

rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for the above rule and nonattainment area is provided in the NPRM cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA, EPA regulations, and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 59 FR 63724 and in a technical support document (TSD) available at EPA's Region IX office (dated December 2, 1994).

Response to Public Comments

A 30-day public comment period was provided in 59 FR 3274. EPA received no adverse comments.

EPA Action

EPA is finalizing action to approve SDCAPCD Rule 67.3 for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

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

Regulatory Process

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 31, 1995.

Felicia Marcus,
Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(206) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(206) Amended rule for the following APCD was submitted on November 23, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) San Diego County Air Pollution Control District.

(1) Rule 67.3, adopted on November 1, 1994.

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40 CFR Parts 52 and 81

[OH50-1-6077a, FRL-5176-8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: State of Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: USEPA is approving, through "direct final" procedure, a redesignation request and maintenance plan for the Toledo, Ohio area (Lucas and Wood Counties) as a revision to Ohio's State Implementation Plan (SIP) for ozone. The revision is based on a request from the State of Ohio to redesignate this area from a moderate nonattainment area to an attainment area for ozone, and to approve the maintenance plan for the area. The State has met the requirements for redesignation contained in the Clean Air Act (the Act), as amended in 1990. The redesignation request is based on ambient monitoring data that show no violations of the ozone National Ambient Air Quality Standard (NAAQS) during the three-year period from 1990 through 1992. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting

public comment on this requested redesignation and SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a final rule based on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

DATES: This action will be effective on July 3, 1995 unless adverse or critical comments are received by June 1, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Angela Lee at (312) 353-5142 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation Docket and Information Center, Room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-7548.

Written comments can be mailed to: William MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Regulation Development Section, Air Enforcement Branch (AE-17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-5142.

SUPPLEMENTARY INFORMATION: On September 17, 1993, Ohio submitted a redesignation request and section 175A maintenance plan for Lucas and Wood Counties. The USEPA reviewed these submittals against the redesignation criteria set forth by section 107(d)(3)(E) of the Act, which are discussed in a September 4, 1992, memorandum from the Director of the Air Quality Management Division, Office of Air Quality Planning and Standards, to Directors of Regional Air Divisions entitled, "Procedures for Processing Requests to Redesignate Areas to Attainment" (Calcagni Memorandum). A second memorandum dated September 17, 1993, signed by Michael Shapiro, Acting Assistant Administrator for Air and Radiation, entitled, "State Implementation Plan (SIP) Requirements for Areas Submitting

Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS on or after November 15, 1992" was also used to evaluate Ohio's request. An analysis of these submittals is contained in a Technical Support Document (TSD), dated December 9, 1994, and an addendum to this TSD dated March 7, 1995.

I. Background

The 1977 Act required areas that were designated nonattainment to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. For Ohio, Lucas and Wood Counties were designated nonattainment for ozone, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR Part 81.

After enactment of the amended Act on November 15, 1990, the nonattainment designation of the Toledo area continued by operation of law according to section 107(d)(1)(C)(i) of the Act; furthermore, it was classified by operation of law as moderate for ozone pursuant to section 181(a)(1) (56 FR 56694, November 6, 1991), codified at 40 CFR 81.336.

More recently, the Toledo area has ambient monitoring data that show no violations of the ozone NAAQS, during the period from 1990 through 1992. The area, therefore, became eligible for redesignation from nonattainment to attainment consistent with the amended Act. On September 17, 1993, Ohio requested redesignation of the area to attainment with respect to the ozone NAAQS. To ensure continued attainment of the ozone standard, Ohio submitted an ozone maintenance SIP for the Toledo area with the redesignation request. On November 1, 1993, Ohio held a public hearing on the maintenance plan and redesignation request.

II. Evaluation Criteria

The 1990 Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS.
2. The area has met all applicable requirements under section 110 and part D of the Act.
3. The area has a fully approved SIP under section 110(d) of the Act.
4. The air quality improvement must be permanent and enforceable.
5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

Each of these requirements are addressed below.

A. Section 107(d)(3)(E)(i). The Administrator determines that the area has attained the National Ambient Air Quality Standard (NAAQS). For ozone, an area is considered in attainment of the NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9, based on quality assured monitoring data for three complete, consecutive calendar years. A violation of the NAAQS occurs when the annual average number of expected exceedances is greater than 1.0 at any site in the area at issue. An exceedance occurs when the maximum hourly ozone concentration exceeds 0.124 ppm. The data should be collected and quality-assured in accordance with 40 CFR Part 58, and recorded in the Aerometric Information Retrieval System (AIRS) in order for it to be available to the public for review. The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Ohio submitted ozone monitoring data recorded in the Lucas and Wood Counties Metropolitan Area (LWCMA) during the years 1984 through August 31, 1993. No violations were monitored for the three-year period 1990 through 1992 upon which the redesignation request was based. Furthermore, no violations have been monitored since then. Monitored exceedances (one-hour averaged) of 0.127 ppm in 1991, 0.126 ppm in 1993, and 0.142 ppm occurred at the Yondota Avenue monitor in 1994. An exceedance of 0.136 ppm occurred at the Friendship Park monitor in 1993. The USEPA used data stored in AIRS to determine the annual average expected exceedances for the years 1990, 1991, 1992, 1993, and 1994. Since the annual average expected exceedances for each monitor during these years is less than 1.0, Lucas and Wood Counties are considered to have attained the standard.

