ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0220; FRL–8917–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Columbus Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing several related actions affecting the Columbus, Ohio area. EPA is proposing to make a determination under the Clean Air Act (CAA) that the Columbus 1997 8-hour ozone nonattainment area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Columbus area includes Delaware, Fairfield, Franklin, Knox, Licking, and Madison Counties. This determination is based on quality-assured ambient air quality monitoring data for the 2006–2008 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. EPA is proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), the State's plan for maintaining the 8-hour ozone NAAQS through 2020 in the area. EPA is proposing to approve a request from the State of Ohio to redesignate the Columbus area to attainment of the 8-hour ozone NAAQS. The Ohio Environmental Protection Agency (Ohio EPA) submitted this request on March 17, 2009.

EPA is proposing to approve the 2002 base year emissions inventory for the Columbus area as meeting the requirements of the CAA. If EPA's determination of attainment is finalized, under EPA's ozone implementation rulemaking the requirements to submit certain planning SIPs related to attainment (the Reasonably Available Control Measure (RACM) requirement, the reasonable further progress (RFP) and attainment demonstration requirements, and the requirement for contingency measures) are not applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. Finally, EPA finds adequate and is proposing to approve the State's 2012 and 2020 Motor Vehicle Emission Budgets (MVEBs) for the Columbus area.

DATES: Comments must be received on or before July 13, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0220, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office 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 Docket ID No. EPA–R05–OAR–2009–0220. 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.regulations.gov,* 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, 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 *http://www.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 instructions on submitting comments, go to section I of this document, ''What Should I Consider as I Prepare My Comments for EPA?''

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

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

When submitting comments, remember to:

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

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

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

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

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

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

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

8. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Proposing to Take?

EPA is proposing to take several related actions. EPA is proposing to make a determination that the Columbus nonattainment area has attained the 8-hour ozone standard and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Ohio's request to change the legal designation of the Columbus area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve Ohio's maintenance plan SIP revision for Columbus (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Columbus area in attainment of the ozone NAAQS through 2020. EPA is proposing to approve the 2002 base year emissions inventory for the Columbus area as meeting the requirements of section 172(c)(3) of the CAA. If EPA's determination of attainment is finalized, under the provisions of 40 CFR section 51.918, the requirement to submit certain planning SIPs related to attainment (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) are not applicable to the area as long as it continues to attain the NAAQS and would cease to be applicable upon redesignation. Finally, EPA is proposing to approve the newly-established 2012 and 2020 MVEBs for the Columbus area. The adequacy comment period for the MVEBs began on February 18, 2009, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*). The adequacy comment period for these MVEBs ended on March 20, 2009. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. In a letter dated March 30, 2009, EPA informed Ohio EPA that we had found the 2012 and 2020 MVEBs to be adequate for use in transportation conformity analyses. Please see section VII. B. of this rulemaking, ''Adequacy of Ohio's MVEBs,'' for further explanation on this process. Therefore, we find adequate, and are proposing to approve, the State's 2012 and 2020 MVEBs for transportation conformity purposes.

III. What Is the Background for These Actions?

A. What Is the General Background Information?

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56813), the Columbus area was designated as a moderate nonattainment area under the 1-hour ozone NAAQS. The area was subsequently redesignated to attainment of the 1-hour standard on February 1, 1996 (61 FR 3591). At the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005, the Columbus area was designated as attainment under the 1-hour ozone NAAQS.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts (ppm). On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in Title I, part D, 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas.

Under EPA's implementation rule for the 1997 8-hour ozone standard, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.,* the three-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Columbus area was designated as a subpart 1, 8-hour ozone nonattainment area by EPA on April 30, 2004 (69 FR 23857, 23927) based on air quality monitoring data from 2001–2003 (69 FR 23860).

40 CFR 50.10 and 40 CFR part 50, Appendix I provide that the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. See 40 CFR part 50, Appendix I, 2.3(d).

On March 17, 2009, Ohio EPA requested that EPA redesignate the Columbus area to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2006 through 2008, indicating the 8-hour NAAQS for ozone, as promulgated in 1997, had been attained for the Columbus area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard, and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075. EPA has not yet promulgated area designations for this standard. While both the 1997 and 2008 8-hour ozone standards are currently in place, the actions addressed in this proposed rulemaking relate only to the 1997 8-hour ozone standard.

