ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05–OAR–2005–OH–0004; FRL–7899–9]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Cincinnati to Attainment of the 1-Hour Ozone Standard; Removal of Vehicle Inspection and Maintenance Programs for the Cincinnati and Dayton Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Ohio has requested the EPA to parallel process an ozone redesignation request and a number of revisions to Ohio's air quality control plan. We are proposing to determine that the Cincinnati-Hamilton area has attained the 1-hour ozone standard for the entire period of 1996–2004 based on 1-hour ozone monitoring data demonstrating attainment of the standard during that period. As a result, certain attainment demonstration requirements, along with certain other related requirements of part D of title I of the Clean Air Act, are not applicable to the Ohio portion of the Cincinnati-Hamilton area. We are proposing to approve Ohio's request to redesignate the Ohio portion of the Cincinnati-Hamilton area to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS). We are proposing to approve Ohio's revision of the 1-hour ozone maintenance plan, previously approved by us on June 19, 2000, for the Ohio portion of the Cincinnati-Hamilton area. This update to the plan extends the timeframe for demonstrating continued maintenance of the 1-hour ozone standard through 2015, and demonstrates that the 1-hour ozone standard may be maintained in this area even with the termination of the vehicle Inspection and Maintenance (I/M) program in the Ohio portion of the Cincinnati-Hamilton area. We are notifying the public that we believe that the revised motor vehicle emissions budgets for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) for the Ohio portion of the Cincinnati-Hamilton area are adequate for conformity purposes and are approvable as part of the revised ozone maintenance plan for this area. We are proposing to approve new VOC emission control regulations for various sources in the Ohio portion of the Cincinnati-Hamilton area and to approve negative source declarations for some source categories for this area as long as the State meets certain conditions. We are proposing approval of periodic emission inventories for the Cincinnati area.

Additionally, we are proposing to find that Ohio has demonstrated that termination of the I/M program in the Ohio portion of the Cincinnati-Hamilton area will not interfere with the attainment and maintenance of the 1-hour ozone NAAQS in this area. Similarly, we are proposing to find that Ohio has demonstrated that termination of the I/M program in the Dayton area will not interfere with attainment and maintenance of the 1-hour ozone NAAQS in this area provided that the State meets certain conditions.

DATES: Written comments must be received on or before May 16, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–OH–0004, by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Agency Web site: *http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME docket identification number. Follow the on-line instructions for submitting comments.

E-mail: *mooney.john@epa.gov.*

Fax: (312) 886–5824.

Mail: You may send written comments to: John Mooney, Chief, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand Delivery: Deliver your comments to: John Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–OH–0004. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification or replacement of comments, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters, any form of encryption, and should be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket for this proposed rule are listed in the RME index at *http://docket.epa.gov/rmepub/index.jsp.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 18th floor, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Edward Doty at (312) 886–6057 or contact him through his e-mail, *doty.edward@epa.gov,* before visiting the Region 5 office).

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *Doty.Edward@epa.gov.*

SUPPLEMENTARY INFORMATION: In the following, whenever ''we,'' ''us,'' or ''our'' are used, we mean the United States Environmental Protection Agency.

Table of Contents

I. General Information

A. Does This Proposed Action Apply to Me?

This proposed action pertains to the ground level ozone programs in place in the Cincinnati (Butler, Clermont, Hamilton, and Warren Counties) and Dayton (Clark, Greene, Miami, and Montgomery Counties) areas. If you own or operate a VOC or NO_X emissions source in the Cincinnati area or live in the Cincinnati area, this proposed action may impact or apply to you. This proposed action may also apply to or impact you if you live in the Dayton area. Finally, this proposed action may impact you if you are involved in mobile source or transportation planning or implementation in the Cincinnati or Dayton areas. This action has impacts on pollution sources in these Counties, including industrial and mobile sources of air pollution.

B. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an electronic public rulemaking file available for inspection at RME ID No. R05–OAR–2005–OH–0004, and a hard copy file which is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

2. Electronic Access. You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov*, where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and that are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in

the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket 'R05–OAR–2005–OH–0004' '' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

D. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit CBI to EPA through RME, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and identify electronically within the file(s) on the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedure set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject, heading, **Federal Register** date and page number);

b. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number;

c. Explain why you agree or disagree; suggest alternatives and substitute language for your recommended changes;

d. Describe any assumptions and provide any technical information and/or data that you used;

e. If you estimate potential costs or burdens, please explain how you arrived at your estimates in sufficient detail to allow for them to be reproduced;

f. Provide specific examples to illustrate your concerns, and suggest alternatives;

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and

h. Make sure to submit your comments by the comment period deadline identified in this proposed rule.

II. Proposed Redesignation of the Cincinnati Area to Attainment of the 1-Hour Ozone NAAQS

A. What Is the Background for This Proposed Action?

In accordance with section 107(d) of the Clean Air Act (CAA or Act) as amended in 1977, EPA designated all counties in the Cincinnati-Hamilton area (the Ohio portion of this area includes Butler, Clermont, Hamilton, and Warren Counties, and the Kentucky portion of this area includes Boone, Campbell, and Kenton Counties) as an ozone nonattainment area for the 1-hour ozone NAAQS in March 1978 (43 FR 8962). On November 6, 1991 (56 FR 56694), pursuant to section 107(d)(4)(A) of the CAA as amended in 1990, EPA designated the Cincinnati-Hamilton area as a moderate ozone nonattainment area based on monitored violations of the 1-hour ozone NAAQS during the 1987–1989 period.

From 1996 through 1998, air quality monitors located in Ohio and Kentucky recorded three years of complete, quality-assured ambient ozone monitoring data in the Cincinnati-Hamilton area that did not violate the 1-hour ozone NAAQS.[1] Thus, the area was eligible for consideration of a redesignation to attainment of the 1-hour ozone NAAQS. As noted below, this area has continued to monitor attainment of the 1-hour ozone NAAQS from the 1996–1998 period through the present.

In 1999, the Ohio Environmental Protection Agency (Ohio EPA) and the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) submitted separate requests for the redesignation of the State-specific portions of the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS. EPA received a request from Ohio EPA on July 2, 1999 to redesignate the Cincinnati area as an attainment/maintenance area for the 1-hour ozone NAAQS. Ohio EPA submitted additional supporting information on August 16, 1999, and completed its redesignation request by submitting a summary of public hearing results and comments on December 22, 1999. The Cabinet submitted a prehearing redesignation request on October 28, 1999, and requested that the EPA parallel process this submittal. The Cabinet completed its redesignation request, including an adopted ozone maintenance plan and public hearing information, in a submittal to the EPA on December 13, 1999.

On January 24, 2000 (65 FR 3630), EPA proposed approval of the Ohio and Kentucky ozone redesignation requests. This rulemaking also proposed to determine that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS by its extended attainment data, and proposed to approve an exemption for the area from NO_X emission control requirements contained in section 182(f) of the CAA. EPA issued a final rulemaking (65 FR 37879, June 19, 2000), effective July 5, 2000, determining that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS and approving the Ohio and Kentucky ozone redesignation requests, including the States' plans for maintaining the 1-hour ozone NAAQS in their respective portions of the Cincinnati-Hamilton area, as well as their NO_X exemption requests.

On August 17, 2000, two Ohio residents and the Ohio chapter of the Sierra Club petitioned the United States Court of Appeals for the 6th Circuit (Court) for review of EPA's final rule on the States' ozone redesignation requests for the Cincinnati-Hamilton area. The petitioners urged the Court to find that the EPA had erred in a number of respects in approving the redesignation requests. In its September 11, 2001 decision in this case, the Court upheld EPA's actions with respect to all requirements for redesignation that related to Kentucky. The Court also rejected the petitioners' challenges with respect to EPA's approval of the Ohio redesignation request, with the sole exception of EPA's finding that it could approve Ohio's redesignation request before Ohio had fully adopted all of the VOC emission control rules needed to comply with the RACT requirements of part D, subpart 2 of the CAA. Specifically, the Court rejected the petitioners' challenges to, and upheld EPA's approvals of the Ohio and Kentucky ozone maintenance plans and EPA's conclusions with respect to transportation conformity requirements.

[1] The 1-hour ozone NAAQS is violated when the annual average expected number of daily peak 1-hour ozone concentrations equaling or exceeding 0.125 parts per million (ppm) (125 parts per billion (ppb)) is 1.05 or greater over a three-year period at any monitoring site in the area of interest.

The Court concluded that EPA exceeded its discretion by determining that Ohio did not need to fully adopt all of the RACT rules required by part D, subpart 2 of the CAA. The Court vacated EPA's action in redesignating the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS and ''remanded for further proceedings consistent with this opinion.'' See *Wall* v. *EPA* (265 F.3d 436, 6th Circuit 2001).

On February 12, 2002 (67 FR 6411), in a direct final rule in response to the Court's findings, the EPA took action to reinstate EPA's redesignation to attainment for the 1-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area. This rulemaking action was withdrawn on April 8, 2002 (67 FR 16646), as the result of the submittal of a public comment on the direct final rule. The reinstatement of the attainment designation for the Kentucky portion of the Cincinnati-Hamilton area was subsequently completed through a final rule on July 31, 2002 (67 FR 49600).

On March 12, 2002 (67 FR 11041), through a technical amendment to its June 19, 2000 final rule, the EPA revised the ozone designation of the Ohio portion of the Cincinnati-Hamilton area to nonattainment of the 1-hour ozone NAAQS with a classification of moderate nonattainment. The technical amendment of the original final rule became effective on April 11, 2002. The final rule technical amendment, coupled with EPA's July 31, 2002 final rule, created separate designations for the Ohio and Kentucky portions of the Cincinnati-Hamilton area with regard to attainment of the 1-hour ozone NAAQS. The Kentucky portion of the area is designated as attainment for the 1-hour ozone NAAQS, while the Ohio portion of the area continues to be a nonattainment area. As noted elsewhere in this notice, today's proposed action applies only to the Ohio portion of the Cincinnati-Hamilton area (only to the Cincinnati area).

On March 10, 2005, the Ohio EPA submitted a new redesignation request and ozone maintenance plan revision for the Cincinnati area. This request notes that the Cincinnati-Hamilton area has monitored attainment of the 1-hour ozone NAAQS continuously from the 1996–1999 period through the present. This submittal also includes VOC emission control rules that Ohio was preparing to adopt to comply with the RACT requirements of the Clean Air Act. This submittal notes that Ohio is scheduling a public hearing on the redesignation request, maintenance plan, and VOC RACT rules, and requests EPA to parallel process these submittal elements.

On April 4, 2005, the Ohio EPA submitted additional information including, a negative source declaration for plastic parts coating, and a demonstration that terminating the vehicle I/M programs in the Cincinnati and Dayton areas will not interfere with the attainment and maintenance of the 1-hour ozone NAAQS in these areas. Ohio EPA proposes to revise the ozone maintenance plans for these areas to move the I/M programs to the contingency measure portions of the maintenance plans. This submittal further revises the ozone maintenance demonstrations for these areas and revises mobile source emission budgets to reflect the increases in mobile source VOC and NO_X emissions that will result when the I/M programs are terminated in these areas. Ohio EPA requests the EPA to rule on the air quality impacts of removing these emission control programs, and commits to completing analyses in compliance with section 110(l) of the CAA to demonstrate that dropping these emission reduction programs will not interfere with attainment of other air quality standards and air quality control requirements covered by the CAA. Other than removing the emission impacts of the I/M programs from the maintenance plans' emission projections and moving the I/M programs to the contingency measures portions of the Cincinnati and Dayton maintenance plans, Ohio EPA requests that the remainder of the Cincinnati and Dayton maintenance plans remain the same as those previously approved by the EPA.

