

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, 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. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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).

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 February 9, 2001. 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 1, 2000

**Felicia Marcus,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, 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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(262)(i)(B)(3) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(262) \* \* \*

(i) \* \* \*

(B) \* \* \*

(3) Rule 74.6, revised on November 10, 1998.

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[OH-138-2; FRL-6914-7]

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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is redesignating Cuyahoga and Jefferson Counties, Ohio, to attainment for particulate matter nominally 10 microns in aerodynamic diameter and smaller (PM<sub>10</sub>). EPA is also approving Ohio's plan for maintaining air quality at levels below the applicable air quality standards.

EPA proposed these actions on July 10, 2000. One commenter submitted

numerous comments, generally taking the position that the criteria for redesignation to attainment given in Clean Air Act section 107(d)(3)(E) are not met. EPA has reviewed these comments and, for the reasons set forth below, continues to believe that the redesignation criteria have been met and that these areas may be redesignated and their maintenance plans approved.

The Steubenville area includes portions of Brooke County, West Virginia, as well as Jefferson County, Ohio. For administrative convenience EPA is taking action only on the Ohio portion of this area. Nevertheless, the action reflects review of air quality for the entire area and Ohio's fulfillment of its portion of an area-wide attainment plan that it developed jointly with West Virginia. In the future, if the standard is violated in either portion of the area, such that redesignation back to nonattainment is warranted, EPA will propose to reinstate nonattainment status for the entire area.

**EFFECTIVE DATE:** This action will be effective on January 10, 2001.

**ADDRESSES:** Copies of the Ohio's submittals and other information are available for inspection during normal business hours at the following address: (We recommend that you telephone John Summerhays at (312) 886-6067, before visiting the Region 5 Office) United States Environmental Protection Agency, Region 5, Air Programs Branch (AR-18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, 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) 886-6067, ([summerhays.john@epa.gov](mailto:summerhays.john@epa.gov)).

**SUPPLEMENTARY INFORMATION:** The terms "we," "us," and "our" in this notice signify EPA. This notice is organized as follows:

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## I. What Actions Did EPA Propose, and Why?

On July 10, 2000, EPA published rulemaking proposing to approve a maintenance plan and redesignation of Cuyahoga and Jefferson Counties, Ohio, to attainment for particulate matter, specifically for particles known as PM<sub>10</sub>. (See 65 FR 43212.) This proposal was based on a request from the State of Ohio submitted in preliminary form on May 22, 2000. This action pertains to the PM<sub>10</sub> standards promulgated in 1987 at 40 CFR 50.6, for which designations are published at 40 CFR 81. This action does not pertain to the PM<sub>10</sub> standards promulgated in 1997 at 40 CFR 50.7, which have been vacated by the District of Columbia Circuit Court of Appeals and for which no designations have been published.

Ohio's maintenance plan relies predominantly on the emissions limits already included in its State Implementation Plan (SIP) that have been shown to limit emissions from the significant sources in these areas sufficiently to assure attainment. The attainment plan addresses maximum allowable emissions, so the plan provides for continued attainment even if source production rates grow to maximum capacity. Ohio's maintenance plan supplements this with evidence of declining impacts from other, unregulated sources, which contribute to the background concentration included in the attainment demonstration. Specifically, Ohio cited population declines in the two counties, which will lead to reduced emissions from consumer activities, and federal regulations requiring reduced emissions from diesel engines. Ohio further cited emission regulations which will reduce emissions below attainment levels at the coke batteries found in the two areas. EPA proposed to conclude on the basis of these plan elements that these counties can be expected to continue attaining the applicable PM<sub>10</sub> standards for the requisite 10 years.

EPA reviewed Ohio's redesignation request on the basis of five criteria given in section 107(d)(3)(E) of the Clean Air Act. The first criterion is attainment of the air quality standards. All monitors have annual average concentrations below the annual standard. The 24-hour standard is met if the expected frequency of values above 150 µg/m<sup>3</sup> is 1.0 day per year or less. All the monitors in the Steubenville area and most of the monitors in Cuyahoga County have recorded no recent exceedances of this air quality standard. These monitors clearly indicate attainment of these

standards. Two monitors in Cleveland have recorded values above 150 µg/m<sup>3</sup>, requiring analysis of expected exceedances at these locations consistent with the provisions of Appendix K of 40 CFR 50. EPA found a sufficiently low expected frequency of exceedances to propose to conclude that these locations, like the rest of Cuyahoga County, are attaining the standards.

The second criterion is that EPA has fully approved the necessary air quality control plans. EPA has previously concluded that relevant requirements were met, as stated in rulemakings published on May 27, 1994, at 59 FR 27464, and June 12, 1996, at 61 FR 29662, supplementing earlier rulemakings. In acting on redesignation requests, EPA has consistently interpreted section 107(d)(3) as permitting the Agency to rely on prior approvals of SIP provisions when reviewing redesignation requests. See Memorandum from John Calcagni, Director of the Air Quality Management Division dated September 4, 1992. For a recent discussion of redesignation requirements see 65 FR 37879 (June 19, 2000) (redesignation to attainment for ozone of the Cincinnati-Hamilton moderate ozone nonattainment area).