B. What Are the Impacts of the December 22, 2006, and June 8, 2007, United States Court of Appeals Decisions Regarding EPA's Phase 1 Implementation Rule?

1. Summary of Court Decision

On December 22, 2006, in *South Coast Air Quality Management Dist.* v. *EPA,* the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. *Id.,* Docket No. 04 1201. Therefore, several provisions of the Phase 1 Rule remain effective: Provisions related to classifications for areas currently classified under subpart 2 of Title I, part D, of the Act as 8-hour nonattainment areas; the 8-hour attainment dates; and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS. The June 8, 2007, decision also left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8, 2007, decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8, 2007, decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation or prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. In its January 16, 2009 proposed rulemaking in response to the South Coast decision, EPA has proposed to classify Columbus under subpart 2 as a moderate area. 74 FR 2936, 2944. If EPA finalizes this rulemaking, the requirements under subpart 2 will become applicable when they are due, a deadline that EPA has proposed to be one year after the effective date of a final rulemaking classifying areas as moderate or marginal. 74 FR 2940–2941. Although a future final decision by EPA to classify this area under subpart 2 would trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Columbus area was not classified under subpart 2, nor were there any subpart 2 requirements yet due for this area. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. See September 4, 1992, Calcagni memorandum (''Procedures for Processing Requests To Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). See *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See, *e.g.* also 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking. In *Sierra Club* v. *Whitman,* 285 F. 3d 63 (DC Cir. 2002), the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request.

3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Columbus area was an attainment area subject to a CAA section 175A maintenance plan under the 1-hour standard. The DC Circuit's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court in its June 8, 2007, decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Columbus area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency

measure (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus, the decision in South Coast Air Quality Management Dist. would not preclude EPA from finalizing the redesignation of this area.

IV. What Are the Criteria for Redesignation?

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

EPA provided guidance on redesignation 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 has provided further guidance on processing redesignation requests in the following documents:

''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from William G. Laxton, Director, Technical Support Division, June 18, 1990;

''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 (TSDs) for Redesignation 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.

V. What Is the Effect of These Actions?

Approval of the redesignation request would change the official designation of the area for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Ohio SIP a plan for maintaining the 8-hour ozone NAAQS through 2020. The maintenance plan includes contingency measures to remedy future violations of the 8-hour NAAQS. It also establishes MVEBs of 54.86 and 36.60 tons per day (tpd) VOC and 91.64 and 46.61 tpd NO_X for the years 2012 and 2020, respectively.

VI. What Is EPA's Analysis of the Request?

A. Attainment Determination and Redesignation

EPA is proposing to make a determination that the Columbus area has attained the 8-hour ozone standard and that the area has met all other applicable section 107(d)(3)(E) redesignation criteria. The basis for EPA's determination is as follows:

1. The Area Has Attained the 8-Hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make a determination that the Columbus area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and part 50, Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. 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 generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Ohio EPA submitted ozone monitoring data for the 2006 to 2008 ozone seasons. Ohio EPA quality-assured the ambient monitoring data in accordance with 40 CFR 58.10, and recorded it in the AIRS database, thus making the data publicly available. The data meet the completeness criteria in 40 CFR 50, Appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each three year period. Monitoring data is presented in Table 1 below.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND THREE YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS

County	Monitor	2006 4th high (ppm)	2007 4th high (ppm)	2008 4th high (ppm)	2006–2008 average (ppm)
Delaware	Delaware, 39–041–0002	0.075	0.080	0.075	0.076
Franklin	Koebel School, 39–049–0028	0.076	0.078	0.069	0.074
	New Albany, 39–049–0029	0.082	0.087	0.083	0.084
	Franklin Park, 39–049–0037	0.079	0.079	0.071	0.076
	Maple Canyon, 39–049–0081	0.077	0.079	0.066	0.074
Knox	Centerburg, 39–083–0002	0.075	0.080	0.074	0.076
Licking	Heath, 39–089–0005	0.072	0.078	0.074	0.074
Madison	London, 39–097–0007	0.076	0.083	0.071	0.076