B. What Are the Redesignation Review Criteria?

The CAA provides the requirements for redesignating a nonattainment area to attainment of a NAAQS. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation of an area to attainment provided that: (1) The Administrator of the EPA determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable state implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, applicable Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignations for the 1-hour ozone standard in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA provided further guidance on processing redesignation requests in documents including the following:

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''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,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, November 30, 1993.

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

C. Has the State of Ohio and the Cincinnati Area Complied With the Redesignation Review Criteria?

We believe that Ohio has demonstrated that the Cincinnati-Hamilton area has attained the 1-hour ozone standard and has demonstrated that the Ohio portion of this area has met all of the applicable section 107(d)(3)(E) redesignation criteria as discussed below.

1. Criterion (1): The Area Must Be Attaining the 1-Hour Ozone NAAQS

In its June 19, 2000 rulemaking, EPA issued a final rule determining that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS. 65 FR 37879. While the Court, in *Wall* v. *EPA*, vacated EPA's action redesignating the area to attainment, it did not vacate EPA's determination of attainment for the entire area. Therefore, the determination remains intact and in effect. See EPA's final rule reinstating the redesignation of the Kentucky portion of the Cincinnati-Hamilton area. 67 FR 49600 (July 31, 2002). As a result of the determination of attainment, EPA also determined that certain attainment demonstration requirements, along with certain other related requirements of part D of title I of the CAA are not applicable to the area. See 65 FR 37883–3884. See Memorandum of John Seitz, ''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 has interpreted the provisions of subparts 1 and 2 of part D of title I of the CAA so as not to require the submission of State Implementation Plan (SIP) revisions concerning attainment demonstrations, Reasonably Available Control Measures (RACM), Reasonable Further Progress (RFP), or sections 172(c)(9) and 182(c)(9) contingency measures, and other related requirements for so long as an area is attaining the relevant NAAQS. EPA explained its rationale in its prior rulemakings on the Cincinnati area, as well as in other rulemaking actions. *See* for example 61 FR 20458 (May 7, 1996) Cleveland-Akron-Lorain), 66 FR 53094 (October 19, 2001) (Pittsburgh-Beaver Valley, Pennsylvania); 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah), 68 FR 4847,4747, 4751, 4855 (January 30, 2003), 68 FR 25418 (May 12, 2003 (St. Louis, Missouri), 60 FR 37366 (July 20, 1995), 61 FR 31832–33 (Grand Rapids, Michigan). The United States Court of Appeals for the Tenth Circuit has upheld this interpretation, *Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996), and the U.S. Court of Appeals for the Seventh Circuit has also affirmed EPA's redesignation actions based on this interpretation. *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004).

As a result of EPA's determination of attainment, certain attainment demonstration requirements, section 172(c)(1), section 182(b)(1), 182(j), the RACM requirement for reasonable further progress, and the requirement for contingency measures under sections 172(c)(9) are not applicable as long as the Cincinnati-Hamilton area continues to attain the NAAQS.

We propose to find that the Cincinnati-Hamilton area has continued to attain the 1-hour ozone standard and we propose to approve the redesignation request submitted by Ohio for the Cincinnati area as meeting this requirement. Complete, quality-assured ambient monitoring data for the 2002–2004 ozone seasons (April through October, when the highest ozone concentrations are expected to occur in this area) demonstrate that the 1-hour ozone NAAQS continues to be attained in this area. In fact, based on monitoring data, the Cincinnati-Hamilton area has been attaining the 1-hour ozone standard continuously from the 1996–1998 period though 2004.

For ozone, an area may be considered to be attaining the 1-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.9 and Appendix H, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 per year at any monitoring site in the area or in its immediate downwind environs. A daily exceedance occurs at a monitoring site when the recorded maximum hourly ozone concentration during a given day is 0.125 parts per million of air (ppm) (125 parts per billion of air (ppb)) or higher. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors used to support a redesignation to attainment of the NAAQS should have remained at the same location for the duration of the monitoring period required to demonstrate attainment of the NAAQS (three years for ozone).

The Ohio EPA and the Cabinet have continued to submit ozone data for all monitors operated in the Cincinnati-Hamilton area. Review of the ozone data contained in AIRS shows that both States have maintained ozone monitoring in the area, with complete quality-assured monitoring data being supplied to AIRS from the 1996–1998 period, when the Cincinnati-Hamilton area first monitored attainment of the 1-hour ozone NAAQS, through the present. Our January 24, 2000 proposed rule (65 FR 3634) documented the lack of ozone standard violations for the 1996–1998 period. In Table 1, we summarize the data obtained from AIRS and demonstrate that the ozone monitoring data continue to show attainment of the 1-hour ozone NAAQS during the 2002–2004 period. As we have noted, the Cincinnati-Hamilton area did not experience a monitored violation of the 1-hour ozone NAAQS during the entire 1996–2004 period, demonstrating attainment of the 1-hour ozone NAAQS in this area.

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE CINCINNATI-HAMILTON, OHIO-KENTUCKY AREA FROM 2002–2004

Site	County	Expected 1-hour ozone standard exceedances			
		2002	2003	2004	Annual average
Hamilton	Butler	1.0	0.0	0.0	0.3
Middletown	Butler	0.0	1.0	0.0	0.3
2400 Clermont	Clermont	2.0	0.0	0.0	0.7
11590 Grooms Rd.	Hamilton	1.0	0.0	0.0	0.3

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE CINCINNATI-HAMILTON, OHIO-KENTUCKY AREA FROM 2002–2004—Continued

Site	County	Expected 1-hour ozone standard exceedances			
		2002	2003	2004	Annual average
6950 Ripple Road	Hamilton	0.0	0.0	0.0	0.0
250 William Howard	Hamilton	0.0	0.0	0.0	0.0
Lebanon 230 Cook Rd	Warren	1.0	.....	.....	**
Lebanon 416 Southeast Street	Warren	.....	1.0	0.0	0.5
KY 338	Boone	0.0	0.0	0.0	0.0
700 Alexandria	Campbell	0.0	0.0	0.0	0.0
Covington	Kenton	0.0	0.0	0.0	0.0

** It is not appropriate to calculate an annual average expected exceedance rate based on a single year of ozone data.

These data have been quality-assured. These data show that the Cincinnati-Hamilton area, as a whole, is currently attaining the 1-hour ozone NAAQS.

2. Criteria (2) and (5): The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Meet All Applicable Requirements Under Section 110 and Part D

Before the Cincinnati area may be redesignated to attainment of the 1-hour ozone NAAQS, the State of Ohio must have fulfilled the applicable requirements of section 110 and part D of the Act. We address here the status of Ohio with regard to these requirements. Since the Kentucky portion of the Cincinnati-Hamilton area has been redesignated to attainment of the 1-hour ozone NAAQS, we do not here address the status of the Kentucky portion of the area. You are referred to our discussion of these criteria in our January 24, 2000 proposed rule (65 FR 3634).

The September 4, 1992 Calcagni memorandum confirms that areas requesting redesignation to attainment have to fully adopt rules and programs that come due prior to the submittal of a complete redesignation request. See also 60 FR 12459, 12465–66 (March 7, 1995). (Redesignation of Detroit-Ann Arbor, MI), 68 FR 15424, 25427 (May 12, 2003) (St. Louis NFR). *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). Furthermore, requirements of the CAA that come due subsequent to the State's submittal of a complete redesignation request would continue to be applicable to the area until a redesignation to attainment is approved, but are not required as a prerequisite for redesignation (see section 175A(c) of the CAA). If the redesignation is disapproved, the State remains obligated to fulfill those requirements.

The Court in *Wall* v. *EPA,* after reviewing EPA's prior action redesignating Cincinnati, upheld EPA's actions with respect to redesignation requirements with the exception of EPA's determination that Ohio did not need to fully adopt all of the RACT rules of part D, subpart 2, before being redesignated. In this notice, as discussed below, we propose to find that Ohio has submitted these remaining RACT rules for processing by the EPA, and that, following their adoption by the State and final approval as a SIP revision by the EPA, Ohio has complied with the RACT requirements of the CAA.

a. Section 110 Requirements

General SIP requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the State after reasonable notice and public hearing; provisions for the establishment and operation of appropriate apparatus, methods, systems, and procedures necessary to monitor ambient air quality; implementation of a source permit program; provision for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring, and reporting; provisions for air quality modeling; and provisions for public and local agency participation. As noted in our January 24 2000 proposed rule (65 FR 3634), the Ohio SIP was reviewed to ensure that all applicable requirements under the CAA were satisfied through SIP provisions. We have concluded that Ohio's SIP complies with the general SIP requirements under section 110 of the CAA. See also EPA's June 19, 2000 final rulemaking action.

b. Transport of Ozone Precursors to Downwind Areas

As noted in our January 24, 2000 proposed action (65 FR 3634), modeling results using EPA's Regional Oxidant Model (ROM) indicate that ozone precursor emissions from various states west of the Ozone Transport Region (OTR) in the Northeastern United States contribute to increases in ozone concentrations in the OTR. The EPA issued a SIP call under section 110(a)(2)(D) of the CAA on October 27, 1998 (63 FR 57356) (the NO_X SIP call) requiring the District of Columbia (DC) and 22 states, including Ohio, to reduce their NO_X emissions in order to reduce the transport of ozone and ozone precursors. Ohio submitted applicable statewide NO_X emission control rules as a requested SIP revision, which the EPA approved on August 5, 2003 (68 FR 12590). The redesignation of this area to attainment of the 1-hour ozone NAAQS does not remove Ohio's obligation to implement its NO_X emission control rules. However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See discussion in the prior Cincinnati redesignation notice 65 FR 37890 (June 19, 2000); Reading Pennsylvania, proposed and final rulemakings (61 FR 53174–53176,(October 10, 1996), 62 FR 24826 (May 7, 1997); Cleveland-Akron-Lorrain, Ohio 61 FR 20458 (May 7, 1996); Tampa, Florida, 60 FR 62748 (December 7, 1995). See also the

Pittsburgh redesignation 66 FR 50399 (October 19, 2001).

c. Part D General Requirements for Nonattainment Areas

Before the Cincinnati area can be redesignated to attainment, Ohio must have fulfilled the applicable requirements of part D of the CAA. Under part D, an area's ozone nonattainment classification determines the requirements to which the area and the State are subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for ozone nonattainment areas classified under table 1 of section 181(a) of the Act. As described in the General Preamble for the implementation of title I, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501, April 16, 1992). The Cincinnati-Hamilton area was classified as a moderate ozone nonattainment area. Therefore, to qualify for redesignation to attainment, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, as well as the applicable requirements of subpart 2 of part D of the Act.

d. Section 172(c) Requirements

As noted in our January 24, 2000 proposed action (65 FR 3635), we determined that the original redesignation request received from the Ohio EPA for the Ohio portion of the Cincinnati-Hamilton area was supported by Ohio's compliance with the plan requirements of section 172(c). We continue to determine that Ohio has met the plan requirements of section 172(c) as discussed here.