The third criterion for redesignation is that attainment be attributable to permanent and enforceable emission reductions. EPA found that permanent and enforceable emission limits have yielded permanent emission reductions that satisfied this criterion at numerous facilities in the two counties. The fourth criterion is that EPA has approved a maintenance plan that assures continued attainment. As discussed above, EPA proposed to approve Ohio's maintenance plan. Final approval of this plan, which is part of today's action, completes the satisfaction of this criterion. The fifth criterion is that the State be found to have met applicable requirements of section 110 and Part D of the Clean Air Act. Based on various rulemakings, starting with rulemaking of April 15, 1974 (39 FR 13539) up to and including EPA's rulemaking of June 12, 1996 (61 FR 29662), EPA finds that the State met these requirements. In summary, EPA proposed to find that Ohio had met all five criteria for redesignation for PM<sub>10</sub> in Cuyahoga and Jefferson Counties, and so EPA proposed to redesignate these counties to attainment.

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

EPA received comments from one commenter, the Earthjustice Legal Defense Fund, representing the Ohio

Chapter of the Sierra Club. These comments are organized according to the five criteria for redesignation listed above. The following comment summaries and EPA responses are organized accordingly.

### 1. Attainment

*Comment:* The commenter cites EPA's Air Information Retrieval System (AIRS) database as showing that one of the monitoring sites, at East 14th Street and Orange Avenue in Cleveland, "had 6 expected exceedances of the 24 hour PM<sub>10</sub> standard in 1999. Moreover, AIRS data shows that the same monitor has recorded 6 expected exceedances so far in the year 2000." The commenter states that the total of 12 expected exceedances at this site means that the area has not attained the standard.

The commenter further states that "EPA seeks to discount the 6 expected exceedances in 1999 at [the above site] by citing data from other monitors that did not exceed the standard that year." The commenter states that disregarding violations based on data at other sites is not authorized in Appendix K, and EPA may not use guidance documents to amend Appendix K to grant itself this authority.

*Response:* The commenter summarizes air quality at the East 14th Street site by reporting a statistic from a summary of air quality data that EPA provides on the internet. By its nature, this summary statistic is derived by an oversimplified approach, and thus inaccurately reflects what the data show. This statistic in this context is derived by automated, default procedures that cannot make the case-by-case judgments involved in assessing attainment status for regulatory purposes. For example, the statistic that the commenter cites does not reflect judgments that must be made by EPA, such as whether to exempt the site from expected exceedance adjustments pursuant to Appendix K section 3.1(f) and 40 CFR 58.13. A more appropriate evaluation of the 1999 data at this site is presented in the notice of proposed rulemaking. This evaluation indicates that only approximately one exceedance is expected at that location. A similar evaluation of the 2000 data at this site, as described further below, also indicates approximately one exceedance is expected. Based on these data, EPA is determining that the 3-year average number of expected exceedances at this site is less than the 1.0 level, and thus the site is in attainment consistent with section 2.1 of Appendix K.

It is also apparent that the commenter may have misunderstood the discussion in the proposal relating to the

historically worst-case site that adjoins the East 14th Street site. Contrary to the assertion in the comment, EPA is not using data from other monitors to discount a violation at the East 14th Street site. Instead, EPA is assessing whether a violation in fact occurred at the East 14th Street site.

The East 14th Street site has two instruments—a high volume sampler, taking samples once every six days, and an instrument that takes continuous concentration readings. The high volume sampler recorded an exceedance of the 24-hour  $PM_{10}$  standard at this site in 1999 (as well as an exceedance in 2000). EPA's evaluation of these high volume sampler data appropriately considers data from the collocated continuous instrument as well as data from another nearby location. Specifically, EPA is using the additional data to evaluate the likelihood of exceedances on the other five out of six days on which the high volume sampler did not take measurements.

One element of EPA's evaluation is based on Appendix K section 3.1(f), for which EPA must consider whether everyday sampling has been conducted in accordance with 40 CFR 58.13. In 40 CFR 58.13, as it applies to sampling for this  $PM_{10}$  standard, EPA calls for everyday sampling at the area of maximum concentration. Accordingly, the notice of proposed rulemaking describes an assessment in which the application of Appendix K section 3.1(f) to the East 14th Street site is contingent on daily sampling at a nearby, maximum concentration site. As discussed in the notice of proposed rulemaking, application of Appendix K section 3.1(f) contingent on daily sampling at the East 14th Street site yields the same result. Both methods lead to treating the measured exceedance as one expected exceedance, which leads to a finding that the standard is being attained.

When EPA promulgated Appendix K, it was concerned, in part, about how to appropriately interpret data from monitors taking measurements one day out of six days when they measure just one exceedance. EPA recognized that the occasional measurement of one exceedance by such monitors often does not signify that five other exceedances would be expected to occur on the unmonitored days. Therefore, section 3.1(f) of Appendix K provides that an adjustment, that entails treating one exceedance as reflecting six (or more) expected exceedances (which is otherwise required to account for missing or incomplete data), need not be done if complete daily, representative sampling is performed and related

conditions are met. If complete daily, representative sampling then shows few or no exceedances, this would validate the view that the exceedance measured during one-in-six-day sampling is better interpreted as reflecting one rather than six (or more) expected exceedances. (Conversely, if daily sampling indicates frequent exceedances, EPA would have a more solid basis for concluding that the site is not attaining.)

The monitoring at the East 14th Street site poses unique circumstances not directly addressed in Appendix K. Appendix K does not specify how to interpret data from two instruments which measure air quality at the same location. EPA has issued guidance explaining how to assess expected exceedances for both instruments in such cases. However, neither Appendix K nor EPA's guidance specifies how to conduct this assessment in cases where the sampling frequencies of the two instruments differ.

