the year 2010. The mobile source budgets for the purposes of transportation conformity for the Kentucky portion of the area are now 5.83 tons per summer day VOC and 15.13 tons per summer day NO_X for the year 2010.

VI. Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law Kentucky—''KRS 224.01–040'' or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

VII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation.

EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 12898

Executive Order 12898 (59 FR 7629, February 16, 1994) instructs EPA to address, as appropriate, disproportionately high and adverse health or environmental effects on minority and low-income populations. As set forth in its response to Comment 3, above, EPA has found that this rulemaking is consistent with Executive Order 12898 and does not impose any disproportionately high and adverse human health or environmental effects on minority and low-income populations.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the state is already imposing. In addition, approval of NO_X exemption requests and determination of attainment do not create any new requirements, but instead allow the states to avoid the imposition of the indicated requirements. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

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

EPA has determined that the approval action promulgated 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 approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 5, 2000.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, and in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

J. Other

EPA finds that there is good cause for this determination of attainment, NO_X exemption, and redesignation to attainment and SIP revision to become effective 15 days after publication because a 30-day delayed effective date is unnecessary due to the nature of these actions, which relieve the area from certain Clean Air Act requirements that would otherwise apply to it. The 15-day effective date for this redesignation and other related actions is authorized under both 5 U.S.C. 553(d)(l), 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 section 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.''

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and regulatory requirements.

Ozone SIPs are designed to satisfy the requirements of part D of the Act and provide for attainment and maintenance of the ozone NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the Act) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 18, 2000. 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 section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 26, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

Dated: June 5, 2000.

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

Chapter 1, title 40 of the Code of Federal Regulations 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 *et seq.*

Subpart S—Kentucky

2. Section 52.920 is amended by adding a new entry to the table in paragrpah (e) in numerical order to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) *EPA-approved nonregulatory provisions.*

EPA-APPROVED KENTUCKY NONREGULATORY PROVISIONS

Appendix	Title/subject	State effective date	EPA approval date	Federal Register notice
*	*	*	*	*
20	Northern Kentucky Ozone Maintenance Plan.	.....	July 5, 2000.	..... [Insert FR page citation]

3. Section 52.930 is amended by adding paragraphs (g), (h), and (i) to read as follows:

§ 52.930 Control strategy ozone.

* * * * *

(g) The redesignation request submitted by the Commonwealth of Kentucky, on October 29, 1999, for the Kentucky portion of the Cincinnati-Hamilton moderate interstate ozone nonattainment area from nonattainment to attainment was approved on July 5, 2000. The mobile source budgets for the Kentucky portion of the area for the purposes of transportation conformity are now 5.83 tons per summer day of volatile organic compounds and 15.13 tons per summer day of nitrogen oxides for the year 2010.

(h) Determination—EPA is determining that as of July 5, 2000, the Kentucky portion of the Cincinnati-Hamilton ozone nonattainment area (which includes the Counties of Boone, Kenton, and Campbell) has attained the 1-hour ozone standard and that the attainment demonstration requirements of section 182(b)(1), 182(j), and 172(c)(1), along with the section 172(c)(9) contingency measure requirements, do not apply to the area.

(i) Approval—EPA is approving an exemption from the requirements contained in section 182(f) of the Clean Air Act. This approval exempts Boone, Kenton, and Campbell counties in Kentucky from the NO_X related general conformity provisions; nonattainment NSR for new sources and modifications that are major for NO_X; NO_X RACT; and the requirement for a demonstration of compliance with the enhanced I/M performance standard for NO_X.

4. Section 52.937 is amended by adding paragraph (b) to read as follows:

§ 52.937 Review of new sources and modifications.

* * * * *

(b) Approval—EPA is approving the section 182(f) oxides of nitrogen (NO_X) reasonably available control technology (RACT) exemption for the Kentucky portion of the Cincinnati-Hamilton ozone (O_3) moderate nonattainment area. This approval exempts this area from implementing NO_X RACT on major sources of NO_X.

Subpart KK—Ohio

5. Section 52.1885 is amended by revising paragraph (x) and adding paragraph (a)(14), (b)(11), (dd) and (ee) to read as follows:

§ 52.1885 Control strategy: Ozone.

(a) * * *

(14) Approval—EPA is approving the ozone maintenance plan for the Ohio portion of the Cincinnati-Hamilton area

that was received by EPA on July 2, 1999, and completed on December 22, 1999. The mobile source budgets for the Ohio portion of the area for the purposes of transportation conformity are now 37.9 tons per summer day of volatile organic compounds and 52.3 tons per summer day of nitrogen oxides for the year 2010.