In addition, as discussed below with respect to the maintenance plan, Ohio EPA has committed to continue to operate an EPA-approved monitoring network as necessary to demonstrate ongoing compliance with the NAAQS. Ohio EPA commits to continue monitoring ozone at the sites indicated in Table 1. Ohio EPA also commits to consult with EPA prior to making changes to the existing monitoring network, should changes become necessary in the future. Ohio EPA remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System in accordance with Federal guidelines. In summary, EPA believes that the data submitted by Ohio provide an adequate demonstration that the Columbus area has attained the 8-hour ozone NAAQS, and currently available data show that the area continues to attain the standard. Should the area violate the standard before the redesignation is finalized, EPA will not go forward with the redesignation.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Ohio has met all currently applicable SIP requirements for purposes of redesignation for the Columbus area under section 110 of the CAA (general SIP requirements). We are also proposing to determine that the Ohio SIP meets all SIP requirements currently applicable for purposes of redesignation under part D of Title I of the CAA (requirements specific to subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the base year emissions inventory, we have determined that the Ohio SIP is fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is proposing to approve Ohio's 2002 base year emissions inventory.

In proposing these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992, Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

Since EPA is proposing here to determine that the area has attained the 1997 8-hour ozone standard, under 40 CFR 51.918, if that determination is finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) would not be applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans * * * provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum at 6 (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'').

a. The Columbus Area Has Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA

i. Section 110 General SIP Requirements

Section 110(a) of Title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a

state must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it includes enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provides for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provides for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; includes provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; includes criteria for stationary source emission control measures, monitoring, and reporting; includes provisions for air quality modeling; and provides for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO_X SIP Call [1] and Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12, 2005)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. 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 believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Ohio's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the Ohio SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.1870). Further, in submittals dated December 5, 2007, and September 19, 2008, Ohio confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard. EPA has not yet taken rulemaking action on these submittals; however, such approval is not necessary for redesignation.

ii. Part D Requirements

EPA has determined that, if EPA finalizes the approval of the base year emissions inventory discussed in section VII.C. of this rulemaking, the Ohio SIP will meet the applicable SIP requirements for the Columbus area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

Since the Columbus area was not classified under subpart 2 of part D at the time its redesignation request was submitted, the subpart 2 requirements do not apply for purposes of redesignation. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176.

Subpart 1 Section 172 Requirements

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Columbus area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and shall provide for attainment of the national primary ambient air quality standards. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the area's attainment demonstration. On November 25, 2008 and February 2, 2009, Ohio EPA submitted an attainment demonstration and identified the control measures necessary to attain the NAAQS in the Columbus area. However, because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant because the Columbus area has demonstrated monitored attainment of the ozone NAAQS. (General Preamble, 57 FR 13564). In addition, because the Columbus area has attained the ozone NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures are not applicable

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. As part of Ohio's redesignation request for the Columbus area, the state submitted a 2002 base year emissions inventory. As discussed below, EPA is proposing to approve the 2002 base year inventory that Ohio submitted with the redesignation

[1] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP call, Ohio EPA has developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Ohio's rules as fulfilling Phase I of the NO_X SIP Call on August 5, 2003 (68 FR 46089) and June 27, 2005 (70 FR 36845). EPA approved Ohio's rules as meeting Phase II of the NO_X SIP call on February 4, 2008 (73 FR 6427).

request as meeting the section 182(a)(1) emissions inventory requirement.

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. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Ohio has demonstrated that the Columbus area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Columbus area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Ohio SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

Subpart 1 Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. 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, because they 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 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Ohio's general and transportation conformity SIPs on March 11, 1996 (61 FR 9646), and May 30, 2000 (65 FR 34395), respectively. Ohio has submitted onroad motor vehicle budgets for the Columbus area of 54.86 and 36.60 tpd VOC and 91.64 and 46.61 tpd NO_X for the years 2012 and 2020, respectively. The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

b. The Columbus Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

If EPA issues a final approval of the base year emissions inventory, EPA will have fully approved the Ohio SIP for the Columbus area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See page 3 of the September 4, 1992, John Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to the Columbus area under the 1-hour ozone standard. In this action, EPA is proposing to approve Ohio's 2002 base year emissions inventory for the Columbus area as meeting the requirement of section 172(c)(3) of the CAA. No Columbus area SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA finds that Ohio has demonstrated that the observed air quality improvement in the Columbus area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures.