As noted above, in the January 24, 2000 proposed action, EPA proposed to find that the requirements for SIP revisions providing ozone attainment demonstrations meeting the requirements of sections 172(c)(1), 182(b)(1), and 182(j) were not applicable for the Cincinnati-Hamilton area because the area had attained the ozone standard based on monitoring data and because the requirements for attainment demonstrations can be waived for areas attaining the ozone standard as confirmed in the May 10, 1995 Seitz memorandum. This determination was finalized in our June 19, 2000 final rulemaking (65 FR 37879). The Court, in *Wall* v. *EPA,* did not vacate this finding and it remains in effect. 64 FR 49601 (July 31, 2002).

Since the area has continued to attain the 1-hour ozone NAAQS, the requirements for ozone attainment demonstrations, reasonable further progress, RACM, and contingency measures and related requirements have continued to not be applicable to this area. For a further discussion of the basis of this determination and EPA's relevant policy, please refer to our discussions in the June 19, 2000 final rule (65 FR 37895).

The RFP requirement under section 172(c)(2) of the CAA is defined as progress that must be made toward attainment. Section 182(b)(1)(A) sets forth the specific requirements for RFP applicable to the Cincinnati-Hamilton area. On March 14, 1994, Ohio submitted a RFP plan for the Ohio portion of the Cincinnati-Hamilton area. On January 28, 1998 (63 FR 4188) EPA approved this RFP plan as meeting the 15 percent RFP VOC emission reduction requirements of section 182(b)(1)(A). By meeting the specific RFP requirements of section 182(b)(1)(A), Ohio and the Cincinnati area are also meeting the RFP requirements of section 172(c)(2).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The Ohio EPA submitted a 1990 base year emissions inventory under section 182(a)(1) and EPA approved it on December 7, 1995 (60 FR 62737). Since Ohio has met the more definitive emissions inventory requirements of section 182(a)(1), we have determined that Ohio has also met the more general emissions inventory requirements of section 172(c)(3).

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Section 182(b)(5) requires all major new sources or major source modifications in a moderate nonattainment area to achieve offsetting reductions of existing VOC emissions at a ratio of at least 1.15 to 1.0. The EPA has determined that areas redesignated to attainment do not need to comply with the requirement that a NSR program be approved prior to redesignation provided that the State demonstrates maintenance of the standard without part D NSR in effect. The rationale for this decision is described in a October 14, 1994 memorandum from Mary Nichols. See 61 FR 31831, June 21, 1996. Nonetheless, Ohio's NSR program was fully approved by the EPA on January 10, 2003 (68 FR 1366). Ohio's Federally delegated PSD program will become effective in the Cincinnati area upon redesignation to attainment.

In accordance with EPA's determination of attainment, the requirement for contingency measures under section 172(c)(9) is not applicable.

e. Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. of the Federal Transit Act (''transportation conformity''), as well as to all other Federally supported or funded projects (''general conformity''). Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

EPA believes that it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation requests 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 CAA 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 *Wall* v. *EPA,* 265 F. 3d 426, 439 (6th Cir. 2001) upholding this interpretation. See also 60 FR 62748 (December 7, 1995) (Tampa, Florida).

Ohio submitted transportation conformity regulations as a revision to the SIP on August 17, 1995. The State adopted State rules to meet the requirements of 40 CFR Part 51, subpart T, as published on November 24, 1993. EPA conditionally approved the revision to the SIP on May 16, 1996, (61 FR 24702) effective on July 15, 1996. The revision was conditionally approved because the Federal transportation conformity rule had been amended twice since the original 1993 publication and the Ohio SIP needed to

be amended to accommodate the changes. On October 6, 1999, Ohio EPA submitted a SIP revision with adopted State rules to meet the requirements of 40 CFR Part 51, subpart T as published on August 15, 1997. The revised State regulations were approved effective July 31, 2000, in a notice published on May 30, 2000, (65 FR 34395).

f. Subpart 2 Section 182 Requirements

The Cincinnati-Hamilton area was classified as a moderate nonattainment area for the 1-hour ozone NAAQS. Therefore, part D, subpart 2, section 182(b) requirements apply. As set forth in the September 4, 1992 and September 17, 1993 EPA guidance memoranda, the requirements which came due prior to Ohio's request to designate the Cincinnati area must be fully approved into the SIP before or at the time EPA approves the redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS. Those requirements are discussed below.

1. 1990 Base Year Emissions Inventory

The 1990 base year emissions inventory was due for submittal by the State by November 15, 1992. Ohio EPA submitted the Cincinnati 1990 base year VOC and NO_X emissions inventory on March 14, 1994, and EPA approved the emissions inventory on December 7, 1995 (60 FR 62737).

2. Periodic Emission Inventory Updates

Periodic VOC and NO_X emission inventories were required to be submitted every three years, beginning in November 15, 1995. Ohio provided its most recent estimates of emissions for the years 1993, 1996, 1999 and 2002 in its July 2, 1999, December 22, 1999, March 8, 2005 and April 4, 2005 redesignation request submittals. These emission inventory updates were discussed in our January 24, 2000 proposed action (65 FR 3638, Tables 2 and 3). A summary of the 1996, 1999 and 2002 emission inventories can also be found in Tables 2 and 3 of this action. EPA is proposing to approve these emission inventory updates as meeting the section 182(a)(3)(A) requirement of the CAA for periodic emission inventory submissions.

3. Emission Statement Requirements

The emission statement SIP revision was due for submittal by November 15, 1992. The Ohio EPA submitted an emission statement SIP revision for Ohio on March 18, 1994, and EPA approved it on October 13, 1994 (59 FR 51863).

4. Fifteen Percent Rate-of-Progress Plan Requirements

The 15 percent VOC emission reduction RFP plan was required to be submitted by November 15, 1993. This plan requirement was applicable to the Cincinnati-Hamilton area. The Ohio EPA submitted the 15 percent RFP plan on March 14, 1994, and EPA approved it on January 28, 1998 (63 FR 4188).

5. VOC RACT Requirements

VOC RACT rules for three classes of VOC sources are required under section 182(b)(2) to be included in the Ohio SIP. The VOC source categories are: (a) All VOC sources covered by Control Technique Guidelines (CTGs) issued between November 15, 1990 and the date the Cincinnati area attained the 1-hour ozone standard; (b) all VOC sources covered by a CTG issued prior to November 15, 1990; and (c) all other major non-CTG stationary sources in the Cincinnati area. The EPA approved Ohio's VOC RACT rules on April 25, 1996 (61 FR 18255), September 7, 1994 (59 FR 46182), and October 23, 1995 (60 FR 54308). These VOC RACT rules, however, did not complete Ohio's obligation, under the CAA, to adopt RACT rules for all applicable source categories and sources.

As noted above, in our June 19, 2000 final rule (65 FR 37879), we determined that Ohio did not need to fully adopt all of the RACT rules required by part D of the CAA for the Cincinnati area to qualify for a redesignation to attainment of the 1-hour ozone NAAQS. The Court, in *Wall* v. *EPA,* concluded that EPA exceeded its discretion in making this determination and vacated our approval of the redesignation of the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS.

Below, we address new RACT rules, permits-to-install restricting some sources to VOC emission levels below RACT applicability levels, and negative source declarations met to complete Ohio's compliance with the RACT requirements of the CAA. Assuming that these State rules and negative source declarations are approved in final, Ohio will have complied with the RACT requirements of part D of the CAA, eliminating the sole basis for the Court's decision to vacate our prior approval of the redesignation of the Cincinnati-Hamilton area.

6. Reasonably Available Control Measures (RACM)

The General Preamble, 57 FR 13560 (April 16, 1992), states that EPA interprets section 172(c)(1) so that the RACM requirements are a ''component'' of an area's attainment demonstration. Thus, since the attainment demonstration is no longer an applicable requirement, RACM is no longer an applicable requirement. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable progress or attainment. General Preamble, 57 FR 13498 (April 16, 1992). Thus, where an area has already attained the standard, no additional RACM measures are required. See prior Cincinnati redesignation, 65 FR 37883–84 (June 19, 2000); Pittsburgh-Beaver Valley, Pennsylvania, 66 FR 53096 (October 19, 2001) and St. Louis rulemaking, 68 FR 25428 (May 12, 2003).

7. Stage II Vapor Recovery Requirements

Section 182(b)(3) requires states to submit State II gasoline vapor recovery rules no later than November 15, 1992. The Ohio Stage II rules were submitted as a SIP revision on June 7, 1993 and on October 20, 1994. The EPA partially approved and partially disapproved Ohio's SIP revision for implementation of Stage II (58 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 a September 17, 1993 EPA guidance document for such programs titled ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs.''

Only those Stage II provisions previously approved by EPA are part of the Cincinnati maintenance plan. The September 17, 1993 guidance memorandum states that once onboard vapor recovery regulations are promulgated, the Stage II regulations are no longer applicable for moderate ozone nonattainment areas. The EPA promulgated onboard vapor recovery rules in February 1994. Therefore, pursuant to section 202(a)(6) of the CAA, Stage II is no longer required. Ohio, however, has opted to include reductions in VOC from the Stage II program as part of the submitted maintenance plan and the previously approved 15 percent RFP plan (63 FR 4188 or 63 FR 67586).

8. Vehicle Inspection/Maintenance (I/M) Requirements

Section 182(b)(4) of the CAA requires States to submit I/M regulations for ozone nonattainment areas classified as moderate and above. Under EPA's I/M rule in 40 CFR part 51, States are required to submit these regulations by November 15, 1993. Ohio submitted regulations for an I/M program (E-

Check) on May 26, 1994, and EPA approved these rules on April 4, 1995 (60 FR 16989).

As noted below, Ohio EPA has requested that the E-Check program be discontinued in the future. Ohio has demonstrated that the VOC and NO_X emission reductions obtained through the E-Check program are not needed for maintenance of the 1-hour ozone NAAQS. Ohio has requested that E-Check, upon termination, be considered to be a contingency measure in Ohio's ozone maintenance plan for the Cincinnati area. This issue is dealt with in section VI of this proposed action.

9. NO_X Emission Control Requirements

Section 182(f) of the CAA establishes NO_X emission control requirements for ozone nonattainment areas. It provides that these emission control requirements, however, do not apply to an area if the Administrator determines that NO_X emission reductions would not contribute to attainment of the ozone standard. The Administrator made such a determination for the Ohio portion of the Cincinnati-Hamilton ozone nonattainment area on July 13, 1995 (60 FR 36060). This NO_X emission control waiver was based on the fact that the Cincinnati-Hamilton area was currently not violating the 1-hour ozone NAAQS. On June 19, 2000 (65 FR 37879), we extended the NO_X emission control waiver to the entire Cincinnati-Hamilton area based on a clean air determination.

Since the NO_X emission control waiver is approved as a final rule, Ohio EPA is not required to adopt and implement NO_X emission control regulations pursuant to section 182(f) for the Cincinnati area to be redesignated. Ohio EPA has committed to adopt NO_X RACT rules as a contingency measure to be considered and possibly implemented upon a violation of the 1-hour ozone NAAQS subsequent to the redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS.

g. Conclusions Regarding Criteria (2) and (5)

EPA concludes that, after Ohio has adopted the RACT rules reviewed here and we have approved these RACT rules as a SIP revision, Ohio and the Cincinnati area will have satisfied the requirement that the State and the area have a fully approved SIP meeting all applicable requirements under section 110(k), section 110, and part D of the CAA.