B. Section 107(d)(3)(E)(iii). The Administrator determines that the improvement in air quality is due to permanent and enforceable measures. Ohio estimated emission reductions from a nonattainment year (1988) to an attainment year (1990), and found that emission reductions from federally mandated control on fuel volatility and new automobiles reduced volatile organic compound (VOC) emissions by 25,843 lbs/day. In 1989, fuel volatility was restricted to 10.5 pounds per square inch (psi) in the Toledo area. Currently, the fuel volatility standard is 9.0 psi. This standard was established in 1992. The USEPA considers the emissions reductions from the Federal Motor Vehicle Control Program (FMVCP) and

Federal volatility standards to be permanent and enforceable and to have contributed to the improvement in air quality.

Controls placed on a wastewater ditch which was used to transport wastewater from the British Petroleum (BP) refinery to a wastewater treatment system also provided VOC emissions reductions during this period. This wastewater ditch, which measured about 3600 feet in length and an average of about 10 feet in width, is referred to as the "oily ditch." Prior to 1990, this "oily ditch" was uncontrolled and was one of the largest single sources of VOCs in the LWCMA with emissions of 19,802 lbs/summer day. The USEPA reviewed the methodology used to calculate these emissions and agrees with the amount of emissions estimated from this source. A major portion of the open ditch was converted to a hard pipe to minimize VOC emissions. Ohio estimates that the enclosure of 3000 feet of the "oily ditch" which was completed on March 15, 1990, resulted in an emission reduction of 11,225 lbs/summer day of VOCs. Since the USEPA is approving the Director's Findings and Orders requiring this control into the SIP as part of the maintenance plan, the emission reductions from the enclosure of the "oily ditch" at the BP Toledo Refinery are considered permanent and enforceable and to have contributed to the improvement in air quality.

C. Section 107(d)(3)(E)(iv). The Area must have a fully approved maintenance plan meeting the requirements of Section 175A. 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. The Calcagni Memorandum provides further guidance on the required content of a maintenance plan.

An ozone maintenance plan should address the following five areas: the attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment and a contingency plan. The attainment emissions inventory identifies the emissions level in the area which is sufficient to attain the ozone NAAQS, and includes emissions during the time period which had no monitored violations. Maintenance is demonstrated by showing that future emissions will not exceed the level established by the attainment inventory. Provisions for continued operation of an appropriate air quality monitoring network are to be

included in the maintenance plan. The State must show how it will track and verify the progress of the maintenance plan. Finally, the maintenance plan must include contingency measures which ensure prompt correction of any violation of the ozone standard.

1. Attainment Inventory

The State has developed an adequate attainment emission inventory for 1990 that identifies the level of emissions in the Toledo area sufficient to attain the ozone NAAQS. The 1990 attainment inventory was based on the comprehensive inventories of VOC and

nitrogen oxides (NO_x) emissions from area, stationary, and mobile sources for 1990. The 1990 base year emission inventory represents 1990 average summer day actual emissions for the Toledo area and was prepared in accordance with USEPA guidance. USEPA's TSD prepared for the 1990 base year emission inventory SIP revision contains a detailed analysis of this inventory. The USEPA approved this inventory as satisfying the requirements of section 182(a)(1) for an emissions inventory on March 22, 1995 (60 FR 15053).

2. Maintenance Demonstration

To demonstrate continued attainment, Ohio projected point, area, and mobile source emissions from the year 1990 to the year 2005. These projections show that the level of emissions established by the attainment inventory will not be exceeded during the maintenance period, 1990–2005. Table 1 lists the emissions for the year 1990 and projected emissions for the year 2005. Total point, mobile, and area emissions are expected to be lower in 2005 than total emissions in the 1990 attainment inventory.

TABLE 1.—MAINTENANCE DEMONSTRATION

Source category	1990	1996	2000	2005
VOC Emissions (pounds per day)				
Point	120,154	78,978	78,611	77,742
Mobile (on-road)	132,659	102,560	82,494	57,412
Area	74,502	74,693	75,119	75,209
Total	327,315	256,231	236,224	210,363
NO _x Emissions (pounds per day)				
Point	147,943	146,793	80,294	81,376
Mobile (on-road)	75,630	65,128	58,126	49,374
Area	20,522	20,547	20,563	20,584
Total	244,095	232,468	158,983	151,334

3. Emission projections

Point source emissions were projected by accounting for known changes to sources for each year between 1990 and 2005, and applying a growth factor based on manufacturing employment data provided by the Bureau of Economic Analysis, United States Department of Commerce, to derive inventories for all ensuing years. The stationary source emission projections incorporate existing control measures. The known stationary source emission reductions came from the British Petroleum (BP) Refinery reductions documented in annual Reasonable Further Progress Reports, and stationary source shutdowns.