In making this demonstration, the State has calculated the change in emissions between 2002 and 2006. Ohio used the 2002 nonattainment area base year emissions inventory required under section 172(c)(3) of the CAA as the nonattainment inventory for redesignation purposes. The State developed an attainment inventory for 2006, one of the years the Columbus area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Columbus and upwind areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

i. Stationary Source NO_X Rules. Ohio EPA developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Ohio's rules as fulfilling Phase I of the NO_X SIP Call on August 5, 2003 (68 FR 46089), and June 27, 2005 (70 FR 36845), and as fulfilling Phase II of the SIP call on

February 4, 2008 (73 FR 6427). Beginning in 2004, this rule accounts for approximately a 31 percent reduction in statewide NO_X emissions.

ii. Federal Emission Control Measures. Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include: The National Low Emission Vehicle (NLEV) program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards. In addition, on June 29, 2004 (69 FR 38958), EPA issued the Clean Air Non-road Diesel Rule, which phases in Tier 4 emissions standards over the 2008–2015 time period.

iii. Control Measures in Upwind Areas. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X. The reduction in NO_X emissions has resulted in lower concentrations of transported ozone entering the Columbus area. Emission reductions resulting from regulations developed in response to the NO_X SIP call are permanent and enforceable.

b. Emission Reductions

Ohio is using the 2002 base year inventory developed pursuant to section 172(c)(3) of the CAA as the nonattainment inventory. In developing the 2002 base year inventory, Ohio EPA provided point and area source inventories to the Lake Michigan Air Directors Consortium (LADCO). The main purpose of LADCO is to provide technical assessments for and assistance to its member states on problems of air quality. LADCO's primary geographic focus is the area encompassed by its member states (Illinois, Indiana, Michigan, Ohio and Wisconsin) and any areas which affect air quality in its member states. LADCO processed these inventories through the Emission Modeling System (EMS) to generate summer weekday emissions for VOC and NO_X. The processed modeling inventories were used for the base year inventory. The point source data provided to LADCO is a combination of EPA's EGU inventory and source specific data reported to Ohio EPA for non-EGU sources. Area source emissions were estimated by Ohio EPA using published Emission Inventory Improvement Program methodologies or methodologies shared by other states. Ohio EPA documented the methodology used for each area source category. Nonroad mobile emissions were generated for LADCO using EPA's National Mobile Inventory Model (NMIM), with the following exceptions: Recreational motorboat populations and spatial surrogates were updated; emissions estimates were developed for commercial marine vessels, aircraft, and railroads (MAR), three nonroad categories not included in NMIM; and onroad mobile emissions were calculated using the MOBILE6.2 emissions model.

Ohio is using 2006 for the attainment year inventory. Ohio EPA developed a 2005 base year inventory, in conjunction with LADCO, using the methodology described above for base year 2002. With the exception of the onroad mobile sector, Ohio EPA used growth factors provided by LADCO to project this inventory to 2006. Onroad mobile emissions were calculated for 2006 using the MOBILE6.2 emissions model.

Using the inventories described above, Ohio's submittal documents changes in VOC and NO_X emissions from 2002 to 2006 for the Columbus area. Emissions data are shown in Tables 3 through 5 below.

TABLE 3—COLUMBUS AREA VOC AND NO_X EMISSIONS FOR NONATTAINMENT YEAR 2002 (TPD)

	Point		Area		Nonroad		Onroad		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Delaware	0.30	0.02	5.40	0.63	4.28	5.54	9.15	16.07	19.13	22.26
Fairfield	0.20	5.37	4.97	0.39	1.88	2.42	7.13	11.21	14.18	19.39
Franklin	3.03	2.43	43.07	4.47	17.51	25.01	64.32	106.77	127.93	138.68
Knox	0.00	0.00	3.96	0.35	1.08	1.93	2.35	3.26	7.39	5.54
Licking	0.49	1.72	6.23	0.77	2.51	4.54	10.20	17.44	19.43	24.47
Madison	0.00	0.00	4.65	0.23	1.09	2.46	4.69	9.20	10.43	11.89
Total	4.02	9.54	68.28	6.84	28.35	41.90	97.84	163.95	198.49	222.23