The history of Appendix K helps clarify why it does not directly address the situation found at the East 14th Street site. Appendix K was promulgated in 1987, at a time when reliable continuous instruments for measuring particulate matter concentrations were not available. Since high volume sampling and filter collection and analysis on a daily basis is resource intensive, EPA encouraged States to conduct sampling once every six days at numerous sites, with only a small number of critical sites sampling on a daily basis. When it encouraged this approach, EPA did not intend that any sampler measuring once every six days that happened to record an exceedance would automatically be treated as showing nonattainment, which is the approach reflected in the commenter's interpretation of the air quality data summary posted on the internet. EPA intended instead that such sampling sites be identified as critical sites warranting the dedication of resources necessary to conduct daily sampling, in order to determine whether the exceedance recurs with a frequency of more than once per year.

In promulgating Appendix K, EPA did not anticipate the possibility that States might simultaneously operate one sampler on a once in six days basis and operate a second sampler at the same site on a daily basis. Even today, sites with instruments measuring air quality once every six days almost never have a collocated instrument simultaneously taking daily or continuous measurements. Therefore, the one-in-six-day data are ordinarily the only basis on which to estimate the likelihood that exceedances would have

been observed on the other five days. In such cases, if the site does not meet the criteria in section 3.1(f) of Appendix K that qualifies it to be exempt from expected exceedance adjustment, then EPA would view the five unmonitored days as days with missing data. Under Appendix K, for such cases, EPA takes a protective approach by assuming that the likelihood of exceedances for those five out of six days equals the likelihood of exceedances for the one in six days with actual observations. (See section 3.1(a).)

In the case of the East 14th Street site, the continuous instrument provides extensive data with potential to help EPA evaluate the likelihood that the high volume sampler would have recorded exceedances on the five out of six days it was not sampling. EPA therefore examined whether the continuous instrument data would reliably indicate whether the high volume sampler would have recorded an exceedance.

EPA compared 24-hour averages from the two instruments for days in 1998 to 2000 when both instruments had valid data. Then EPA developed what is known as a "best fit" equation, which attempts to describe, as accurately as possible, the relationship between same-day readings of the two instruments. On average, the high volume sampler reading equaled 1.05 times the continuous instrument reading plus 0.2 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), with a variance ( $r^2$ ) of 0.78. In no case did the high volume sampler record any value more than 27  $\mu\text{g}/\text{m}^3$  higher than the continuous instrument. Thus, from a sampling perspective, readings from the two instruments would be considered quite similar.

Consequently, EPA concluded that data from the continuous instrument is reliable for use in assessing expected exceedances for the high volume sampler. Specifically, given the excellent agreement between the measurements produced by the two instruments, EPA believes the days with continuous instrument measurements but no high volume sampler measurements should be treated as days with valid data indicating high volume sampler concentrations. That is, consistent with the provisions of Appendix K, the best assessment of expected exceedances under these circumstances would be to consider all days with data from either instrument as days with valid data, and to treat as days with missing data only those days in which neither the high volume sampler nor the continuous instrument was operating. For purposes of this assessment, a day with only continuous

instrument data is considered by EPA as having a value below the standard only if the maximum difference in instrument readings added to the continuous instrument value indicates a high volume sampler value below the level of the standard.

EPA described its assessment of the 1999 data in its notice of proposed rulemaking. Briefly, the high volume sampler recorded an exceedance during the first quarter. This first quarter included 14 days with high volume sampler values and 74 additional days with only continuous instrument values. Two days had no value from either instrument and, under Appendix K, should be considered days with missing data. The 14 days with high volume sampler values included one day with a measured exceedance and 13 days with values below the standard. For the 74 additional days with only continuous instrument values, the highest such value was  $75 \mu\text{g}/\text{m}^3$ . This continuous instrument value leads to a best estimated peak value for the high volume sampler of  $79 \mu\text{g}/\text{m}^3$  (using the best fit equation), and leads to a worst case peak estimate of  $102 \mu\text{g}/\text{m}^3$  (applying the maximum difference in instrument values). Based on the explanation above, the data from all of these 74 days will be treated by EPA as valid data. In total, then, for the high volume sampler in the first quarter of 1999, one day had an exceedance, 87 days have concentrations that are well below the standard of  $150 \mu\text{g}/\text{m}^3$ , and two days are lacking data. According to Appendix K, the proposed rulemaking therefore calculated an estimate of expected exceedances to be  $1 + (2 * 1/88)$  or 1.02. Since no exceedances were measured at the site in any other quarter of 1999 or in 1998 or 1997, the total expected exceedances for 1999 is 1.02, and the three-year average of expected exceedances is 0.3.

A second unique feature of the situation at the East 14th Street site is the occurrence of a second exceedance measured by the instrument sampling once in six days. In ordinary circumstances, *i.e.*, in the absence of collocated daily sampling data, EPA assumes that the first measured exceedance often reflects only about one expected exceedance, but EPA would generally assume that a second exceedance measured by a one-in-six day sampler represents multiple expected exceedances. However, EPA does not need to rely on such assumptions at the East 14th Street site, since in this case EPA has a wealth of actual data with which to assess the likelihood of exceedances at the site.

EPA therefore estimated expected exceedances for 2000 according to the same method it used to evaluate the 1999 data. An exceedance was observed by the high volume sampler in the first quarter of 2000. The high volume sampler provided values for 15 of the 91 days. The continuous sampler provided valid data for an additional 73 days. The highest 24-hour average for these 73 days was  $84 \mu\text{g}/\text{m}^3$ , suggesting a best estimated peak high volume sampler value of  $88 \mu\text{g}/\text{m}^3$  and a worst case estimated high volume sampler value of  $111 \mu\text{g}/\text{m}^3$ . Three days have missing values. These data indicate that only 1 out of 88 days with valid data had an exceedance. Consequently, expected exceedances for the quarter are estimated at  $1 + (3 * 1/88)$  or 1.03. The second quarter had no observed exceedances. Thus, the available data for 2000 at this site indicate 1.03 expected exceedances.