3. Criterion (3): The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

The improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from the SIP, Federal measures, and other State adopted measures. The improvement in air quality in the Ohio portion of the Cincinnati-Hamilton area is due to emissions reductions from the Federal Motor Vehicle Emissions Control Program (FMVECP), Stage II gasoline vapor recovery program, VOC RACT controls, and the partial implementation of E-Check. Between 1993 and 1996, the VOC emissions in the Ohio portion of the Cincinnati-Hamilton area were reduced by 6.7 percent. The emission control programs noted here have been adopted by the State and have been approved into the Ohio SIP by the EPA. Based on this conclusion, it is concluded that Ohio has complied with Criteria (3). It is further noted that, subsequent to 1996, Ohio has continued to implement these emission controls and has adopted statewide NO_X emission control rules in compliance with EPA's NO_X SIP call, further improving the air quality in the Cincinnati-Hamilton area. See the documentation of 1990, 1993, and 1996 VOC and NO_X emissions for the Cincinnati area in Tables 2 and 3 of our January 24, 2000 proposed rule for the Cincinnati-Hamilton ozone redesignation (65 FR 3638).

4. Criterion (4): The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

EPA is proposing to approve the updated maintenance plan and to determine that it meets the requirements of the CAA.

In its January 24, 2000 proposed rule (65 FR 3630), the EPA documented and proposed to approve a maintenance plan for the Ohio portion of the Cincinnati-Hamilton area as meeting the requirements of section 175A. This maintenance plan was approved in EPA's June 19, 2000 final rule (65 FR 37879). Although the Court, in *Wall* v. *EPA*, vacated EPA's approval of the redesignation of the Cincinnati-Hamilton area due to the lack of VOC RACT rules in Ohio, the Court upheld EPA's approval of Ohio's ozone maintenance plan for the Cincinnati area.

Due to passage of time, Ohio's original maintenance demonstration, which projected maintenance of the ozone standard through 2010, no longer satisfies the requirement that the maintenance plan demonstrate maintenance for 10 years after EPA approval of the ozone redesignation request. Based on this fact, Ohio EPA has updated the maintenance plan to demonstrate maintenance through 2015. Below we review this updated maintenance plan.

Please note that besides updating the maintenance plan to demonstrate maintenance of the 1-hour ozone standard through 2015, Ohio EPA has also revised the maintenance plan to demonstrate that the 1-hour ozone standard can be maintained even if the E-Check program is terminated in the Cincinnati area. Ohio EPA has also requested that the E-Check program be moved to the contingency portion of the maintenance plan. All other aspects of the contingency portion of the plan, as approved on June 19, 2000 remain in place. See our January 24, 2000 proposed rule (65 FR 3639) for a discussion of Ohio's contingency plan.

Also please note that the ozone maintenance plan approved by EPA on June 19, 2000 included the adoption of additional RACT rules as a contingency measure. Since Ohio is in the process of adopting the additional RACT rules to meet the requirements of the CAA, the consideration of RACT adoption as a contingency measure is no longer warranted. Should a need for the implementation of contingency measures be subsequently triggered, the State would have to consider other contingency measures since this contingency measure is no longer available. Even though the State has not removed this contingency measure from the maintenance plan, we do not see this as a basis for disapproving Ohio's ozone redesignation request. The maintenance plan is not corrupted by this issue since Ohio would be forced to consider alternate contingency measures if triggered, and the presence of the RACT adoption contingency measure in the maintenance plan does not prevent Ohio from doing so.

The contingency plan provisions of the maintenance plan are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The contingency measures to be considered for implementation for the Cincinnati area are the following:

1. Lower Reid Vapor Pressure (RVP) gasoline;

2. Reformulated gasoline;

3. Broader geographic coverage of existing regulations;

4. Application of RACT on sources covered by new control technology guidelines issued in response to the 1990 CAA amendments; [2]

5. Application of RACT to smaller existing sources;

6. Implementation of one or more transportation control measures sufficient to achieve at least a 0.5 percent reduction in actual area wide VOC emissions. The transportation control measures to be considered would include: (a) Trip reduction programs, including but not limited to employer-based transportation management programs, area wide rideshare programs, work schedule changes, and telecommuting; (b) transit improvements; (c) traffic flow improvements; and (d) other measures;

7. Alternative fuel programs for fleet vehicle operations;

8. Controls on consumer products consistent with those adopted elsewhere in the United States;

9. VOC offsets for new or modified major sources;

10. VOC offsets for new or modified minor sources;

11. Increased ratio of VOC offsets required for new sources;

12. Requirements of VOC controls on new minor sources; and

13. E–Check (I/M).[3]

Consideration and selection of one or more of the contingency measures will take place in the event that the NAAQS is violated after the redesignation of the Cincinnati area to attainment of the NAAQS. If a subsequent violation of the ozone NAAQS occurs after implementation of the VOC control measures, NO_X RACT will be activated. As noted in our January 24, 2000 proposed rule (65 FR 3640), the State commits to implement contingency measures within 12 months of a violation of the NAAQS.

Based on our review of the revised maintenance plan, discussed below, and Ohio's revised contingency commitments, we conclude that Ohio has complied with Criteria (4). The revised maintenance plan meets the requirements of section 175A of the CAA and complies with the relevant guidelines of the September 4, 1992 Calcagni policy memorandum.

III. Update of the Ohio Ozone Maintenance Plan for the Cincinnati Area

A. How Did EPA Evaluate the Maintenance Plan Update?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. An EPA Office of Air Quality Planning and Standards memorandum dated September 4, 1992, provides additional guidance on the required elements of a maintenance plan. In this case, the maintenance plan is only being updated in terms of the estimated emissions projections and to add E-Check as a contingency measure for the Cincinnati area. The State already has an approved maintenance plan that includes an attainment emissions inventory, a commitment to maintain an ozone monitoring network, a contingency plan, and a commitment for continued attainment verification which was upheld by the Court. In this SIP submission, Ohio is updating the emissions projections which provide for the maintenance demonstration through at least 10 years into the future from redesignation. This is necessary because of the Court's decision which vacated EPA's original redesignation to attainment for the Cincinnati area.

The attainment emissions inventory identifies the emissions level in the area which is sufficient to attain the 1-hour ozone NAAQS, and includes emissions during the time period which had no monitored violations of the ozone NAAQS. Maintenance is demonstrated by showing that future emissions will not exceed the level established by the attainment emissions inventory. The ''attainment emissions inventory'' approach to demonstrating maintenance was upheld in *Wall* v. *EPA*, 426 F. 3d at 435–37. The 1996 attainment emissions inventory established in the prior approved maintenance plan remains as the approved attainment inventory. The only change to the inventory is that on-road mobile source emissions have been updated by using MOBILE6. There have been no violations of the 1-hour ozone standard over the time period since 1996 and thus the 1996 attainment emissions levels remain valid.

Ohio has submitted updated VOC and NO_X emissions projections for the year 2015 and has submitted these projections as a revision to the SIP. The Tables below (Table 2 and Table 3) show the prior approved emissions levels for point and areas sources and the mobile source emissions that have been updated using the MOBILE6 emissions model. Also, the mobile emissions estimates are calculated without the benefit of the E-Check program for 2010 and 2015, as noted in parentheses in the on-road mobile and total emissions estimates. The results of the analysis show that the area is expected to maintain the air quality standard for at least 10 years into the future. Table 2 and Table 3 provide the VOC and NO_X emissions summaries for the Ohio portion of the Cincinnati area and demonstrate that the area's total VOC and NO_X emissions will remain below attainment levels established for 1996.

TABLE 2.—CINCINNATI, OHIO: VOC MAINTENANCE EMISSION INVENTORY SUMMARY

[Tons per day]

Source type	Year					
	1996	1999	2002	2005	2010	2015
Point	74.9	77.0	79.2	81.4	84.3	88.4
Area	70.7	71.4	72.3	73.1	74.5	79.5
On-road Mobile	82.9	70.1	60.9	45.6	33.0 *(35.1)	23.6 *(26.2)

[2] This contingency measure becomes moot when Ohio adopts the RACT rules reviewed here.

[3] It is assumed here that E-Check would not become a contingency measure until after it is terminated in the Cincinnati area.

TABLE 2.—CINCINNATI, OHIO: VOC MAINTENANCE EMISSION INVENTORY SUMMARY—Continued

[Tons per day]

Source type	Year					
	1996	1999	2002	2005	2010	2015
Total	228.5	218.5	212.4	200.1	191.8 *(193.9)	191.5 *(194.1)

* Without E-Check program.

TABLE 3.—CINCINNATI, OHIO: NO_X MAINTENANCE EMISSION INVENTORY SUMMARY

[Tons per day]

Source type	Year					
	1996	1999	2002	2005	2010	2015
Point	279.0	278.6	278.3	277.6	277.4	276.0
Area	30.9	31.4	32.1	32.2	33.8	37.4
On-road Mobile	133.9	130.4	116.3	87.8	61.8 *(65.4)	35.0 *(39.5)
Total	443.8	440.4	426.7	397.6	373.0 *(376.6)	348.4 *(352.9)

*Without E-Check program.

To demonstrate continued attainment, the State projected anthropogenic 1996 emissions of VOC and NO_X to the years 1999, 2002, 2005, 2010 and 2015. The results of this analysis show that the area is expected to maintain the air quality standard for at least ten years into the future. In fact, the emissions projections show that future emissions will be reduced from 1996 levels.

The emission projections show that the emissions are not expected to exceed the level of the base year 1996 inventory during the 10-year maintenance period. Therefore, maintenance of the 1-hour ozone NAAQS continues to be demonstrated.

The On-road Mobile emissions were also calculated without the E-Check program to determine if the area could continue to maintain the 1-hour ozone standard if the E-Check program were discontinued. The 2010 VOC emissions from on-road mobile sources were calculated by the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) to be 35.1 tpd of VOC and 65.4 tpd of NO_X. In the year 2015, the on-road mobile emissions were projected to be 26.2 tpd of VOC and 39.5 tpd of NO_X without the E-Check program. These emissions demonstrate that the area can still maintain the 1-hour ozone standard without the E-Check program.

B. How Were the Point and Area Sources Updated?

The point and area sources were grown using the same expected growth rates that were used in the original approved maintenance plan. The 2010 emission estimates were grown to give the expected emissions in 2015. Area source estimates in this case include off-road mobile sources, such as construction equipment. The growth rates are based on expected population growth. Any emission reductions from implementation of RACT on the non-Control Technique Guidelines source categories, which Ohio is working to control, are not included in the point source emission projections. Thus, this is a worse case emissions projection and still demonstrates maintenance of the 1-hour ozone NAAQS. Some RACT emission controls will provide additional VOC emission reductions and will further support maintenance of the 1-hour ozone NAAQS.