TABLE 4—COLUMBUS VOC AND NO_X EMISSIONS FOR ATTAINMENT YEAR 2006 (TPD)

	Point		Area		Nonroad		Onroad		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Delaware	0.44	0.05	5.94	1.24	5.35	8.01	6.70	12.11	18.43	21.41
Fairfield	0.26	4.38	6.13	0.90	2.17	4.07	4.70	7.73	13.26	17.08
Franklin	3.00	2.13	46.53	10.69	21.62	27.03	46.55	85.07	117.70	124.92
Knox	0.00	0.04	3.29	0.60	1.50	1.99	2.09	2.98	6.88	5.61
Licking	0.52	2.69	8.37	1.59	3.46	3.77	6.97	12.91	19.32	20.96
Madison	0.13	0.01	2.98	0.41	1.42	2.83	3.26	7.00	7.79	10.25
Total	4.35	9.30	73.24	15.43	35.52	47.70	70.27	127.80	183.38	200.23

TABLE 5—COMPARISON OF COLUMBUS 2002 AND 2006 VOC AND NO_X EMISSIONS (TPD)

	VOC			NO_X		
	2002	2006	Net change (2002–2006)	2002	2006	Net change (2002–2006)
Point	4.02	4.35	0.33	9.54	9.30	−0.24
Area	68.28	73.24	4.96	6.84	15.43	8.59
Nonroad	28.38	35.52	7.17	41.90	47.70	5.80
Onroad	97.84	70.27	−27.57	163.95	127.80	−36.15
Total	198.49	183.38	−15.11	222.23	200.23	−22.00

Table 5 shows that the Columbus area reduced VOC emissions by 15.11 tpd and NO_X emissions by 22.00 tpd between 2002 and 2006. Based on the information summarized above, Ohio has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175a of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with its request to redesignate the Columbus nonattainment area to attainment status, Ohio submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the area through 2020.

a. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: The attainment VOC and NO_X emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The Ohio EPA developed an emissions inventory for 2006, one of the years Ohio used to demonstrate monitored attainment of the 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 4, above.

c. Demonstration of Maintenance

Along with the redesignation request, Ohio submitted a revision to the 8-hour ozone SIP to include a maintenance plan for the Columbus area, in compliance with section 175A of the CAA. This demonstration shows maintenance of the 8-hour ozone standard through 2020 by assuring that current and future emissions of VOC and NO_X for the Columbus area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio is using emissions inventories for the years 2012 and 2020 to demonstrate maintenance. Onroad emissions for 2012 and 2020 emissions were calculated using the MOBILE6.2 emissions model. Emissions estimates for the remaining source categories were based on future year inventories developed by LADCO for the years 2012 and 2018. With the exception of MAR, nonroad emissions for these years were estimated using NMIM. MAR emissions were derived by applying growth and control factors to the 2005 inventory. EGU emissions were based on IPM3.0 modeling and assume no credit for implementation of CAIR in the area. Area source and non-EGU point source emissions were derived by applying growth and control factors to the 2005 inventory. To derive 2020 emissions estimates, Ohio EPA applied LADCO growth factors to the 2018 LADCO inventory.

Ohio is in the process of revising its state rules for its Best Available Technology (BAT) minor source permitting program. As discussed above, a state can demonstrate maintenance of the standard by showing that future emissions of VOC and NO_X for the area remain at or below attainment year emission levels. Ohio EPA's emissions projections for this maintenance plan assume no emissions benefits from implementation of the BAT program. The LADCO growth factors used to project future emissions were developed using techniques consistent among the LADCO states and assume implementation of no minor source permitting programs for any state, including Ohio. The emission projections show that Ohio EPA does not expect emissions in the Columbus area to exceed the level of the 2006 attainment year inventory during the maintenance period. Ohio's maintenance plan demonstrates that the area can maintain the standard through 2020 applying standard growth factors and without the BAT program. EPA believes that Ohio has provided adequate demonstration of maintenance, and that any changes to the BAT program should not impact the Columbus area's ability to attain or maintain the 1997 8-hour ozone NAAQS. Therefore, the issues associated with the BAT program are not being considered for purposes of this redesignation. Nothing in this rule or redesignation is intended to affect the SIP approvability or non-approvability of any revised Ohio BAT rules, and EPA will evaluate the approvability of such rules when Ohio submits them. Emissions data are shown in Table 6 below.