Appendix K does not provide for us to include a half year's worth of data results in calculating the three year average of expected exceedances. Thus, consideration of data for the first half of 2000 by necessity involves projecting likely air quality in the second half of 2000. EPA examined data at the East 14th Street site to judge the most plausible such projection. In the past, the East 14th Street site has not been prone to observe exceedances in the second half of the year. In the  $7\frac{1}{2}$  year history at this site, all three days with recorded exceedances have been in March. Therefore, EPA has good reason to anticipate that no further exceedances will be measured at this site in 2000. Assuming no further exceedances for the remainder of 2000 is equivalent to using data from a previous July to December period, for example constructing an assessment for 1998 to 2000 by using data from the second half of 1997 as a surrogate for projected data for the second half of 2000. This suggests a total of 1.03 expected exceedances for 2000. This result, in combination with the 1.02 expected exceedances for 1999 and zero expected exceedances for 1998, indicates a 3-year average of 0.7 expected exceedances.

The above presents EPA's evaluation of the frequency with which the high volume sampler at the East 14th Street site would have recorded exceedances had it been operating every day. One may do a similar evaluation for the continuous instrument at this site. This continuous instrument recorded no exceedances from the day it began operating in April 1998 to the present. This instrument was not operating on March 31, 1999, when the high volume sampler recorded an exceedance, but

the high volume sampler data for that date suggest treating that day as a day the continuous instrument would be expected to have had an exceedance. Considering missing data according to Appendix K, this suggests 1.02 expected exceedances for the first quarter of 1999. While data are not available for a proper 3-year average of expected exceedances, the data that are available clearly suggest an average of less than 1.0 expected exceedances for this instrument. Thus, both instruments at the East 14th Street site indicate that this site is attaining the standard.

The commenter provided no rationale for using the computer-generated statistic he cited rather than applying the judgments and procedures described in the notice of proposed rulemaking, even though the two methods clearly give different results. For reasons given here and in the notice of proposed rulemaking, EPA believes that the evaluation described here is more consistent with applicable  $\text{PM}_{10}$  regulations and reflects more reasoned judgments about the air quality at the site in question. EPA is determining on the basis of this evaluation that this site, like the remainder of Cuyahoga County, is attaining the standard.

## 2. Fully Approved SIP

*Comment:* The second prerequisite for redesignation to attainment is that EPA has fully approved the applicable SIP for the area. The commenter states that this prerequisite has not been met because EPA has not fully approved either the state's new source review (NSR) programs or the motor vehicle emission budget for these areas. With respect to NSR, the commenter states that this program is "not an optional program that the state and EPA can simply waive based on claims that it is not 'needed' for attainment." With respect to conformity, the commenter cites Section 176(c) of the Clean Air Act and states that the absence of a motor vehicle emissions budget and conformity procedures means that EPA has not met all SIP requirements applicable to the area.

*Response:* EPA continues to believe that it has fully approved the applicable SIP for Cuyahoga and Jefferson Counties. For the requirements added in the Clean Air Act Amendments of 1990, in Subpart 4 of Part D of the Clean Air Act, EPA approved Ohio's attainment demonstration and other related plan elements on June 12, 1996, at 61 FR 29662. EPA has published several earlier rulemakings approving Ohio's SIP as meeting the various requirements enacted earlier.

With respect to NSR, EPA believes that Cuyahoga and Jefferson Counties 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 Cincinnati-Hamilton redesignation (65 FR 37879, June 19, 2000) and Grand Rapids, Michigan redesignation (61 FR 31834-31837, June 21, 1996). This policy has also been applied in ozone 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 Cuyahoga and Jefferson Counties 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 Cuyahoga and Jefferson Counties.

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. When an area is redesignated to attainment, a new source must satisfy prevention of significant deterioration (PSD) requirements rather than nonattainment new source review. PSD requires that new sources demonstrate that their construction will not increase ambient concentrations significantly and will not result in concentrations above the air quality standard. This may be compared to requirements under nonattainment area new source review for new sources to secure emission reductions to offset their new emissions. EPA believes that there would be trivial if any environmental value of applying nonattainment new source requirements in Cuyahoga and Jefferson Counties rather than PSD requirements.

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.

With respect to conformity, the requirements cited by the commenter do not apply to PM<sub>10</sub> in these areas. As stated in EPA's conformity regulations, at 40 CFR 93.102(b), the conformity requirements apply in "nonattainment and maintenance areas for transportation-related criteria pollutants" [emphasis added]. Within that section of the conformity regulations, 40 CFR 93.102(b)(2)(iii) specifies that conformity requirements apply "in PM<sub>10</sub> areas [only] if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission established a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy."

Transportation-related emissions do not contribute significantly to PM<sub>10</sub> concentrations in Cuyahoga and Jefferson Counties. Stationary sources are the predominant contributors to high concentrations in these areas. The attainment demonstration that EPA approved for these areas on June 12, 1996, at 61 FR 29662, documents this finding, and documents that mobile sources contribute only a few micrograms per cubic meter to airborne concentrations, i.e. only a few percent of the air quality standards. EPA and the Ohio Environmental Protection Agency agreed during the 1994 conformity consultation process that transportation sources are insignificant contributors to the nonattainment problem in Cuyahoga County and the Steubenville area. As appropriate, the SIP does not establish a budget for these emissions. EPA approved conformity rules for Ohio on May 16, 1996 (61 FR 24702) and May 30, 2000 (65 FR 34395). In accordance with applicable EPA regulations, conformity requirements under the state's rules do not apply to PM<sub>10</sub> in Cuyahoga or Jefferson Counties. Rules establishing such requirements and approval of an emissions budget are not prerequisites for full SIP approval or redesignation.