C. How Were the Mobile Sources Updated?

The mobile source emissions cover all on-road mobile sources such as cars, trucks, and buses, including transit. The Ohio-Kentucky-Indiana Regional Council of Governments (OKI) used the most recent transportation network model with the most recent projections of population and employment to estimate emissions from the transportation system. The transportation network model is calibrated by using actual ground counts of vehicles currently on the highways. A summary of the OKI updates and calibrations were provided in the Ohio submittal. OKI estimated the mobile source emissions for 2015 to be 23.6 tons per day of VOC and 35 tons per day of NO_X. OKI provided the 2015 on-road mobile emissions information to the Ohio EPA, who in turn summarized the emissions in the revised maintenance demonstration and emissions budget reviewed here. OKI also provided the 2010 and 2015 emissions estimates without the E-Check program.

D. Does the Updated Maintenance Plan Reaffirm the Adequacy of the Maintenance Plan?

The updated maintenance plan submitted by Ohio has built upon the existing approved maintenance plan to extend the time-frame of the plan out to the year 2015. Ohio has used methodologies that meet the EPA guidance for emission inventory preparation. Additionally, as noted above, Ohio did not take credit for all emission reductions which may be expected in the time-frame of the maintenance plan, resulting in a conservative overestimate of future emissions and a conservative demonstration of maintenance. For example, Ohio did not take credit for the anticipated VOC controls on point sources which are not yet in place. These anticipated VOC controls will provide additional reductions on certain stationary sources in the Cincinnati area once the controls are implemented and are permanent and enforceable.

Ohio has used methods consistent with the previous approved maintenance plan. Because the revised maintenance plan projections for 2015 are below the 1996 attainment year inventory, the update to the maintenance plan for Cincinnati shows

that the maintenance plan is adequate for maintaining emissions below the 1996 attainment level.

IV. Transportation Conformity Emission Budgets for the Cincinnati Area

A. What Are the Motor Vehicle Emissions Budgets?

A motor vehicle emissions budget (MVEB) is the projected level of controlled emissions from the transportation sector (mobile sources) that is estimated in the SIP. The SIP controls emissions through regulations, for example, on fuels and exhaust levels for cars. The emissions budget concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the motor vehicle emissions budget in the SIP and how to revise the emissions budget. The transportation conformity rule allows the motor vehicle emissions budget to be changed as long as the total level of emissions from all sources remains below the attainment level. For maintenance plan submissions, the last year of the maintenance plan is the budget year for transportation conformity. The motor vehicle emissions budgets for the Ohio portion of the Cincinnati-Hamilton area, as submitted by Ohio, are for the 2015 year and are the projected emissions for the on-road mobile sources. The motor vehicle emissions budgets, if approved, will be 26.2 tons per day for VOC, and 39.5 tons per day for NO_X for the Ohio portion (Butler, Clermont, Hamilton, and Warren Counties) of the Cincinnati-Hamilton area. These emission budgets, when approved in final by EPA, will be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. For example: The Cincinnati-Hamilton area first attained the 1-hour ozone standard during the 1996–1999 time period. The State used 1996 as the year to determine attainment levels of emissions for the Cincinnati-Hamilton area. The total emissions from point, area and mobile sources in 1996 equaled 228.5 tons per day of VOC and 443.8 tons per day of NO_X. The Ohio EPA projected emissions out to the year 2015 and projected a total of 191.5 tons per day of VOC and 348.4 tons per day of NO_X from all sources in the Ohio portion of the Cincinnati-Hamilton area. The safety margin for the Ohio portion of Cincinnati-Hamilton is calculated to be the difference between these amounts, or 37.0 tons per day of VOC and 95.4 tons per day of NO_X. If the E-Check program is eliminated, the safety margin will be reduced because the total projected emissions in 2010 and 2015 will be higher.

The emissions are projected to maintain the area's air quality consistent with the 1-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels [points] that can be allocated as long as the total emission levels are maintained at or below the attainment levels. Ohio is not requesting allocation of the safety margins in the submittal. The motor vehicle emissions budgets for the Ohio portion of the Cincinnati-Hamilton area will be the 2015 emissions estimates for on-road mobile sources (motor vehicles) without the E-Check program.

C. How Does This Action Change the Current Maintenance Plan?

Full approval of Ohio EPA's submittal will change the transportation conformity emissions budgets for mobile sources. The maintenance plan is designed to provide for future growth while still maintaining the ozone air quality standard. Growth in industries, population, and traffic is offset with reductions from cleaner cars and other emission reduction programs. Through the maintenance plan, the State and local agencies can manage and maintain air quality while providing for growth.

In the submittal, Ohio has updated the emissions estimates and has requested to replace the approved 2010 motor vehicle emissions budgets with new budgets for 2015 so that the maintenance plan will extend out 10 years past the expected date of redesignation. The 2015 budgets are intended to replace the currently approved 2010 budgets rather than being in addition to the 2010 budgets, avoiding coexisting emissions budgets for two separate years.

D. What Are Subarea Budgets?

Ohio submitted these budgets as subarea budgets, which are only applicable to the Ohio portion of the Cincinnati-Hamilton area. Subarea budgets allow conformity to be determined for Ohio and Kentucky separately. Kentucky currently has approved 2010 mobile source budgets. In separate actions, both States (Ohio and Kentucky) are electing to use subarea budgets per 40 CFR 93.124(d) for the purpose of determining transportation conformity in the areas within their individual states. Subarea budgets still require the Cincinnati-Hamilton area to conduct transportation conformity for the entire area (both Ohio and Kentucky portions). However, subarea budgets allow transportation projects in each State to be implemented if and only if the budget test is met for that particular State. The new updated budgets for the Ohio side of the Cincinnati-Hamilton area for 2015 are: 26.2 tons per summer day for VOC; and 39.5 tons per summer day for NO_X.

E. Why Is the Request Approvable?

The new 2015 motor vehicle emission budgets for the Cincinnati-Hamilton area are approvable because the new motor vehicle emissions budgets for NO_X and VOC maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

F. What Is the Adequacy and Approval Process for These Submitted Budgets?

The budgets for the Ohio portion of the Cincinnati-Hamilton maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is parallel processing the maintenance plan update and the adequacy process for the budgets. In this proposed rule, EPA is proposing to find the budgets adequate and also proposing to approve the budgets as part of the maintenance plan. Because the Cincinnati-Hamilton area already has an approved maintenance plan, the budgets need to be approved and not just found adequate prior to being used for transportation conformity purposes. Therefore, the budgets cannot be used for transportation conformity until the maintenance plan update and associated budgets are approved in a final **Federal Register** notice.

If EPA receives adverse written comments with respect to the proposed approval of the Cincinnati-Hamilton emissions budgets, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the emissions budgets in our final action or proceed with the adequacy process as a separate action.

Our action on the Cincinnati-Hamilton emissions budgets will also be announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity''

button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

V. Volatile Organic Compounds Emission Control Regulations

Ohio is required to ensure that all major VOC sources and all VOC sources that meet the applicability criteria in any of EPA's Control Technique Guideline (CTG) documents in the Cincinnati ozone nonattainment area are subject to RACT regulations. Ohio's existing VOC RACT regulations cover all CTG categories and major sources except those categories for which EPA established RACT guidance after 1990 and for one additional source category, bakeries, for which it was determined there was a major non-CTG source in the nonattainment area. An analysis of how this RACT requirement is satisfied is presented in a category-by-category basis below. VOC RACT regulations are required for any facilities that exceed the applicability criteria specified in the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor/Distillation, Wood Furniture Manufacturing, Ship Building and Ship Repair and Aerospace Manufacturing Control Technique Guideline documents. For the other post-1990 categories and for bakeries, VOC RACT regulations are required if a facility including one or more of these source categories has greater than 100 tons VOC per year of potential non-CTG VOC emissions and the facility is not subject to federally enforceable operating and/or production restrictions limiting the facility to less than 100 tons per year of non-CTG VOC emissions. A description of these source categories follows.

A. Source Categories Not Requiring New VOC Regulations

The following VOC source categories do not require any additional regulations because, for the CTG categories, there are no sources that exceed the CTG applicability criteria and for any non-CTG categories, there are either no major sources or any such sources are subject to federally enforceable operating and/or production restrictions limiting the facility to less than 100 tons per year of non-CTG VOC emissions.

1. Industrial Cleaning Solvents

On May 23, 2003, the Ohio EPA submitted to EPA a Negative Declaration Letter for Industrial Cleaning Solvents. Ohio EPA has adequately documented that there are no sources in the Ohio portion of the Cincinnati ozone nonattainment area with industrial cleaning solvent emissions that have total non-CTG potential emissions of equal to or greater than 100 tons VOC/year. Non-CTG emissions include emissions from source categories for which there is not a CTG document and unregulated emissions from source categories covered by a CTG category.

Ohio EPA made a thorough search to ensure that it considered all sources with solvent clean-up emissions. This included looking at the Standard Industrial Classification (SIC) Manual, the local Yellow Pages, a database associated with the Ohio EPA permitting system, as well as several trade associations and Web sites. Based on that review, 122 facilities were identified that are normally associated with solvent clean-up emissions. None of these facilities were found to have solvent clean-up potential emissions of over 50 TPY and there are no facilities with solvent cleaning operations that have combined non-CTG Potential to Emit (PTE) of 100 TPY or more. Therefore, Ohio EPA has adequately documented that there are no major non-CTG sources with solvent clean-up emissions and therefore there are no sources with solvent clean-up emissions that are subject to RACT.

2. Shipbuilding and Ship Repair Industry

On May 23, 2003, the Ohio EPA submitted to EPA a Negative Declaration Letter for the Ship Building and Ship Repair Industry. The Ohio EPA has determined that there are no major sources (sources with potential emissions equal to or greater than 25 tons VOC/year for this CTG category) in the Ohio portion of the Cincinnati ozone nonattainment area.

Ohio EPA made a thorough search to determine whether any ship building or ship repair facilities were located within the Cincinnati ozone nonattainment area. This included reviewing the Ohio EPA air pollution control permitting system, contacting the local office of the United States Coast Guard, reviewing ship building trade association information identified on the web and, in addition, the Harris Directory, which provides SIC information for more than 800,000 companies across the country, was investigated for those categories related to ship building and repair. None of the above sources of information resulted in the identification of any ship building and repair facilities. In addition, staff from the Hamilton County Department of Environmental Services confirmed that there are no military or commercial ship building and repair operations along the Ohio River, the only plausible location for such operations in the Ohio portion of the non-attainment areas. Therefore, Ohio EPA has adequately documented that there are no ship building and repair facilities located in the Ohio portion of the Cincinnati ozone non-attainment area.

3. Automobile Refinishing

On May 23, the Ohio EPA submitted to EPA a Negative Declaration Letter for Automobile Refinishing. Ohio EPA has adequately documented that there are no automobile refinishing (also referred to as auto body shops) major sources in the Ohio portion of the Cincinnati ozone nonattainment area with non-CTG potential emissions of equal to or greater than 100 tons VOC/year. Non-CTG emissions include emissions from source categories for which there is not a CTG document and unregulated emissions from source categories covered by a CTG category.

In order to determine whether there were any major automobile refinishing sources within the Cincinnati nonattainment area, Ohio EPA searched the SIC Code Manual for automobile refinishing in conjunction with the Harris Directory, the local and business to business Yellow Pages for automobile refinishing companies, the Ohio EPA permitting system, and Ohio EPA's Small Business Assistance Program. After reviewing all of the above sources of information 142 automobile refinishing facilities were identified. Of the 142 facilities, 103 are each subject to a Permit to Install which limits potential VOC emissions to less than 25 tons/year. A review of each of the remaining 39 facilities established that the potential VOC emissions from each of them was less than 25 tons VOC/year. Therefore, Ohio EPA has adequately documented that there are no major non-CTG automobile refinishing facilities and therefore there are no such facilities that are subject to RACT.