TABLE 6—COLUMBUS AREA VOC AND NO_X EMISSIONS FOR 2006, 2012 AND 2020 (TPD)

	VOC					NO_X				
	2006	2012	2020	Net change 2006–2012	Net change 2006–2020	2006	2012	2020	Net change 2006–2012	Net change 2006–2020
Point	4.35	4.88	5.72	0.53	1.37	9.30	9.18	9.75	−0.12	0.45
Area	73.24	59.22	52.66	−14.02	−20.58	15.43	15.61	15.70	0.18	0.27
Nonroad	35.52	26.56	26.44	−8.96	−9.08	47.70	35.13	18.74	−12.57	−28.96
Onroad	70.27	47.70	31.83	−22.57	−38.44	127.80	79.69	40.53	−48.11	−87.27
Total	183.38	138.36	116.65	−45.02	−66.73	200.23	139.61	84.72	−60.62	−115.51

The emission projections show that Ohio EPA does not expect emissions in the Columbus area to exceed the level of the 2006 attainment year inventory during the maintenance period, even without implementation of CAIR. In the Columbus area, Ohio EPA projects that VOC and NO_X emissions will decrease by 66.73 tpd and 115.51 tpd, respectively, between 2006 and 2020.

In addition, LADCO performed a regional modeling analysis to address the effect of the recent court decision vacating CAIR. This analysis is documented in LADCO's ''Regional Air Quality Analyses for Ozone, PM2.5, and Regional Haze: Final Technical Support Document (Supplement), September 12, 2008.'' LADCO produced a base year inventory for 2005 and future year inventories for 2009, 2012, and 2018. To estimate future EGU NO_X emissions without implementation of CAIR, LADCO projected 2007 EGU NO_X emissions for all states in the modeling domain based on Energy Information Administration growth rates by state (North American Electric Reliability Corporation (NERC) region) and fuel type for the years 2009, 2012 and 2018. The assumed 2007–2018 growth rates were 8.8% for Illinois, Iowa, Missouri and Wisconsin; 13.5% for Indiana, Kentucky, Michigan and Ohio; and 15.1% for Minnesota. Emissions were adjusted by applying legally enforceable controls, *e.g.,* consent decree or rule. EGU NO_X emissions projections for the states of Illinois, Indiana, Michigan, Ohio, and Wisconsin are shown below in Table 7. The emission projections used for the modeling analysis do not account for certain relevant factors such as allowance trading and potential changes in operation of existing control devices. The NO_X projections indicate that, due to the NO_X SIP call, certain State rules, consent decrees resulting from enforcement cases, and ongoing implementation of a number of mobile source rules, EGU NO_X is not expected to increase in Ohio or any of the States in the immediate region, and overall NO_X emissions in Ohio and the nearby region are expected to decrease substantially between 2005 and 2020.[2] Total NO_X emissions projections are shown in Table 8, below.

TABLE 7—EGU NO_X EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR 2007, 2009, 2012, AND 2018

	2007	2009	2012	2018
EGU	1,582	1,552	1,516	1,524

TABLE 8—TOTAL NO_X EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR THE YEARS 2005, 2009, 2012, AND 2018

	2005	2009	2012	2018
Total NO_X	8,260	6,778	6,076	4,759

Given that 2007 is one of the years Ohio used to demonstrate monitored attainment of the 8-hour NAAQS, Table 7 shows that EGU NO_X emissions will remain below attainment levels through 2018. If the rate of emissions increase between 2012 and 2018 continues through 2020, EGU NO_X emissions would still remain below attainment levels in 2020. Furthermore, as shown in Table 8, total NO_X emissions clearly continue to decrease substantially throughout the maintenance period.