Some of the emission reductions from the BP refinery during the maintenance period result from controls included in Ohio's non-control technology guideline (non-CTG) Reasonably Available Control Technology (RACT) rules, Ohio Administrative Code 3745–21–09(UU) and 3745–21–04(c)(55). Additional VOC reductions at the BP Refinery result from the conversion of two cooling towers to non-VOC emitting processes and the removal of the Crude Vacuum blow down drum. Emission reductions from source shutdowns can be considered permanent and enforceable to the extent that those shutdowns have

been reflected in the SIP and all applicable permits have been modified accordingly. Once the maintenance plan is approved into the SIP, these emission reductions will be provided for by the SIP. Consequently, resumption of operation of these sources would be treated as operation of a new source and would be subject to preconstruction review under Part C of the Prevention of Significant Deterioration (PSD) program. The net reduction in VOC emissions at the BP refinery during the maintenance period is estimated to be 40,582 lbs/day.

Stationary source emissions of nitrogen oxides (NO_x) are projected to decline from 1990 levels. This reduction is caused by shutdowns of utility units, "low-NO_x burner" requirements of Title IV of the Clean Air Act, and declining growth in stationary sources. In 1992, Toledo Edison permanently retired all units at its Acme Generating Station other than Unit 16. The operating permits for the retired units have been surrendered, making the resulting emission reductions permanent and enforceable. These shutdowns reduced 1990 levels of NO_x emission by 15,403 lbs/day. A negative growth factor of 2.3 percent based on manufacturing employment from 1990 and 2005, reduces NO_x emissions by 973 lbs/day.

Mobile source emissions were projected by forecasting vehicle miles travelled (VMT) for the year 2005. This was done by considering the future highway networks and forecasts of socio-economic data. Growth parameters for the year 2005 were developed from the travel forecasting modeling programs and VMTs from the transportation modeling growth factors and 1990 Highway Performance Modeling System data.

Area source emissions were projected using growth factors consistent with Table III.3 in USEPA's guidance document entitled "Procedures for Preparing Emissions Projections," dated July 1991.

4. Emissions Budgets

The emissions budget to be used for determining the conformity status of transportation plans and transportation improvement plans is 29.85 tons VOC/day and 24.69 tons NO_x/day. On November 28, 1994, the USEPA received a request from Ohio to add 1.142 tons VOC/day of the "safety margin" to the year 2005 VOC emissions (28.71 tons/day) for purposes of conformity. This is provided for by section 51.456(b) of the conformity rule (58 FR 62188). (The safety margin is the difference between the attainment

inventory level of mobile source emissions from the projected levels of mobile source emissions in the out year (i.e. 2005) of the maintenance plan.) The USEPA is approving this submittal as part of the maintenance plan.

5. Contingency Plan

Ohio has committed to adopt and implement various contingency measures following various triggering events. The contingency plan is summarized in Table 3. If three exceedances at one monitor occur in the same year, Stage II Vapor Recovery (Stage II) would be implemented. Stage II and the vehicle inspection and maintenance (I/M) program would be implemented after a violation has been monitored. If a violation occurred after both Stage II and the I/M program have been implemented, NO_x RACT would be adopted and implemented. If an emissions inventory meeting the requirements of USEPA guidance shows that total area-wide VOC emissions exceed 95 percent of the 1990 emissions inventory, then either one or both Stage

II and the I/M program would be implemented. The implementation schedules for each contingency measure are detailed in Table 4. If more violations were to occur, Ohio has committed to identify and develop the legislative authority to implement additional contingency measures.

Ohio has the legislative authority to implement the I/M program in Toledo. Ohio's Stage II rule allows for the implementation of Stage II as part of a maintenance and/or a contingency plan. The Director of the Ohio Environmental Protection Agency (OEPA) issued a Director's Findings and Orders on September 17, 1993, suspending Stage II in the Toledo area. This suspension will continue until there are three monitored exceedances of the ozone standard in one year or a violation of the ozone standard is monitored. On October 20, 1994, the USEPA 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),

USEPA considers Ohio's Stage II program to fully satisfy the criteria set forth in the USEPA guidance document for such programs entitled "Enforcement Guidance for Stage II Vehicle Refueling Control Programs." Ohio has adopted NO_x RACT rules for the Toledo area. The Director of OEPA has suspended the NO_x RACT rules in the Toledo area until a violation is monitored after the implementation of I/M and Stage II.