4. Aerospace Manufacturing and Rework Facilities

On October 14, 2003, the Ohio EPA submitted to EPA a Negative Declaration Letter for Aerospace Manufacturing and Rework Facilities. The Ohio EPA has determined that there are no major sources (sources with potential emissions equal to or greater than 25 tons VOC/year for this source category) in the Ohio portion of the Cincinnati ozone nonattainment area.

Ohio EPA made a thorough search to determine what aerospace manufacturing and/or rework facilities were located within the Cincinnati nonattainment area. Ohio EPA searched the Ohio EPA permitting system, the local and business Yellow Pages for aerospace manufacturing and rework

facilities, they utilized the web and found a number of trade associations, and used the Harris Directory, which provides SIC information for more than 800,000 companies across the country.

After reviewing all of the above sources of information, Ohio EPA identified 22 facilities in the Cincinnati nonattainment area that are generally associated with aerospace manufacturing and rework operations. These 22 facilities are listed in a table attached to the October 14, 2003, letter. In reviewing the status of those 22 facilities, it was determined that 14 facilities do not manufacture or have rework operations. Two facilities, CTL Aerospace and Gayston Corporation have federally enforceable Permits to Install which limit the allowable VOC emissions to less than 25 TPY for each facility. One facility has shut down all coating operations. The individual files were reviewed for the remaining 5 facilities and it was determined that the potential to emit of the VOC emissions for operations subject to the CTG were less than 25 TPY. Therefore, Ohio EPA has adequately documented that there are no aerospace manufacturing and rework operations located in the Ohio portion of the Cincinnati ozone non-attainment area that exceed the applicability criteria for this CTG category and therefore there are no such facilities that are subject to RACT.

5. Volatile Organic Liquid Storage Tanks

On January 27, 2004, the Ohio EPA submitted to EPA a letter documenting that there are no volatile organic liquid (VOL) storage tanks, in the Cincinnati ozone nonattainment area, at facilities with the potential to emit over 100 TPY from all non-CTG sources that do not have either enforceable operating and production restrictions limiting actual VOC emissions to below 100 TPY from these non-CTG sources or existing RACT level controls on their VOL storage tanks. Ohio EPA performed the following searches to identify all VOL storage tanks in the Cincinnati ozone nonattainment area. Ohio EPA checked the Harris Directory for those SICs which may have VOL storage tanks. They also checked the local Yellow and business Yellow Pages for petroleum, oils and solvent storage facilities, their permitting system for storage tanks and on the web, information was obtained from several trade associations.

Ohio EPA identified 151 facilities in the four county Cincinnati ozone nonattainment area with a total of 1363 storage tanks of various sizes, that contained materials having a wide range of vapor pressures. Of those 151 facilities, only 12 had PTE VOC emissions greater than 100 Tons per year from the facility. Of those 12, 7 have no storage tanks that exceed the cutoffs (storage tanks greater than 40,000 gallons storing a material with a vapor pressure greater than 0.5 pounds per square inch absolute (psia)) requiring control. One facility is subject to a federally enforceable Permit to Install limiting facility emissions to less than 100 tons per year and the storage tanks over 40,000 gallons at the other four facilities are subject to either existing petroleum liquid RACT control requirements or National Emission Standards for Hazardous Air Pollutant (NESHAP) regulations with control requirements at least as stringent as RACT. Therefore, no additional RACT control requirements are required for VOL storage tanks.

6. Lithographic Printing

On July 31, 2003, the Ohio EPA submitted to EPA a Negative Declaration Letter for Lithographic Printing. The Ohio EPA has determined that there are no major sources (sources with potential emissions equal to or greater than 100 tons per year for this source category) in the Cincinnati ozone nonattainment area.

Ohio EPA made a thorough search to determine what lithographic printing facilities were located in the Cincinnati ozone nonattainment area. Ohio EPA searched their permitting system, the local and business Yellow Pages for Lithographic printing, they utilized the web and reviewed trade association information, they used the Small Business Assistance program, and they also used the Harris Directory, which provides SIC information for more than 800,000 companies.

After reviewing the above sources of information, Ohio EPA determined that there are seven facilities which perform web offset lithographic printing. The potential to emit for three of these facilities is less than 12 tons VOC per year. The other four facilities have federally enforceable Permits to Install limiting emissions to less than 100 tons per year for each facility. Therefore, Ohio EPA has adequately documented that there are no lithographic printing facilities in the Cincinnati ozone nonattainment area that are subject to RACT regulations.

7. Plastic Parts Coating

On March 31, 2005, the Ohio EPA submitted to EPA a Negative Declaration Letter for the coating of Automotive Plastic Parts. The Ohio EPA has determined that there are no major sources (sources with potential emissions equal to or greater than 100 tons per year for this source category) in the Cincinnati ozone nonattainment area.

Ohio EPA made a thorough search to determine what automotive plastic parts coating facilities were located in the Cincinnati ozone nonattainment area. Ohio EPA searched their permitting system, the local and business Yellow Pages for automotive plastic parts coating, they utilized the web and reviewed trade association information, they used the small business assistance program, and they also used the Harris Directory which provides SIC information on more than 800,000 companies.

After reviewing the above sources of information, Ohio EPA determined that there are three facilities which coat automotive plastic parts. The potential to emit for one of these facilities is less than 10 tons VOC per year and the other two automotive plastic parts coating facilities have federally enforceable Permits to Install limiting emissions to less than 100 tons per year for each facility. Therefore, Ohio EPA has adequately documented that there are no automotive plastic parts coating facilities in the Cincinnati ozone nonattainment area that are subject to RACT regulations.

B. Source Categories for Which VOC RACT Regulations Have Been Proposed

On March 8, 2005, Ohio EPA proposed for parallel processing VOC regulations for five source categories that are discussed below. Parallel processing includes proposed rulemaking (by EPA) on draft rules submitted by the State with EPA's final rulemaking taking place subsequent to the State rules being finally adopted. Subsequent to proposal, Ohio EPA agreed to make some revisions to these proposed rules so that they are consistent with EPA VOC RACT requirements and therefore approvable. If Ohio's final rules are not consistent with what has been agreed on to ensure that these rules represent RACT, or if Ohio makes other substantive changes to these rules, EPA will not be able to go final without additional rulemaking. A discussion of these required changes is included in the section for each rule.

1. Bakeries

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–12 ''Control of Volatile Organic Compound Emissions from Commercial Bakery Oven Facilities'' and the accompanying definitions in 37–45–21–01(U). This draft rule applies to any commercial bakery oven facility in the Cincinnati ozone nonattainment area with a

potential to emit VOC emissions equal to or greater than 100 tons per year. Each bakery oven subject to these control requirements must install and operate a VOC emission control system with an overall control efficiency of at least 95 percent by weight. A bakery oven is exempted from this control requirement if it has annual VOC emissions of less than 25.0 tons and average daily VOC emissions of less than 192 pounds. This is consistent with the exemption levels that were approved by EPA in the Maricopa County (Arizona) bakery rule. This rule contains a calculation procedure to determine uncontrolled potential to emit, a requirement to achieve compliance within 12 months as well as compliance testing requirements, monitoring and inspection requirements as well as recordkeeping and reporting requirements. Ohio EPA agreed to delete the last sentence in the draft definition of ''Commercial bakery oven facility'' which improperly exempts establishments that produce bakery products primarily for direct sale on the premises to household consumers and that utilize only batch bakery ovens. This rule, with the revised definition, is consistent with RACT and is therefore approvable.

2. Batch Processes

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–14 ''Control of Volatile Organic Compound Emissions from Process Vents in Batch Operations'' and the accompanying definitions in 3745–21–01(W). This draft rule applies to any batch process train for a variety of chemical manufacturing operations at facilities in the Cincinnati ozone nonattainment area with over 100 tons per year of potential VOC emissions. A batch operation is a non-continuous operation in which chemicals are added to the process in discrete intervals as opposed to on a continuous basis. A batch process train is a collection of equipment (*e.g.*, reactors, filters, distillation columns, extractors, crystallizers, blend tanks, neutralizer tanks, digesters, surge tanks and product separators) configured to produce a specific product or intermediate by a batch operation.

Exempted from the VOC control requirements of this rule are any unit operation with uncontrolled annual VOC emissions of less than 500 pounds per year and any batch process train containing process vents that have, in the aggregate, uncontrolled total annual mass emissions of less than 30,000 pounds per year.

For those process vents of batch process trains and unit operations within batch process trains subject to the control requirements of this rule, compliance can be achieved by (1) reducing uncontrolled VOC emissions by an overall efficiency of at least 90 percent, or to 20 parts per million volume, per batch cycle; (2) using a boiler or process heater to comply with the above by requiring that the vent stream be introduced into the flame zone of the boiler or process heater, (3) using a flare provided that it meets Ohio's approved flare requirements in 3745–21–09(DD)(10)(d). In addition, suitable recordkeeping, reporting and test methods have been included.

Compliance with these control requirements is required within 12 months of the effective date of this rule. In order to eliminate ambiguity in 3714–21–14(A)(4), which deals with compliance deadlines, Ohio EPA agreed to eliminate the last sentence in 3714–21–14(A)(4) and to add ''1990'' after baseline year in order to specify the year after which actual emissions could not have exceeded 100 tons per year of VOC to make the source eligible for avoiding applicability to the batch rule by restricting emissions to less than 100 tons VOC per year by federally enforceable operating restrictions.

This proposed batch rule is consistent with EPA VOC RACT guidance and is approvable provided that the changes to 3714–21–14(A)(4) are made.

3. Industrial Wastewater

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–16 ''Control of Volatile Organic Compound Emissions from Industrial Wastewater'' and the accompanying definitions in 3745–21–01(Y). This draft rule applies to facilities in the Cincinnati ozone nonattainment area with the potential to emit over 100 tons VOC per year that have operations in one of several industrial categories (such as organic chemicals, pesticides and pharmaceutical manufacturing) and that generate process wastewater.

The proposed industrial wastewater rule contains the following control requirements: Each individual drain system shall be covered and, if vented, be routed through a closed vent system to a control device, or each drain shall be equipped with water seal controls or a tightly fitting cap or plug, each surface impoundment that receives, manages or treats an affected VOC wastewater stream must be equipped with a cover and a closed-vent system which routes the VOC vapors to a control device or the surface impoundment must be equipped with a floating flexible membrane cover, each oil-water separator shall be equipped with a fixed roof and a closed vent system that routes the vapors to a control device or a floating roof, each portable container must be covered, each wastewater tank shall have a fixed roof, a fixed roof and a closed-vent system that routes the VOC vapors to a control device, a fixed roof and an internal floating roof, or an external floating roof, and each treatment process must meet the applicable requirements described above along with other requirements such as venting the gases from the treatment process to a control device designed and operated to reduce wastewater VOC emissions by 90%. There is also an alternative control option requiring EPA approval.