(b) * * *

(11) Butler, Clermont, Hamilton, and Warren Counties.

* * * * *

(x) Approval—EPA is approving requests submitted by the State of Ohio on March 18, November 1, and November 15, 1994, for exemption from the requirements contained in section 182(f) of the Clean Air Act. This approval exempts the following counties in Ohio from the NO_X related general and transportation conformity provisions; nonattainment area NSR for new sources and modifications that are major for NO_X: Clinton, Columbiana, Delaware, Franklin, Jefferson, Licking, Mahoning, Preble, Stark, and Trumbull. This approval also exempts the following counties in Ohio from the NO_X related general and transportation conformity provisions; nonattainment area NSR for new sources and modifications that are major for NO_X; NO_X RACT; and a demonstration of compliance with the enhanced I/M performance standard for NO_X: Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit.

* * * * *

(dd) Determination—EPA is determining that, as of July 5, 2000, the Ohio portion of Cincinnati-Hamilton ozone nonattainment area (which includes the Counties of Butler, Clermont, Hamilton and Warren) has attained the 1-hour ozone standard and that the attainment demonstration requirements of section 182(b)(1), 182(j), and 172(c)(1), along with the section 172(c)(9) contingency measure requirements, do not apply to the area.

(ee) Approval—EPA is approving an exemption from the requirements contained in section 182(f) of the Clean Air Act. This approval exempts Butler, Clermont, Hamilton, and Warren counties in Ohio from the NO_X related general conformity provisions; the nitrogen oxides nonattainment NSR for new sources and modifications that are major for NO_X; NO_X RACT; and a demonstration of compliance with the enhanced automobile inspection and maintenance performance standard for NO_X.

* * * * *

6. Section 52.1879 is amended by revising paragraph (e) and adding paragraph (g) to read as follows:

§ 52.1879 Review of new sources and modifications.

* * * * *

(e) Approval—EPA is approving requests submitted by the State of Ohio on March 18, November 1, and November 15, 1994, for exemption from the requirements contained in section 182(f) of the Clean Air Act. This approval exempts the following counties in Ohio from the NO_X related general and transportation conformity provisions and nonattainment area NSR for new sources and modifications that are major for NO_X: Clinton, Columbiana, Delaware, Franklin, Jefferson, Licking, Mahoning, Preble, Stark, and Trumbull. This approval also exempts the following counties in Ohio from the NO_X related general conformity provisions; nonattainment area NSR for new sources and modifications that are major for NO_X; NO_X RACT; and a demonstration of compliance with the enhanced I/M performance standard for NO_X: Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit.

* * * * *

(g) Approval—EPA is approving an exemption from the requirements contained in section 182(f) of the Clean Air Act. This approval exempts Butler, Clermont, Hamilton, and Warren counties in Ohio from nonattainment NSR for new sources and modifications that are major for NO_X.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 81.336 is amended by revising the ozone table entry for the Cincinnati-Hamilton Area to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

[1-hour standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Cincinnati-Hamilton Area:				
Butler County	6/19/00	Attainment.		
Clermont County	6/19/00	Attainment.		
Hamilton County	6/19/00	Attainment.		
Warren County	6/19/00	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

3. Section 81.318 is amended by revising the ozone table entry for the Cincinnati-Hamilton Area to read as follows:

§ 81.318 Kentucky

* * * * *

OHIO—OZONE
[1-hour standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Cincinnati-Hamilton Area:				
Boone County	6/19/00	Attainment.		
Campbell County	6/19/00	Attainment.		
Kenton County	6/19/00	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

[FR Doc. 00–15294 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6718–2]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This document expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program.

EFFECTIVE DATE: June 19, 2000.

ADDRESSES: Information relevant to this document is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Anhar Karimjee at (202) 564–2683 or fax (202) 565–2095, U.S. Environmental Protection Agency, Stratospheric Protection Division, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW, Washington, DC, 20001. The Stratospheric Protection Hotline can be reached at (800) 296–1996. Further information can be found at EPA's Ozone Depletion World Wide Web site at ''http://www.epa.gov/ozone/title6/snap/''.

SUPPLEMENTARY INFORMATION:

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

• *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

• *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

• *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.

• *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published rulemaking (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, by this notice EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.