TABLE 3.—CONTINGENCY PLAN

Trigger	Control measure
3 exceedances of ozone standard in one year.	Stage II.
Violation	Stage II and I/M.
Violation after implementation of Stage II and I/M.	NO _x RACT.
VOC emissions greater than 95% of the 1990 level of VOC emissions.	Stage II and/or I/M.

TABLE 4.—CONTINGENCY PLAN SCHEDULE FOR ADOPTION AND IMPLEMENTATION

Activity	Completion time after triggering event
Stage II Vapor Recovery	
Identify and verify third excursion in one year or violation of ozone standard	1 month.
Initiate compliance schedules contained in Ohio Administrative Code (OAC) 3745-21-04	2 months.
Source demonstration of compliance or submittal of schedules to achieve compliance	3 months.
Achieve final compliance of non-independent facilities for which construction commenced after 11/15/90	6 months.
Achieve final compliance of non-independent facilities greater than 100,000 gallons per month	12 months.
Achieve final compliance of all other non-independent facilities	24 months.
Achieve final compliance of 33% of facilities owned by each marketer	12 months.
Achieve final compliance of 66% of facilities owned by each marketer	24 months.
Achieve final compliance of 100% of facilities owned by each marketer	36 months.
Activity	Time after triggering event
Vehicle Inspection and Maintenance	
Identify and verify violation of the ozone standard. Begin revisions to the Request for Proposals for centralized portion of program based on existing legislative authority.	1 month.
Begin drafting rules for contingency centralized I/M program, procedures and guidelines	1 month.
Release Request for Proposals for centralized contractor	2 months.
File draft program rules with Legislative Service Commission	3 months.
Public hearing on new program rules	4 months and 15 days.
Rules approved by Joint Committee on Agency Rule Review	4 months and 30 days.
Request for Proposal responses for centralized contract due	4 months and 30 days.
Begin evaluation of Request for Proposal responses	5 months.
Award centralized contract for each zone.	6 months and fifteen days.
Program rules become effective	6 months and 30 days.
Begin drafting Request for Proposal for Ohio Environmental Protection Agency (BAR90) approved analyzer certification, if necessary..	7 months.
Begin drafting Request for Proposal for inspector certification training in the Toledo metropolitan area	7 months.
Release Request for Proposal for analyzer certification services	8 months.
Release Request for Proposal for inspector certification training	8 months.
Proposals for analyzer certification services due	9 months and 15 days.
Proposals for inspector certification training due	9 months and 15 days.
Begin evaluation of proposals for analyzer certification services	9 months and 16 days.
Begin evaluation of proposals for inspector certification training	9 months and 16 days.
Award contract for analyzer certification services	10 months.
Award contract for inspector certification training	10 months.
Begin licensing process for reinspection stations. State will require Ohio Certified BAR90 (or better) equipment, on-line real-time systems, and ASE certified mechanics.	11 months.
New analyzer specifications issued, if necessary. Begin certifying four-gas analyzers	12 months.

Activity	Time after triggering event
Inspector certification begins	14 months.
Begin final licensing of reinspection stations	15 months.
Initiate PR program including media blitz	16 months.
Initiate motorist notification mailings	16 months and 15 days.
Begin limited voluntary inspections at centralized test stations. Allow first month motorist to receive valid test. Reinspection stations begin to perform retests.	17 months.
Begin mandatory testing at centralized test stations	18 months.

Activity	Completion time after triggering event
NO _x RACT	
Identify and verify violation following implementation of OAC 3745-21-09 and automobile inspection and maintenance.	1 month.
Source demonstration of compliance or submittal of schedule to achieve compliance	3 months.
Achieve compliance with requirements of OAC 3745-14-03 or request extension	18 months.

6. Tracking Maintenance

The State plans to track monitored levels of ozone. Emissions inventories will be prepared every 3 years beginning with the year 1993. The point source inventory will be updated annually with facility and permit data. OEPA will update emissions estimates from the BP refinery wastewater system on an annual basis. The mobile source inventory will be updated annually with new VMT estimates and revised mobile emissions models if appropriate. Area source inventories will be updated annually using new census data. The OEPA will submit annual progress reports to USEPA which will include available emissions data and a comparison of projected and actual emissions. The Toledo Division of Pollution Control has committed to continue operating and maintaining the four existing ozone monitors in a manner consistent with Federal and State monitoring guidelines.

The USEPA has determined that the maintenance plan for Lucas and Wood Counties meets the requirements set forth by the CAA.

D. Section 107(d)(3)(E)(v). The Area must have met all applicable requirements under Section 110 and Part D. Section 107(d)(3)(E) requires that, for an area to be redesignated, an area must have met all applicable requirements under section 110 and Part D. The USEPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation to be approved, the State must have met all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the Act that come due subsequently continue to be applicable to the area at those later dates (see section 175A(c)) and, if the redesignation of the area is disapproved, the State remains obligated to fulfill those requirements.