There are also inspection and monitoring requirements, a list of approved test methods, recordkeeping requirements and a requirement that compliance be achieved within 12 months from the effective date of the rule.

Ohio EPA agreed to make the following changes to its draft rule: revise the definition of ''Affected VOC'' in 3745–21–01(Y)(3) to ''means VOC with a Henry's Law Constant greater than * * *,'' delete the last sentence in 3745–21–16(A)(4), add ''1990'' before ''baseline year'' (for the reason described in the prior section) and delete the phrase ''or (D)(8)'' from 3745–21–16(D)(1) as (D)(8) is a control option for treatment processes and was not intended to be an alternative to the control requirements in (D)(3) through (D)(7). This rule was largely based on the Texas wastewater rule that was approved by EPA. We believe that the rule, with the modifications identified is approvable as RACT.

4. SOCMI Reactors/Distillation Units

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–13 ''Control of Volatile Organic Compound Emissions from Reactors and Distillation Units Employed in SOCMI Chemical Production'' and the accompanying definitions in 3745–21–01(V). This rule applies to any reactor or distillation unit within a process unit that produces a SOCMI chemical and that is located in the Cincinnati ozone nonattainment area. Any reactor or distillation unit in a process unit with a design capacity of less than 1,100 tons per year of chemicals produced is exempt from the control requirements of this rule. This rule also exempts any reactor or distillation unit that is regulated by either of two of Ohio's existing VOC RACT rules or three new source performance standards, each of

which have federally enforceable control requirements that are at least as stringent as the control requirements for this SOCMI rule. Each process vent is classified according to characteristics of the process vent stream (VOC concentration, flow rate, and the total resource effectiveness (TRE)) prior to a control device. The TRE is a cost-effectiveness tool established by EPA to determine if the annual cost of controlling a gas stream is reasonable based on the emission reduction that can be achieved by a combustion-type control device.

One of the following controls is required for those process vents for which control is required, based upon the above: Discharge to a properly operating flare, discharge to the flame zone of a boiler or process heater with a heat input capacity of over 150 million BTU per hour, discharge to a boiler or process heater as the primary fuel or with the primary fuel, discharge to a control device that reduces VOC emissions by at least 98% or emits VOC at a concentration less than 20 ppmv, achieve and maintain a TRE index value greater than 1.0 (for which no additional control is warranted), or discharge to an existing combustion device with a 90% reduction efficiency.

Compliance is required within 12 months of the effective date of the rule. This rule also includes compliance testing, TRE determination testing and monitoring requirements, as well as recordkeeping and reporting requirements.

Ohio EPA agreed to revise 3714–21–13(A)(2) and add a new (A)(3) that specifies that for those sources that are exempt from the requirements of the SOCMI rule because they are subject to another rule, they must be subject to the limits of that rule. Ohio EPA also agreed to delete (F)(1)(f) which allows emission reduction credit for a recovery device that is part of the process.

This proposed VOC rule is consistent with EPA RACT guidance and is approvable provided that the indicated changes are made.

5. Wood Furniture Manufacturing

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–15 ''Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations'' and the accompanying definitions in 3745–21–01(X). This draft rule applies to any facility that has wood furniture manufacturing operations with a potential to emit 25 tons VOC per year and is located in the Cincinnati ozone nonattainment area.

The five compliance options for wood finishing operations are: (1) A VOC content limit of 0.8 pound VOC per pound of solids for topcoats only, (2) VOC content limits for topcoats and sealers, wherein topcoats are subject to 1.8 pounds VOC per gallon of solids or 2.0 pounds VOC per gallon of solids for an acid-cured alkyd amino conversion topcoat, and sealers are subject to 1.9 pounds VOC per gallon of solids or 2.3 pounds VOC per gallon of solids for an acid-cured alkyd amino sealer, (3) a VOC emission control system for topcoats and/or sealers that is equivalent to the VOC content limits of the above options, (4) daily VOC emissions limits for topcoats, and (5) daily VOC emissions limit for topcoats, sealers, and other finishing materials. The compliance options associated with daily VOC emissions are based on a daily summation of actual VOC emissions not exceeding 90% of the daily summation of VOC emissions allowed under compliance options (1) or (2). This rule also allows 30-day averaging for dip coaters.

This rule also requires a work practice implementation plan that develops environmentally desirable work practices including: An operator training course, a leak inspection and maintenance plan, a cleaning and washoff accounting system, spray booth cleaning restrictions, storage requirements for coatings, coating application requirements, line cleaning and spray gun cleaning procedures and emission control practices from washoff operations.

Compliance is required 12 months after the effective date of this rule, which also includes compliance testing and monitoring requirements for a VOC emission control system, as well as recordkeeping and reporting requirements. This rule is consistent with VOC RACT guidance and approvable provided that Ohio EPA revises its viscosity provisions, as agreed, so that viscosity cannot, by itself, be used to establish the VOC content for dip coaters.

VI. Changes in the Ohio SIP To Support the Removal of Vehicle Inspection and Maintenance Programs in the Cincinnati and Dayton Areas

A. What Changes to the Ohio SIP Have Been Submitted To Support the Removal of the I/M Programs in the Cincinnati and Dayton Areas?

Ohio EPA submitted a revision to the Cincinnati and Dayton-Springfield portions of the Ohio SIP on April 4, 2005. This revision requests that the I/M programs in Ohio, also known as the E-Check programs, be discontinued in the Cincinnati and Dayton-Springfield areas by December 31, 2005. The revision also requests that the E-Check program regulations be moved from the active control measures portion of the SIP to the contingency measures portion of the Cincinnati and Dayton-Springfield 1-Hour Ozone Maintenance Plans.

The Cincinnati and Dayton-Springfield areas are required to implement ''basic'' I/M programs under section 182(b)(4) of the Act because they were originally designated as moderate 1-hour nonattainment areas. In order to maximize NO_X, VOC and CO emissions reductions from the I/M program, Ohio EPA chose to implement an ''enhanced'' program in those areas and has incorporated an on-board diagnostic (OBD) component into the programs. EPA fully approved Ohio's I/M programs on April 4, 1995 (60 FR 16989). The E-Check programs began operation on January 2, 1996, to help meet nonattainment area requirements for the ozone NAAQS effective at the time. As noted in other portions of this action, both the Cincinnati and Dayton-Springfield areas have either been redesignated to attainment for the 1-hour ozone standard, or are in the process of doing so. Both areas have developed maintenance plans showing how they plan on maintaining the 1-hour ozone standard. In its submittal, Ohio EPA is modifying these maintenance plans showing that the 1-hour standard can be maintained through 2015 in the Cincinnati area without use of emission reductions associated with the E-Check program beyond December 31, 2005 and through 2005 for Dayton-Springfield.

B. What Authorities Apply To Removing the Cincinnati and Dayton I/M Programs From Active Status and Moving Them to Contingency Measures in the Ohio SIP?

Section 110(l) of the Act states that ''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.'' The states' obligation to demonstrate attainment of each of the NAAQS is considered as ''any applicable requirement(s) concerning attainment.'' A demonstration is necessary to show that this revision will not interfere with attainment or maintenance of the NAAQS, including the relatively new 8-hour ozone and PM2.5 standards, or any other requirement of the Act.

With respect to the 1-hour ozone NAAQS, the Dayton-Springfield area has met the standard and was redesignated to attainment on May 5, 1995 (60 FR 22289). EPA is proposing approval of the Cincinnati-Hamilton redesignation request in today's action. As noted elsewhere, EPA has approved 1-hour ozone maintenance plans for both areas. These approved maintenance plans show that control measures in place in these areas are sufficient for overall emissions to remain beneath the attainment level of emissions until the end of the maintenance period, in these cases 2005 for Dayton-Springfield and 2010 for Cincinnati-Hamilton. In accordance with the Act and EPA redesignation guidance, however, states are free to adjust control strategies in the maintenance plan as long as they can demonstrate that overall emissions remain below the attainment level of emissions. By making such a demonstration, control programs may be discontinued and removed from the SIP. At a minimum, however, section 175A(d) of the Act requires that contingency measures in the maintenance plan include all measures in the SIP for the area before that area was redesignated to attainment. Since the E-Check program was in the SIP prior to redesignation to attainment for ozone, the E-Check program must be listed in the contingency portion of the 1-hour ozone maintenance plan as required by section 175A(d). As part of this action, Ohio EPA is making a demonstration showing continued maintenance of the 1-hour ozone standard without taking credit for reductions from the Dayton-Springfield and Cincinnati E-Check programs.

Provisions in EPA's I/M rule, set forth in 40 CFR section 51.372(c) provide additional requirements that apply to the Cincinnati-Hamilton and Dayton-Springfield E-Check program situation. These provisions were published January 5, 1995, at 60 FR 1735. The provisions indicate that certain areas seeking redesignation may submit only the authority for an I/M program rather than an implemented program in satisfaction of the applicable I/M requirements. Under these I/M rule provisions, a basic I/M area which has been redesignated to attainment for the 1-hour ozone NAAQS can convert the I/M program to a contingency measure as part of the area's 1-hour ozone maintenance plan, notwithstanding the new antibacksliding provisions in EPA's recent 8-hour ozone implementation rule. Ohio has retained the necessary legal authority to meet this requirement, and has requested that E-Check be converted to a contingency measure in both areas. A basic I/M area which is designated nonattainment for the 8-hour ozone NAAQS, and which is not required to have an I/M program based on its 8-hour ozone designation, continues to have the option to move its I/M program to a contingency measure as long as the 8-hour nonattainment area can demonstrate that doing so will not interfere with its ability to comply with any NAAQS or any other applicable CAA requirement pursuant to section 110(l) of the Act. For further details on the application of 8-hour ozone anti-backsliding provisions to basic I/M programs in 1-hour ozone maintenance areas, please refer to the May 12, 2004, EPA Memorandum from Tom Helms, Group Leader, Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards, and Leila H. Cook, Group Leader, State Measures and Conformity Group, Office of Transportation and Air Quality, to the Air Program Managers, the subject of which is ''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs.'' A copy of this memorandum may be obtained at *http://www.epa.gov/ttn/oarpg/t1pgm.html* or on RME, EPA's electronic public docket and comment system at *http://docket.epa.gov/rmepub/*.

C. What Is EPA's Analysis of Ohio's Demonstrations of No Interference With the 1-Hour Ozone NAAQS in the Cincinnati and Dayton Areas?

The April 4, 2005 Ohio SIP revision seeking removal of the E-Check program includes an evaluation for the 1-hour ozone NAAQS of the potential emission impacts that would result from removal of the Cincinnati and Dayton-Springfield E-Check program as an active control measure in the SIP. For the 1-hour ozone NAAQS, the submittal provides VOC and NO_X emission inventory data for the Ohio portion of the Cincinnati-Hamilton CMSA nonattainment area for 1996, the attainment year for the area, and projected emission inventories for 2005, 2010, and 2015. The projected mobile source emission inventories for 2010, and 2015 do not include emission reduction credits from the operation of the E-Check Program after 2005. As shown in Tables 4 and 5 below, projected, total VOC and NO_X emissions for 2005, 2010, and 2015 for the Ohio portion of the Cincinnati 1-Hour Ozone Maintenance Area all fall below the emissions levels in 1996, when the area met the 1-hour standard. These VOC and NO_X emission totals include emissions from the point, area, mobile, and non-road source categories. The estimates are also quite conservative as they do not include emissions reductions from certain control programs, namely the RACT rules for VOC and NO_X reductions achieved from implementing regulations to meet EPA's NO_X SIP call. Thus, the area demonstrates continued maintenance of the 1-hour ozone NAAQS without the E-Check Program in the Cincinnati-Hamilton area.