Furthermore, EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating a redesignation request under section 107(d). The rationale for this interpretation has been set forth in a number of notices

redesignating areas to attainment for ozone. See, for example, the Cincinnati-Hamilton redesignation at 65 FR 37879 (June 19, 2000), the Grand Rapids redesignation at 61 FR 31835-31836 (June 21, 1996), and the Cleveland-Akron-Lorain redesignation at 61 FR 20458 (May 7, 1996).

### 3. Permanent and Enforceable Reductions

*Comment:* The commenter believes that Section 107(d)(3)(E)(iii) requires that EPA or the State conduct modeling to demonstrate that air quality improvements are attributable to permanent and enforceable emission reductions rather than weather patterns, reduction in production, or other factors.

*Response:* When Ohio developed its attainment plan, it began by modeling existing emissions, to identify where existing air quality was problematic. This modeling identified problems consistent with the nonattainment problems identified at that time by monitoring. Ohio then conducted numerous model runs to assess alternative control strategies. The final modeling analysis demonstrated that the permanent and enforceable emission reductions which were added as requirements in the attainment plan regulations were sufficient to bring PM<sub>10</sub> concentrations down to attainment levels. Since this modeling reflected emissions at allowable levels assuming full capacity plant operations, attainment is not dependent on reduced production or other transient factors. While EPA does not concede that modeling must be done to demonstrate that air quality improvements are due to permanent and enforceable reductions, in this case the type of modeling requested by the commenter was in fact done. This modeling demonstrated that the air quality improvement is due to permanent and enforceable reductions.

### 4. Maintenance

Due to the length and variety of comments on Ohio's maintenance plan, these comments are addressed in three parts.

*Comment:* The commenter states that Ohio has failed to submit a SIP revision that provides for maintenance. The commenter observes that Ohio "has merely submitted a letter asserting that the standard will be maintained. There is no SIP revision comprising the maintenance plan, and no commitment to implement or continue control strategies necessary for maintenance." The commenter further believes that "neither the state nor EPA has demonstrated that the standard will in

fact be maintained for [the necessary] ten years".

The commenter acknowledges that "EPA presumes" that declining population, cleaner new vehicles, and recent regulations on coke oven emissions will maintain the standards by keeping emissions at or below levels found in the SIP to assure attainment. However, the commenter states that Cuyahoga County "violated the [air quality standards] in 1995, again in 1999, and again in 2000," demonstrating that "holding emissions to those assumed in the attainment plan most certainly does not assure attainment." The commenter believes that the above "indicators" have not been shown to be good indicators of regional emissions, and observes that "other factors—e.g., increased production, construction of new pollution sources, increased per capita vehicle ownership—[may] cause emissions to rise." The commenter cites EPA rules as requiring modeling to demonstrate maintenance, "rather than the intuitive approach proposed here," and states that without "such a modeling demonstration, [EPA] cannot approve maintenance demonstrations for these areas."

*Response:* A maintenance plan must provide sufficient assurances that attainment of the air quality standard will continue for at least 10 years after the area is redesignated to attainment. A maintenance plan is not required to add to the set of enforceable emission limitations in the SIP. If the State can show that the air quality standard will be maintained without any additional measures beyond those that are already part of the SIP, then the maintenance plan need not add any additional measures. Also, if the maintenance plan relies in part on a previously submitted attainment demonstration, then the State need not resubmit that attainment demonstration.

Ohio's maintenance plan is in fact based on its previously submitted attainment demonstration, which EPA approved on June 12, 1996, at 61 FR 29662. This analysis assesses the sum of the impacts of significant industrial sources at their maximum allowable emissions plus other, background sources at actual emission levels. Ohio demonstrated that the sum of these impacts is concentrations below the standard.

Emissions from the significant sources will be maintained at or below maximum allowable levels. Therefore, Ohio can demonstrate maintenance simply by demonstrating that background impacts will remain at or below current levels.

Maintenance planning for PM<sub>10</sub> differs from maintenance planning for ozone in this respect. Attainment plans for PM<sub>10</sub> for areas like Cuyahoga and Jefferson Counties must demonstrate that attainment will occur even if sources emit their maximum allowable amount. As a result, attainment and maintenance do not depend on maintaining preexisting levels of production by facilities in the area. Since the modeled industrial sources in the area are the principal contributors to high PM<sub>10</sub> levels in these counties, the maintenance plan will consist principally of the limits on these industrial sources provided in the attainment plan. The only remaining question pertains to future background concentrations. If the State can demonstrate that background concentrations will decline over the next ten years, then the maintenance demonstration will consist of that demonstration in conjunction with the previously approved attainment demonstration, and the maintenance plan's control measures will consist of the control measures in the attainment plan.

Ozone maintenance plans are different because ozone attainment plans address actual production levels. This means first that ozone maintenance plans must project any increases or decreases in future production. Such projections must consider all significant source types, and cannot be restricted to addressing background contributors. Thus, maintenance plans for PM<sub>10</sub> for areas like Cuyahoga and Jefferson County are considerably less complicated and have much less potential to require additional controls than maintenance plans for ozone.