1. Section 110 Requirements

General SIP elements are delineated in section 110(a)(2) of Title I, Part A. These requirements include but are not limited to submittal of a SIP that has been adopted by the State after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for Part C (PSD) and D (NSR) permit programs, criteria for stationary source emission control measures, monitoring, and reporting, provisions for modeling, and provisions for public and local agency participation. For purposes of redesignation, the Ohio SIP was reviewed to ensure that all requirements under the amended Act were satisfied. Although section 110 was amended in 1990, the Toledo area SIP meets the requirements of the amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, USEPA believes that the pre-1990 amendment SIP meets those requirements. As to those requirements that were amended in 1990, many are duplicative of other requirements in the Act and USEPA has determined that the Toledo SIP is consistent with the requirements of section 110 of the amended Act.

2. Part D Requirements

Before the Toledo area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification determines the requirements to which it is 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 nonattainment areas

classified under Table 1 of section 181(a). As described in the General Preamble for the Implementation of Title 1, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). The Toledo area was classified as moderate (56 FR 56694). Therefore, in order to be redesignated, 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.

a. Section 172(c) Requirements

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years after an area has been designated as nonattainment under the amended Act. Furthermore, as noted above, some of these section 172(c) requirements are superseded by more specific requirements in subpart 2 of part D. In the case of Toledo, the State has satisfied all of the section 172(c) requirements necessary for Toledo to be redesignated upon the basis of the November 8, 1993 redesignation request.

USEPA has determined that the section 172(c)(2) reasonable further progress (RFP) requirement (with parallel requirements for a moderate ozone nonattainment area under subpart 2 of part D, due November 15, 1993) was not applicable as the State of Ohio submitted this redesignation request on November 8, 1993. Also the section 172(c)(9) contingency measures and additional section 172(c)(1) non-RACT reasonable available control measures beyond what may already be required in the SIP are no longer necessary, since no earlier date was set for these measures

and as RFP was not due until November 15, 1993.

The section 172(c)(3) emissions inventory requirement has been met by the submission and approval of the 1990 base year inventory required under subpart 2 of part D, section 182(a)(1) (60 FR 15053).

As for the section 172(c)(5) NSR requirement, USEPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. Memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment. The rationale for this view is described fully in that memorandum, and is based on the Agency's authority to establish *de minimis* exceptions to statutory requirements. See *Alabama Power Co. v. Costle*, 636 F.2d 323, 360-61 (D.C. Cir. 1979). As discussed below, the State of Ohio has demonstrated that the Toledo area will be able to maintain the standard without part D NSR in effect and, therefore, the State need not have a fully-approved part D NSR program prior to approval of the redesignation request for Toledo. Ohio's part C PSD program will become effective in the Toledo area upon redesignation to attainment.

Finally, for purposes of redesignation, the Toledo SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, were satisfied. As noted above, USEPA believes the SIP satisfies all of those requirements. Section 176 Conformity Plan Provisions Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that, before they are taken, Federal actions conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (transportation conformity), as well as to all other Federal actions (general conformity). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the

Implementation of Title I informed States that its conformity regulations would establish a submittal date [see 57 FR 13498, 13557 (April 16, 1992)].

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of Ohio is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Ohio is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals did not come due prior to the date the Toledo redesignation request was submitted, however, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

b. Subpart 2 Requirements

The Toledo area is classified moderate nonattainment; therefore, part D, subpart 2, section 182(b) requirements apply. The requirements which came due prior to the submission of the request to redesignate the Toledo area must be fully approved into the SIP prior to redesignating the area to attainment. These requirements are discussed below:

(i) *1990 Base Year Emission Inventory*. The 1990 base year emission inventory was due on November 15, 1992. It was submitted to the USEPA on March 15, 1994. The USEPA approved this submittal on March 22, 1995 (60 FR 15053).

(ii) *Emission Statements*. The emissions statement SIP was due on November 15, 1992. It was submitted to the USEPA on March 15, 1994. The USEPA approved this SIP revision through a direct final rulemaking action published on October 13, 1994 (59 FR 51863).

(iii) *VOC RACT Fix-ups and Catch-ups*. Sections 182(a)(2)(A) and 182(b)(2) establish VOC RACT requirements applicable to moderate ozone nonattainment areas such as Toledo. Section 182(a)(2)(A) required the submission to USEPA of all rules and

corrections to existing VOC RACT rules that were required under the RACT provision of the pre-1990 CAA (referred to as RACT "fix-ups"). Section 182(b)(2) required the submission to USEPA of (1) VOC RACT rules for all VOC sources covered by a CTG issued before the date of enactment of the 1990 CAA amendments (a requirement that the State has previously met), (2) VOC RACT for each VOC source covered by a CTG issued between the enactment of the 1990 CAA and the attainment date (which is not an applicable requirement for purposes of this redesignation since the due date for these rules is November 15, 1994, a date after the submission of the redesignation request), and (3) VOC RACT for all other major stationary sources of VOC located in the area.