Ozone modeling performed by LADCO using this emissions data supports the conclusion that the Cleveland-Akron-Lorain area will maintain the standard throughout the maintenance period. Peak modeled ozone levels in the area for 2009, 2012 and 2018 are 0.082 ppm, 0.080 ppm, and 0.074 ppm, respectively. These projected ozone levels were modeled applying only legally enforceable controls, *e.g.,* consent decrees, rules, the NO_X SIP call, federal motor vehicle control programs (FMVCP), etc. Because these programs will remain in place, emission levels, and therefore ozone levels, would not be expected to increase significantly between 2018 and 2020. Given that projected emissions and modeled ozone levels continue to decrease substantially through 2018, it is reasonable to infer that a 2020 modeling run would also show levels well below the 1997 8-hour ozone standard.

As part of its maintenance plan, the State elected to include a ''safety margin'' for the area. A ''safety margin''

[2] There is more uncertainty about the use of SO_2 allowances and future projections for SO_2 emissions; thus, further review and discussion will be needed regarding the appropriateness of using these emission projections for future PM2.5 SIP approvals and redesignation requests.

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 which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The Columbus area attained the 8-hour ozone NAAQS during the 2006–2008 time period. Ohio used 2006 as the attainment level of emissions for the area. In the maintenance plan, Ohio EPA projected emission levels for 2020. For the Columbus area, the emissions from point, area, nonroad, and mobile sources in 2006 equaled 183.38 tpd of VOC. Ohio EPA projected VOC emissions for the year 2020 to be 116.65 tpd of VOC. The SIP submission demonstrates that the Columbus area will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 66.73 tpd of VOC for 2020. By this same method, 115.51 tpd (*i.e.*, 200.23 tpd less 84.72 tpd) is the safety margin for NO_X for 2020. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network

Ohio currently operates eight ozone monitors in the Columbus area. Ohio EPA has committed to continue to operate these ozone monitors. Further, Ohio EPA commits to consult with EPA prior to making changes to the existing monitoring network, should changes become necessary in the future. Ohio EPA remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System in accordance with Federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Columbus area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. Ohio's plan for verifying continued attainment of the 8-hour standard in the Columbus area consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. Ohio EPA will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA 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 maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted a contingency plan for the Columbus area to address possible future ozone air quality problems. The contingency plan adopted by Ohio has two levels of response, depending on whether a violation of the 8-hour ozone standard is only threatened (warning level response) or has occurred (action level response).

A warning level response will be triggered when an annual fourth high monitored value of 0.088 ppm or higher is monitored within the maintenance area. A warning level response will consist of Ohio EPA conducting a study to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

An action level response will be triggered when a two-year average fourth high value of 0.085 ppm is monitored within the maintenance area. A violation of the standard (a three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration of 0.085 ppm or greater) also triggers an action level response. When an action level response is triggered, Ohio EPA will determine what additional control measures are needed to assure future attainment of the ozone standard. Control measures selected will be implemented within 18 months from the close of the ozone season that prompted the action level. Ohio EPA will also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute a response.

Ohio EPA included the following list of potential contingency measures in the maintenance plan:

i. Lower Reid vapor pressure gasoline program;

ii. Adopt VOC Reasonably Available Control Technology (RACT) on existing sources covered by EPA Control Technique Guidelines issued after the 1990 CAA;

iii. Apply VOC RACT to smaller existing sources;

iv. One or more transportation control measures sufficient to achieve at least half a percent reduction in actual area wide VOC emissions;

v. Alternative fuel and diesel retrofit programs for fleet vehicle operations;

vi. High volume, low pressure coating application requirements for autobody facilities;

vii. Adopt requirements for cold cleaner degreaser operations (low vapor pressure solvents);

viii. Require VOC or NO_X emission offsets for new and modified major sources;

ix. Require VOC or NO_X emission offsets for new and modified minor sources;

x. Increase the ratio of emission offsets required for new sources;

xi. Require VOC or NO_X controls on new minor sources (less than 100 tpy); and,

xii. Adopt NO_X RACT for existing combustion sources.

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, Ohio commits to submit to the EPA an updated ozone maintenance plan eight years after redesignation of the Columbus area to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175(A) of the CAA, Ohio has committed to retain the VOC and NO_X control measures contained in the SIP prior to redesignation.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a

maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Ohio for the Columbus area meets the requirements of section 175A of the CAA.