The commenter expressed concern that the "indicators" that Ohio cites are not indicative of regional PM<sub>10</sub> emissions. In fact, Ohio should not be seeking to indicate trends in regional emissions. Ohio is properly relying on existing SIP limits to address the most significant regional emissions, and focusing its additional trend analyses on sources affecting "background" concentrations. Ohio need not address increased production at important industrial facilities, because all increases up to maximum production are already accommodated in the attainment/maintenance demonstration. Ohio need not address construction of new pollution sources, because PSD regulations require any significant new source to demonstrate that its emissions will not cause violations of the standards. Ohio needs to address increased vehicle ownership, but only

as part of an assessment of trends in background concentrations.

Despite the relative insignificance of motor vehicle emissions, EPA has examined detailed assessments pertinent to motor vehicle emissions in Cuyahoga County. Ohio submitted extensive detail on current and projected traffic volumes in the Cleveland area as part of its maintenance plan for this area for ozone. Between 1996 and 2010, traffic volumes are projected to increase by less than one percent per year. Most of this growth is occurring in the outer counties of the area; Cuyahoga County traffic is projected to grow by less than 1/3 percent per year. Meanwhile, emissions per vehicle are declining as a result of previous regulations plus the tighter fuel and emission standards of the Tier 2 rules discussed below. Between now and 2010, emissions per vehicle are expected to decline an average of 2.5 percent per year, not including the significant emission reductions that will result from the Tier 2 rules. The net projected effect is a significant decline in motor vehicle emissions in Cuyahoga County over the next ten years. Similar information indicates a less than one percent traffic growth rate in the Steubenville area as well, so this area too will likely witness declining motor vehicle emissions.

EPA believes that Ohio has addressed important elements of the background concentrations. EPA believes that the net reduction in motor vehicle emissions plus the reduction in other emissions associated with population will yield a net decline in background concentrations. According to the attainment demonstration that EPA has approved, these background concentrations in combination with maximum allowable impacts from significant sources add up to concentrations below the standard. Consequently, EPA believes that Ohio's maintenance plan provides for maintenance of the PM<sub>10</sub> standards.

Ohio does not explicitly address whether maintenance is assured for 10 years. However, Ohio's approved attainment demonstration shows that the standard will be maintained, principally due to permanent emission limits on significant sources, so long as background emissions remain at or below current levels. Ohio provided evidence that background emissions will remain at or below current levels throughout the next 10 years. Consequently, EPA is satisfied that Ohio has assured maintenance for the requisite 10 years.

*Comment:* The commenter cites results of an EPA analysis conducted in

conjunction with adoption of Tier 2 motor vehicle emission standards, discussed in the **Federal Register** of February 10, 2000 (65 FR 6698 and 6719). The commenter states that "EPA identified Cuyahoga County as an area with a 'significant risk of failing to attain and maintain the PM10 [air quality standards] without further reductions in emissions.'" The commenter acknowledges future reductions from the Tier 2 standards but states that "EPA has not shown that these reductions will be sufficient or will occur soon enough to prevent NAAQS violations" throughout the next 10 years.

*Response:* In preparation for adopting its Tier 2 motor vehicle emission standards, EPA attempted a national analysis of prospective attainment with and without these standards. EPA identified eight areas as areas of "high risk of failing to attain or maintain the PM<sub>10</sub> NAAQS". These areas had monitored violations in 1996 to 1998 and were projected to have continued violations in 2030 without the Tier 2 standards. These areas were all in California or neighboring States. EPA then identified five additional counties, including Cuyahoga County, as having a risk of future violations of the PM<sub>10</sub> NAAQS. These counties were defined as attaining the NAAQS based on 1996 to 1998 data but projected to violate the standards in 2030 in the absence of Tier 2 regulations. The rulemaking cited by the commenter states, "There is a substantial risk that at least some of [these latter five counties] would fail to maintain without further emission reductions. The emission reductions from the Tier 2/Gasoline Sulfur program will help to keep them in 40 attainment." EPA in fact adopted the Tier 2 regulations, so projections of possible future nonattainment without these regulations are irrelevant. Contrary to the commenter's statements, EPA's analysis for the relevant scenario (with Tier 2 standards) shows continued maintenance. In addition, a projection that vehicle emissions without Tier 2 standards could reach levels sufficient to help cause violations by 2030 does not necessarily mean that violations would occur by 2010, the timeframe that is germane here. In any case, the Tier 2 rulemaking notes that "[a]fter reviewing public comments on our presentation of these modeling results, [EPA] concluded that [its analysis is] suitable for estimating PM concentration reductions for economic benefits estimation, [but] it is not a tool we can use with high confidence for predicting that individual areas that are now in

attainment will become nonattainment in the future." Thus the most relevant analysis is Ohio's attainment modeling and maintenance plan information, which considers local data on the significance of motor vehicle emissions and on the population (and thus the number of drivers). This information, like the Tier 2 analysis, supports EPA's conclusion that Cuyahoga County will maintain the PM<sub>10</sub> NAAQS over the next ten years.

*Comment:* The commenter objects that what EPA calls a maintenance plan "lacks enforcement programs and commitments of resources" as well as "legal authority." In addition, the commenter states that PM<sub>10</sub> motor vehicle emissions budget is "required not only for purposes of the attainment plan, but also for a maintenance plan as well." Finally, the commenter states that "the state lacks adequate contingency plans for maintenance" pursuant to Section 175A(d). The commenter acknowledges that Ohio has contingency measures "designed to produce limited annual progress toward attainment in the event of a shortfall," but the commenter believes that these measures fail to meet a different requirement applicable to maintenance plans "to assure that the State will promptly correct any violation of the standard."