On June 9, 1988, August 24, 1990, and June 7, 1993, Ohio submitted VOC RACT rules. In a final rulemaking action, the USEPA partially approved, partially disapproved and granted partial limited approval/limited disapproval to portions of Ohio's VOC RACT rules on May 9, 1994 (see 58 FR 49458). The USEPA processed draft VOC RACT rules which addressed identified deficiencies in Ohio's VOC RACT rules in parallel with the ozone redesignation request. Ohio adopted these rules and submitted them to USEPA on February 14, 1995. Ohio's VOC RACT rules submittals have now been approved in a direct final notice published on March 23, 1995 (60 FR 15235). Thus, the State has now satisfied all of the VOC RACT requirements applicable to the Toledo area. (The approval of the redesignation is contingent upon the approval of the VOC RACT rules and the 1990 Base-Year Emissions Inventory. Thus, this redesignation will not become effective until the approval of the VOC RACT rules and the 1990 Base-Year Emissions Inventory become effective. Consequently, should the direct final notice approving the VOC RACT rules or 1990 Base-Year Inventory be withdrawn as a consequence of adverse comment, this direct final notice approving the redesignation will also be withdrawn and final action will be taken on the redesignation at a later date.)

(iv) *Stage II Vapor Recovery (Stage II)*. Section 182(b)(3) required States to submit Stage II rules to USEPA for moderate ozone nonattainment areas by November 15, 1992. Ohio submitted Stage II regulations as a SIP revision on June 7, 1993. However, as the USEPA promulgated onboard rules on April 6, 1994 (59 FR 16262), Stage II is no longer required for moderate ozone nonattainment areas (see section

202(a)(b). Thus, Stage II is not an applicable requirement for purposes of evaluating this redesignation.

(v) *Vehicle Inspection and Maintenance (I/M)*. On January 5, 1995, the USEPA revised the I/M Program Requirements promulgated on November 5, 1992 (60 FR 1735). See 60 FR 1735. The revision allows areas subject to the basic I/M program requirements and that otherwise qualify for redesignation from nonattainment to attainment for ozone or carbon monoxide NAAQS to defer adoption and implementation of some of the otherwise applicable requirements established in the original promulgation of the I/M rule. USEPA amended Subpart S to allow such areas to be redesignated if they submit a SIP that contains the following four elements: (1) Legal authority for a basic I/M program (or an enhanced program, as defined in the Federal rule, if the state chooses to opt up), meeting all of the requirements of Subpart S such that implementing regulations can be adopted without further legislation; (2) a request to place the I/M plan or upgrades, as defined in the Federal rule, (as applicable) in the contingency measures portion of the maintenance plan upon redesignation as described in the fourth element below; (3) a contingency measure to go into effect as soon as a triggering event occurs, consisting of a commitment by the Governor or the governor's designee to adopt regulations to implement the I/M program in response to the specified triggering event; and (4) a commitment that includes an enforceable schedule for adopting and implementing the I/M program, including appropriate milestones, in the event the contingency measure is triggered (milestones shall be defined in terms of months since the triggering event). USEPA believes that for areas that otherwise qualify for redesignation, a SIP meeting these four requirements would satisfy the obligation to submit "provisions to provide" for a satisfactory I/M program, as required by the statute.

Ohio has met each of the above four requirements. Section 3704.14(B) of Ohio's Administrative Code states "* * * The Director shall implement and supervise a basic or an enhanced motor vehicle inspection and maintenance program in a county that is within an area classified as nonattainment for carbon monoxide or ozone when such a program is included in the air quality maintenance plan or contingency plan for the nonattainment area that includes the county and that is submitted to the USEPA by the Director as required under section 175A of the CAAA as part of a request for

redesignation of the nonattainment area as attainment for carbon monoxide or ozone under section 107(d) of that Act, and the Director determines that the conditions requiring implementation of such a program and set forth in either such plan have been met." This provision allows the I/M program to be implemented in the Toledo area as part of a contingency plan. In addition, I/M programs in Ohio have been approved by USEPA (46 FR 31881). As noted in tables 3 and 4, Ohio has identified appropriate triggering events and submitted an enforceable implementation schedule for the I/M program. The commitment to implement I/M was contained in the letter from the Director of OEPA, the Governor's designee, requesting the redesignation of the Toledo area to attainment for ozone. This satisfies the remaining requirements of the I/M rule revision.