B. Adequacy of Ohio's MVEBs

1. How Are MVEBs Developed and What Are the MVEBs for the Columbus Area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard. These emission control strategy SIP revisions (*e.g.*, reasonable further progress SIP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB 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 MVEB in the SIP and how to revise the MVEB if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the part of the SIP that addresses emissions from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was codified in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM 2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Columbus area's maintenance plan contains new VOC and NO_X MVEBs for the years 2012 and 2020. The availability of the SIP submission with these 2012 and 2020 MVEBs was announced for public comment on EPA's Adequacy Web site on February 18, 2009 at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*. The EPA public comment period on adequacy of the 2012 and 2020 MVEBs for the Columbus area closed on March 20, 2009. No requests for this submittal or adverse comments on the submittal were received during the adequacy comment period. In a letter dated March 30, 2009, EPA informed Ohio EPA that we had found the 2012 and 2020 MVEBs to be adequate for use in transportation conformity analyses.

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in the Columbus area because EPA has determined that the area can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. Ohio EPA has determined the 2012 MVEBs for the Columbus area to be 54.86 tpd for VOC and 91.64 tpd for NO_X. Ohio EPA has determined the 2020 MVEBs for the area to be 36.60 tpd for VOC and 46.61 tpd for NO_X. These MVEBs are consistent with the onroad mobile source VOC and NO_X emissions projected by Ohio EPA for 2012 and 2020, as summarized in Table 6 above. Ohio has demonstrated that the Columbus area can maintain the 8-hour ozone NAAQS with mobile source emissions of 54.86 tpd and 36.60 tpd of VOC and 91.64 tpd and 46.615 tpd of NO_X in 2012 and 2020, respectively, since emissions will remain under attainment year emission levels.

2. 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. As noted in Table 6, the Columbus area emissions are projected to have safety margins of 45.02 tpd for VOC and 60.62 tpd for NO_X in 2012 (the difference between the attainment year, 2006, emissions and the projected 2012 emissions for all sources in the Columbus area). For 2020, the Columbus area emissions are projected to have safety margins of 66.73 tpd for VOC and 115.51 tpd for NO_X. Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

The MVEBs requested by Ohio EPA contain safety margins for mobile sources smaller than the allowable safety margins reflected in the total emissions for the Columbus area. The State is not requesting allocation of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the State is requesting MVEBs that exceed the projected onroad mobile source emissions for 2012 and 2020 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

C. 2002 Base Year Emissions Inventory

As discussed above, section 172(c)(3) of the CAA requires areas to submit a base year emissions inventory. As part of Ohio's redesignation request for the

Columbus area, the State submitted a 2002 base year emissions inventory. This inventory is discussed above and summarized in Table 3. EPA is proposing to approve this 2002 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

VII. What Action Is EPA Taking?

EPA is proposing to make a determination that the Columbus area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the Columbus area. EPA's proposed approval of the maintenance plan is based on Ohio's demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. After evaluating Ohio's redesignation request, EPA believes that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve the redesignation of the Columbus area from nonattainment to attainment for the 8-hour ozone NAAQS. The final approval of this redesignation request would change the official designation for the Columbus area from nonattainment to attainment for the 8-hour ozone standard. EPA is proposing to approve the 2002 base year emissions inventory for the Columbus area as meeting the requirements of section 172(c)(3) of the CAA. Finally, EPA also finds adequate and is proposing to approve the State's 2012 and 2020 MVEBs for the section 172(c)(3) area.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

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

Dated: June 4, 2009.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–13855 Filed 6–11–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–325; DA 09–1127]

FM Digital Power Increase and Associated Technical Studies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission seeks comment on four issues, discussed below in the Synopsis, that are related to a request by certain private parties, identified below, that the technical specifications for FM digital audio broadcasting (''DAB'') set forth in the Commission's rules be amended to increase the maximum permissible operating power from the current level of 1 percent of a station's authorized analog power (−20 dB) up to a maximum of 10 percent of a station's authorized analog power (−10 dB). This document establishes a period for public comment on these issues and on two related technical studies.

DATES: Comments for this proceeding are due on or before July 6, 2009. Reply comments are due on or before July 17, 2009.

ADDRESSES: You may submit comments, identified by MM Docket No. 99–325, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* 445 12th Street, SW., Washington, DC 20554, with a copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov or phone:* 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Peter H. Doyle, Chief, Audio Division, Media Bureau, at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released by