*Response:* The requirements under Section 110(a)(2)(E) that the commenter cites were addressed in general by Ohio in its initial SIP, submitted on January 31, 1972, and ultimately approved on April 15, 1974 (39 FR 13539). EPA's conclusion in that rulemaking remains valid, that Ohio's enforcement program, commitment of resources, and legal authority are adequate and assure that measures in the SIP (including maintenance plan measures) will be implemented. See Calcagni Memorandum cited above and *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984 (6th Cir. 1998). See also discussion in Cincinnati-Hamilton redesignation notice at 65 FR 37882. If EPA were to find that SIP measures were not being implemented, for lack of the above or for any other reason, the process leading to sanctions under Section 179(a)(4) would commence.

A response above clarifies that motor vehicle emission budgets are not required for PM<sub>10</sub> in areas where motor vehicles do not contribute significantly to PM<sub>10</sub> nonattainment. Thus, neither the attainment plans nor the maintenance plans for Cuyahoga and Jefferson Counties need to have a motor vehicle emissions budget.

The commenter acknowledges that the Ohio SIP includes contingency measures. These measures, approved on May 6, 1996 (61 FR 20142), are triggered on the basis of air quality monitoring data irrespective of attainment status. That is, these measures are valid maintenance plan contingency measures because they take effect if violations recur for any reason after redesignation of the areas to attainment. The question of interest here, then, is whether these contingency measures are adequate to satisfy Section 175A(d).

The commenter's quote from Section 175A(d) omits a key qualifier that invokes EPA's judgment in assessing contingency measure adequacy for maintenance plan purposes. The full sentence in Section 175A(d) reads: "Each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary [emphasis added] 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." Section 175A(d) does not dictate that the maintenance plan contingency measures be sufficient by themselves to correct any violation of the standard. Instead, these measures need only be sufficient in EPA's judgment to help assure that the State will promptly correct any future violation.

A variety of sources emit PM<sub>10</sub>, so nonattainment can occur for a variety of reasons. EPA cannot reasonably expect maintenance plan contingency measures by themselves to address all possible future violations. Instead, EPA must judge the contingency measures in the context of the types of future violations that it views as most likely and in the context of other factors which help assure that the State will correct any future violations.

Additional factors that help assure prompt correction of any future PM<sub>10</sub> violation in Cuyahoga County or the Steubenville area include provisions in Ohio's regulations that allow the State to impose additional source controls if violations occur and provisions in the Clean Air Act Section 110(h) (provisions for SIP Calls). EPA is satisfied that the contingency measures that are included in Ohio's maintenance plan for Cuyahoga and Jefferson Counties, in combination with other factors, assure that Ohio will promptly correct any future violations in these areas.

### III. What Actions Is EPA Taking, and Why?

EPA is redesignating Cuyahoga and Jefferson Counties in Ohio to attainment

for PM<sub>10</sub> and is approving Ohio's PM<sub>10</sub> maintenance plan for these counties. The redesignation action reflects EPA's judgment of Ohio's request, focusing on the five criteria given in Clean Air Act Section 107(d)(3)(E) for redesignations from nonattainment to attainment.

The first criterion is that the areas are in fact attaining the standards. The standards in question are the PM<sub>10</sub> standards given in 40 CFR 50.6, promulgated in 1987. Although EPA promulgated new standards for PM<sub>10</sub> into 40 CFR 50.7, these new standards have been vacated by the District of Columbia Circuit Court of Appeals, no designations have been promulgated for these new standards, and this rule addresses only the older standards.

No concentrations exceeding the applicable standards have been recorded in Jefferson County or in most of Cuyahoga County. Exceedances occurred at two sites in Cleveland. One site was found to have 2 exceedances of the 24-hour standard over 3 years, which was found to translate to 0.7 expected exceedances per year. EPA proposed this finding, no commenter challenged this finding, and EPA now concludes that the standard is being attained at this site. A second site observed 1 exceedance of the 24-hour standard in 1997 to 1999, which was found to translate to 0.3 expected exceedances per year. A commenter challenged this view, noting that EPA's AIRS database indicates 6 expected exceedances in 1999 as well as 6 expected exceedances in 2000. As discussed above in response to comments, EPA finds that the more sophisticated methods of data interpretation described in the proposed rulemaking give a better assessment of expected exceedances at this site. These methods indicate that the site had approximately one expected exceedance for 1999. A similar assessment of the data so far in 2000 also indicate approximately one expected exceedance. While it is problematic to average in data for only half of 2000, these data support a conclusion that expected exceedances averaged over 3 years is less than 1.0. Consequently, EPA finds that these two sites, as well as the rest of Cuyahoga County, are attaining the applicable PM<sub>10</sub> standards.

As noted in the proposed rulemaking, Jefferson County is part of a two-state area that also includes a portion of Brooke County, West Virginia. Satisfaction of the attainment criterion requires that air quality throughout this two-state Steubenville area be attaining the standards. The West Virginia portion of this area has one monitor, which has shown no recent



exceedances. Thus, this criterion is met because the entire Steubenville area is attaining the standards.

The second criterion is that EPA has fully approved the applicable implementation plan for the areas. The most recent approval, including approval of Ohio's attainment demonstrations, was published on June 12, 1996, at 61 FR 29662. Other applicable plan elements were approved on prior occasions. EPA does not require full approval of new source review rules or conformity as a prerequisite for redesignation, and, moreover, the conformity regulations do not apply to these areas for PM<sub>10</sub>. While approval of the SIP for the West Virginia portion of the Steubenville area was published separately, both SIPs have been approved on the basis of the same, jointly developed attainment strategy.