(vi) *1.15:1 VOC and NO_x Offsets Requirement for NSR*. As explained above, USEPA has determined that areas need not comply with the part D NSR requirements of the Act in order to be redesignated provided that the area is able to demonstrate maintenance without part D NSR in effect. As maintenance has been demonstrated for the Toledo area without part D NSR being in effect, USEPA is not requiring that the area have a fully-approved part D NSR plan meeting the requirements of sections 182(a) and (b) prior to redesignation.

(vii) *NO_x Requirement*. Section 182(f) establishes NO_x requirements for ozone nonattainment areas. However, it provides that it does not apply to an area such as Toledo if the Administrator determines that NO_x reductions would not contribute to attainment. The Administrator has made such a determination and has approved the State of Ohio's request to exempt the Toledo area from the section 182(f) NO_x requirements (60 FR 3760). Thus, the State of Ohio need not comply with the NO_x requirements of section 182(f) for Toledo to be redesignated. If a violation is monitored in the Toledo area, Ohio has committed to adopt and implement NO_x RACT rules as a contingency measure.

E. Section 107(d)(3)(E)(ii). The Administrator has fully approved the applicable implementation plan for the area under Section 110(k). USEPA has reviewed the SIP to ensure that it contains all measures that were due under the amended 1990 Act. Based on the approval of submittals under the pre-amended CAA, and USEPA's approval of SIP revisions under the amended CAA, USEPA has determined

that the Toledo area has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed above (45 FR 72122, 59 FR 51863, 60 FR 3760, 60 FR 15053, 60 FR 15235).

III. Transport of Ozone Precursors to Downwind Areas

Preliminary modeling results utilizing USEPA'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 State of Ohio has provided documentation that VOC and NO_x emissions in the Toledo area will decrease 35 percent and 38 percent, respectively, from attainment levels by the year 2005. Given this decrease in emissions, the Toledo area's impact on ozone concentrations in the OTR will correspondingly be reduced. The USEPA is currently developing policy which will address long range impacts of ozone transport. The USEPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. The USEPA intends to address the transport issue through Section 110 based on a domain-wide modeling analysis.

The USEPA notified Environment Canada of this action. The redesignation is not expected to have any adverse impact on Canada since emissions are expected to remain below levels associated with attainment conditions in the Toledo area.

IV. Final Rulemaking Action

The State of Ohio has met the requirements of the Act for revising the Ohio ozone SIP. The USEPA approves the redesignation of Lucas and Wood Counties to attainment areas for ozone. In addition, the USEPA approves the maintenance plan into the ozone SIP for these Counties. As noted earlier, this approval is contingent upon the direct final approval of Toledo's VOC RACT rules and 1990 Base-Year Emissions Inventory becoming effective.

Because USEPA considers this action to be noncontroversial and routine, USEPA is publishing this notice of approval without prior proposal. This action will become effective on July 3, 1995. However, if the USEPA receives adverse comments by June 1, 1995 on this action or by April 24, 1995, regarding the VOC RACT notice published at 60 FR 15235, or by April 21, 1995, regarding the 1990 Base-Year Emissions Inventory published at 60 FR

15053, then the USEPA will publish a notice that withdraws the action, and will address these comments in the final rule on the requested redesignation and SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**.

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

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory

flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (1976).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

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

Dated: March 14, 1995.

Valdas V. Adamkus,
Regional Administrator.

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

2. Section 52.1870 is amended by adding a new paragraph (c)(105) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(105) On September 17, 1993, the Ohio Environmental Protection Agency requested the redesignation of Lucas and Wood Counties to attainment of the National Ambient Air Quality Standard for ozone. To meet the redesignation criteria set forth by section 107(d)(3)(E) (iii) and (iv), Ohio credited emissions reductions from the enclosure of the "oily ditch" at the British Petroleum Refinery in Oregon, Ohio. The USEPA is approving the Director's Finding and Order which requires the enclosure of the "oily ditch" into the SIP for Lucas and Wood Counties.

(i) Incorporation by reference.

Letter dated June 2, 1994, from Donald R. Schregardus, Director, Ohio Environmental Protection Agency, to Valdas Adamkus, Regional Administrator, USEPA, Region 5, and one enclosure which is the revised Director's Final Findings and Orders in the matter of BP Oil company, Toledo Refinery, 4001 Cedar Point Road, Oregon, Ohio, Fugitive Emissions from the Refinery Waste Water System "Oily Ditch", dated June 2, 1994.

3. Section 52.1885 is amended by adding paragraph (b) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(b) The maintenance plans for the following counties are approved:

(1)-(4) [Reserved].

(5) Lucas and Wood Counties.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES

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

Authority: 42 U.S.C. 7401-7671q.

2. Section 81.336 is amended by revising the entry in the ozone table for Toledo area to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * *				
Toledo Area.				
Lucas County	July 3, 1995.	Attainment		
Wood County	July 3, 1995.	Attainment		
* * * * *				

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

[FR Doc. 95-10693 Filed 5-1-95; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket 92-264; FCC 95-147]

Cable Television Act of 1992—Vertical Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Order on reconsideration.