TABLE 4.—TOTAL VOC EMISSIONS FOR THE CINCINNATI-HAMILTON 1-HOUR OZONE MAINTENANCE AREA

VOC (in tpsd)	Year				
	1990	1996	2005	2010	2015
Total VOC for Maintenance Area	265.7	228.5	200.1	191.8	191.5
VOC Increase w/o E-Check Program	.....	.....	.....	2.1	2.6
Total VOC for Maintenance w/o E-Check	265.7	228.5	200.1	193.9	194.1

TABLE 5.—TOTAL NO_X EMISSIONS FOR THE CINCINNATI-HAMILTON 1-HOUR OZONE MAINTENANCE AREA

NO_X (in tpsd)	Year				
	1990	1996	2005	2010	2015
Total NO_X for Maintenance Area	440.5	443.8	397.6	373.0	348.4

TABLE 5.—TOTAL NO_X EMISSIONS FOR THE CINCINNATI-HAMILTON 1-HOUR OZONE MAINTENANCE AREA—Continued

NO_X (in tpsd)	Year				
	1990	1996	2005	2010	2015
NO_X Increase w/o E-Check Program	.....	.....	.....	3.6	4.5
Total NO_X for Maintenance w/o E-Check	440.5	443.8	397.6	376.6	352.9

Also for the 1-hour ozone NAAQS, the submittal provides VOC and NO_X emission inventory data for the Dayton-Springfield CMSA (*i.e.*, Clark, Greene, and Montgomery Counties) for 1990, the attainment year for the area, and revised projected emission inventories for 1996, 2000, and 2005. The revised projected mobile source emission inventories for 2005 do not include emission reduction credits from the operation of the E-Check Program after 2004. As shown in Tables 6 and 7 below, projected, total VOC and NO_X emissions for 2005 for the Dayton-Springfield 1-Hour Ozone Maintenance Area all fall below the emissions levels in 1990, the attainment year for the area. These VOC and NO_X emission totals include emissions from the point, area, mobile, and non-road source categories. The estimates are also quite conservative as they do not include emissions reductions from certain control programs, namely the RACT rules for VOC and NO_X reductions achieved from implementing regulations to meet EPA's NO_X SIP call.

There are 2 issues with the 1-hour ozone demonstration for the Dayton area that must be addressed in order for us to approve the maintenance plan changes for Dayton. In the April 4, 2005 submittal, the Ohio EPA provides emissions estimates for the Dayton area for 1996, 2000, and 2005. In order to show that the area can maintain the ozone standard for an additional ten years, the Ohio EPA must estimate area wide emissions for Dayton for the year 2015. Additionally, the state must recalculate the attainment year mobile source emissions, in Dayton's case for the year 1990, using EPA's Mobile 6 model. This will provide the necessary information needed to show whether the area can stay within the attainment level of emissions in the future without implementing the E-Check program.

If Ohio EPA provides this information, we are proposing to find that Ohio has demonstrated that termination of the I/M program in the Dayton area will not interfere with attainment and maintenance of the 1-hour ozone NAAQS in this area provided that Ohio extends such demonstration through 2015 or later and corrects the demonstration to use MOBILE 6 estimates for mobile source emission factors for the attainment year (1990) and provides a revised demonstration to the EPA prior to our final rulemaking.

TABLE 6.—TOTAL VOC EMISSIONS FOR THE DAYTON-SPRINGFIELD 1-HOUR OZONE MAINTENANCE AREA

VOC (in tpsd)	Year			
	1990	1996	2000	2005
Total VOC for Maintenance Area	301.1	270.6	282.9	290.9
VOC Increase w/o E-Check Program	.....	.....	.....	1.2
Total VOC for Maintenance w/o E-Check	301.1	270.6	282.9	292.1

TABLE 7.—TOTAL NO_X EMISSIONS FOR THE DAYTON-SPRINGFIELD 1-HOUR OZONE MAINTENANCE AREA

NO_X (in tpsd)	Year			
	1990	1996	2000	2005
Total NO_X for Maintenance Area	129.6	115.6	117.1	111.1
NO_X Increase w/o E-Check Program	.....	.....	.....	0.95
Total NO_X for Maintenance w/o E-Check	129.6	115.6	117.1	112.05

D. Has Ohio Demonstrated That Terminating the I/M Programs in the Cincinnati and Dayton Areas Will Not Interfere With the Expeditious Attainment and Maintenance of the 8-Hour Ozone and Fine Particulate Matter NAAQS?

In addition to demonstrating that movement of the E-Check program to a contingency measure would not interfere with the 1-hour ozone NAAQS, Ohio also needs to demonstrate that removing the E-Check Program as an active control measure from the SIP in the Cincinnati-Hamilton and Dayton-Springfield areas would not interfere with the new 8-hour ozone and fine particulate matter standards. In a future action, Ohio will be submitting supplemental information providing a demonstration that removal of the E-Check Program will not interfere with attainment of the 8-hour ozone and PM2.5 NAAQS. At this time, EPA is proposing to approve the State's demonstration that E-Check is not needed for purposes of the 1-hour ozone standard, but the State must submit, and EPA must approve, a demonstration on 8-hour ozone and PM2.5 prior to program discontinuation.

VII. Conclusions on the Redesignation of the Cincinnati Area to Attainment of the 1-Hour Ozone NAAQS and the Removal of the Vehicle I/M Programs in the Cincinnati and Dayton Areas

A. What Are Our Conclusions Regarding Ohio's Request for the Redesignation of the Cincinnati Area to Attainment of the 1-Hour Ozone NAAQS?

Based on the discussions of compliance with the redesignation criteria above, rulemakings concerning the redesignation of the Cincinnati area and on the fact that Ohio is in the process of completing the adoption of VOC RACT regulations meeting the RACT requirements of the CAA, we conclude that Ohio and the Cincinnati area will comply with the criteria for redesignation to attainment of the 1-hour ozone NAAQS. Therefore, we are proposing to approve this redesignation if Ohio meets the conditions noted in this proposed action. The process of redesignation for the 1-hour ozone standard must be completed prior to the revocation of the 1-hour ozone standard on June 15, 2005.

We also conclude that the current ozone air quality in the Cincinnati-Hamilton area supports continuation of the determination of attainment for the Cincinnati area and our conclusion that certain planning requirements of the CAA are not applicable to this area.

B. What Are Our Conclusions Regarding Ohio's Ozone Maintenance Plan for the Cincinnati Area?

Based on our review of the maintenance plan proposed by the State, including a demonstration of maintenance through 2015 and a revised contingency plan that includes an I/M program as a contingency measure following the termination of the program in the Cincinnati area, we conclude that Ohio has proposed a maintenance plan that meets the requirements of section 175A of the CAA. Assuming that Ohio adopts this maintenance plan as proposed, we propose to approve this maintenance plan as a SIP revision. If the State substantially revises the maintenance plan from the version proposed by the State and reviewed here, this will result in the need for additional proposed rulemaking on maintenance plan.

C. What Are Our Conclusions Regarding the VOC and NO_X Emission Inventories Used To Support Ohio's Ozone Redesignation Request?

Based on emission estimates submitted to support Ohio's ozone redesignation requests for the Cincinnati area, we conclude that Ohio has met the requirements of section 182(a)(3)(A) of the CAA for periodic emissions inventory updates. We are proposing to approve the 1996, 1999, and 2002 emission estimates summarized in this proposed rule for the Cincinnati area as the updated periodic emission inventory estimates.

D. What Are Our Conclusions Regarding Ohio's Draft RACT Rules?

For five source categories, we conclude that RACT regulations proposed by the State are approvable provided that the State makes the rule changes noted above in the final adopted versions of the rules. The five source categories covered by these draft rules are: Bakeries; chemical manufacturing batch processes; industrial wastewater treatment; SOCMI reactors and distillation units; and wood furniture manufacturing. Significant changes in the RACT rules from the versions reviewed here, other than the changes negotiated between the State and the EPA and described in this notice, will result in the need for additional proposed rulemaking on these RACT regulations.

We conclude that the following VOC source categories do not require any additional regulations: Industrial solvent cleaning; shipbuilding and ship repair industry; automobile refinishing; aerospace manufacturing and rework facilities; volatile organic liquid storage tanks; lithographic printing; and plastic parts coating. For these source categories, either there are no sources with VOC emissions exceeding the cutoffs for major sources under EPA and CAA RACT policy, or the existing sources have Federally enforceable operating and/or production restrictions limiting the facility emissions to levels below major source size cutoffs.

Assuming the State adopts RACT rules that we can approve in final, we conclude that the State will comply in full with the RACT requirements of the CAA.

E. What Are Our Conclusions Concerning the Elimination of I/M Programs in the Cincinnati and Dayton Areas?

We are proposing that the State has demonstrated that eliminating the I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the 1-hour ozone NAAQS. We are proposing such conclusion provided that Ohio submits additional documentation to the EPA prior to our final rulemaking on this issue that extends the Dayton-Springfield emission estimates through 2015 or later and corrects the demonstration to use MOBILE 6 estimates for mobile source emissions for the attainment year (1990). This demonstration does not complete the State's demonstration obligations under section 110(l) of the CAA. The State must also demonstrate that the elimination of these emission reduction programs will not interfere with the attainment and maintenance of the 8-hour ozone NAAQS and the fine particulate NAAQS and with the attainment and maintenance of other air quality standards and criteria of the CAA. Ohio EPA has committed to complete this demonstration before I/M program discontinuation in the Cincinnati and Dayton-Springfield areas.

VIII. Statutory and Executive Order Reviews

Executive Order 12866 Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211 Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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.

Paperwork Reduction Act

This proposed 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.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 7, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–7509 Filed 4–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[OAR–2003–0180; FRL–7900–7]

RIN 2060–AM63

Request for Comment on Potentially Inadequate Monitoring in Clean Air Act Applicable Requirements and on Methods To Improve Such Monitoring; Notice of Public Comment Period Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced notice of proposed rulemaking (ANPR); notice of public comment period extension.

SUMMARY: The EPA is announcing that the closing date of the public comment period for the advanced notice of proposed rulemaking (ANPR) ''Request for Comment on Potentially Inadequate Monitoring in Clean Air Act Applicable Requirements and on Methods To Improve Such Monitoring'' (70 FR 7905, February 16, 2005) is extended sixty days from April 18, 2005 until June 17, 2005. After publishing this ANPR, the EPA received a letter dated March 11, 2005, from Environmental Integrity Project and several other environmental and citizens' organizations requesting a 120-day extension of the public comment period to allow the public to provide more meaningful comments, given the broad scope of the ANPR. The EPA believes it is reasonable to extend the public comment period for sixty days and is hereby granting the requested extension for that period.

DATES: Comments must be submitted by June 17, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0180, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: Send electronic mail (e-mail) to EPA Docket Center at *a-and-r-docket@epamail.epa.gov*.
- Fax: Send faxes to EPA Docket Center at (202) 566–1741.
- Air and Radiation Docket, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket, U.S. Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0180. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information