The third criterion is that the air quality improvement be due to permanent and enforceable reductions. EPA finds that air quality has significantly improved as a result of emission reductions that limits in the SIP make permanent and enforceable.

The fourth criterion is that EPA has fully approved a maintenance plan. This rule approves Ohio's maintenance plan for Cuyahoga and Jefferson Counties. Ohio held a public hearing on its maintenance plan and otherwise satisfied the procedural requirements for adopting and submitting this plan. The most important part of this plan is the continuation of SIP emission limits on major industrial sources which have been shown by modeling to assure attainment even if the sources operate at maximum capacity. Additional factors will assure that the remaining, background concentrations will remain at attainment levels, including ongoing plus forthcoming mobile source control requirements as well as population declines in the two areas. Although a commenter expressed numerous concerns about Ohio's maintenance plans, the review of those concerns discussed in the previous section lead EPA to conclude that the maintenance plans fully meet applicable requirements. With today's approval of Ohio's maintenance plans, the fourth criterion for redesignation of the two counties is satisfied.

The fifth criterion for redesignation is that the State has met all requirements under Section 110 and Part D of the Clean Air Act that apply to the areas. This criterion is similar to the second criterion, and EPA finds that Ohio has met all relevant requirements.

For the Steubenville area, EPA is taking action today only on the Ohio portion of this area. This approach is for

administrative convenience and in no way signifies any splitting of the area into separate air quality planning areas. EPA's action today reflects a review of the air quality for the full Steubenville area as well as Ohio's fulfillment of its portion of an attainment plan that Ohio and West Virginia jointly developed. EPA has received no redesignation request for the West Virginia portion of the Steubenville area. EPA anticipates receiving and rulemaking on such a request in the near future. If in the future the standard is violated in either portion of the area, such that redesignation back to nonattainment is warranted, EPA will reinstate nonattainment status for the entire area.

#### IV. 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 that may have disproportionate effects on children.

##### 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. 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, 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 January 10, 2001.

#### 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. 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 February 9, 2001. 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).)

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.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 29, 2000.

Elissa Speizman,

Acting Regional Administrator, Region 5.

Chapter I, 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 KK—Ohio**

2. Section 52.1880 is amended by removing and reserving paragraph (d) and adding paragraph (j) to read as follows:

**§ 52.1880 Control strategy: Particulate matter.**

(j) Approval—EPA is approving the PM10 maintenance plan for Cuyahoga and Jefferson Counties that Ohio submitted on May 22, 2000, and July 13, 2000.

**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 table “Ohio—PM-10” to read as follows:

**§ 81.336 Ohio.**

\* \* \* \* \*

**OHIO—PM-10**

Designated Area	Designation		Classification	
	Date	Type	Date	Type
Cuyahoga County .....	1/10/01	Attainment.		
Jefferson County .....	1/10/01	Attainment.		
The area bounded by Market Street (State Route 43) from the West Virginia/Ohio border west to Sunset Blvd. (U.S. Route 22), Sunset Blvd. west to the Steubenville Township/Cross Creek Township boundary, the Township boundary south to the Steubenville Corporation limit, the corporation boundary east to State Route 7, State Route 7 South to the Steubenville Township/Wells Township boundary, the Township boundary Unclassifiable east to the West Virginia/Ohio border, and North on the border to Market Street				
Rest of State .....	11/15/90	Unclassifiable.		

\* \* \* \* \*

[FR Doc. 00-31329 Filed 12-8-00; 8:45 am]

BILLING CODE 6560-50-U

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

(DA 00-2713, MM Docket No. 94-29, RM-8416)

**Radio Broadcasting Services; Willows and Dunnigans, California**

AGENCY: Federal Communications Commission.

ACTION: Final rule: petition for reconsideration.

SUMMARY: This document denies the petition for reconsideration filed by Marysville Radio, Inc. and Roseville Radio, Inc., of our Report and Order, 60 FR 55332 (October 31, 1995) which substituted Channel 288B1 for Channel 288A and reallocated Channel 288B1 from Willows to Dunnigan, California and modified the license for Station KIQS-FM accordingly. The Commission determined that a new engineering study can not be relied upon and that the Report and Order properly compared the existing and proposed arrangement of allotments under the

FM Priorities. With this action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:**

Arthur D. Scrutchins, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Memorandum Opinion and Order, MM Docket No. 94-29, adopted November 22, 2000 and released December 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), at its headquarters, 445 12th Street, S.W. Washington, D.C.

The complete text of this decision may also be purchased from the Commission’s copy contractors, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00-31398 Filed 12-8-00; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 00-2711, MM Docket No. 99-58; RM-9461 RM-9611]

**Radio Broadcasting Services; Strattanville and Farmington Township, PA**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of West Wind Broadcasting, allots Channel 267A at Strattanville, Pennsylvania, as the community’s first local aural transmission service (RM-9461). See 64 FR 8782, February 23, 1999. At the request of Clarion County Broadcasting, Inc., we also allot Channel 291A at Farmington Township, Pennsylvania, as the community’s first local aural transmission service (RM-9611). Channel 267A can be allotted at Strattanville in compliance with the Commission’s minimum distance separation requirements with a site restriction of 15.1 kilometers (9.4 miles) northeast to avoid a short-spacing to the licensed site of Station WORD-FM, Channel 268B, Pittsburgh, Pennsylvania. The coordinates for