SUMMARY: On reconsideration of the cable television vertical ownership (or channel occupancy) rules adopted in its Second Report and Order, the Federal Communications Commission (the "Commission") has adopted a Memorandum Opinion and Order on Reconsideration of the Second Report and Order ("Reconsideration Order"). The Reconsideration Order denies petitions for reconsideration filed by the Center for Media Education/Consumer Federation of America (collectively "CME") and Bell Atlantic Corporation ("Bell Atlantic"). Specifically, the Reconsideration Order: Denies CME's petition requesting that the Commission; reduce the percentage of activated channels that a cable operator may devote to video programming in which it has an attributable interest from 40% to 20%; reverse the Commission's decision to include over-the-air broadcast, public, educational, governmental ("PEG"), and leased access channels when calculating total channel capacity; reverse the Commission's decision to exempt local and regional networks from the channel occupancy limits; reverse the Commission's decision not to apply channel occupancy limits beyond a system's first 75 channels; and reverse the Commission's decision to grandfather all vertically integrated programming services being carried as of the effective date of the 1992 Cable Act. The Reconsideration Order also denies Bell Atlantic's petition asking that the Commission reconsider its decision to apply the vertical ownership limits to cable systems facing actual head-to-head competition.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau, (202) 416-0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Memorandum Opinion and Order on Reconsideration of the Second Report and Order

("Reconsideration Order") in MM Docket 92-264, adopted April 5, 1995 and released April 6, 1995. This Reconsideration Order responds to petitions for reconsideration filed in response to the Commission's Second Report and Order, 58 FR 60135 (November 15, 1993). The Second Report and Order was established pursuant to section 11(c)(2)(B) of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), Public Law 102-385, 106 Stat. 1460 (1992).

The complete text of this Reconsideration Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS, Inc.") at (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Memorandum Opinion and Order on Reconsideration of the Second Report and Order

A. Background

Pursuant to section 11(c)(2)(B) of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), Pub. L. 102-385, 106 Stat. 1460 (1992), the Commission's Second Report and Order, 58 FR 60135 (November 15, 1993), established cable channel occupancy rules, including the following rules relevant here: (1) Cable operators generally may devote no more than 40% of their activated channels to the carriage of programming services in which they have an attributable interest; (2) all activated channels will be included in calculating channel capacity, including broadcast, PEG and leased access channels; (3) channel occupancy limits will apply only to "national" programming services (i.e., local and regional programming services are exempt); (4) channel occupancy limits will apply to a maximum of 75 channels per system; (5) all vertically integrated programming services carried as of the effective date of the 1992 Cable Act (December 4, 1992) could continue to be carried; and (6) channel occupancy limits will not be eliminated in communities where actual head-to-head competition exists.

B. Petitions for Reconsideration

The Center for Media Education and the Consumer Federation of America (collectively "CME") filed a joint Petition for Reconsideration asking the Commission to reconsider several issues decided in the Second Report and

Order. Specifically, CME asked the Commission to: (1) Reduce the channel occupancy limit from 40% to 20%; (2) require that broadcast, PEG, and leased access channels be subtracted from the number of activated channels before calculating total channel capacity; (3) eliminate the exemption for local and regional networks; (4) apply channel occupancy limits beyond a system's first 75 channels; and (5) reverse the decision to grandfather all vertically integrated programming services carried as of December 4, 1992.

After consideration of the various submissions, the Commission declines to modify the 40% channel occupancy limit. In requiring the Commission to establish "reasonable" channel occupancy limits, Congress directed the Commission to balance the risks of vertical integration against benefits such as the development of diverse and high quality video programming. The Commission continues to believe that the 40% limit strikes the appropriate balance between these competing objectives.

Moreover, CME may have overstated the practical effect of must-carry, PEG and leased access requirements on unaffiliated programmers' ability to obtain carriage. In the absence of record evidence on this point, the Commission examined an unscientific sampling of 25 Tele-Communications, Inc. ("TCI") and Time Warner Entertainment Company, L.P. ("Time Warner") cable systems (those being the most vertically integrated cable operators) in order to determine whether, in fact, broadcast, PEG and leased access channels occupied all, or nearly all, of the systems' unaffiliated programming channels. Generally, the Commission found that, even after excluding broadcast, PEG and leased access channels (and even assuming the presence of two local or regional networks), all of the systems had capacity remaining for additional unaffiliated programming.

Next, CME claims that the Commission overstated the benefits of vertical integration. As proof, CME states that the Cable News Network, Inc. ("CNN"), Black Entertainment Television, Inc. ("BET"), and Nickelodeon were successful prior to their relationship with cable operators, and that "there has been no successful launch of an unaffiliated video programmer since the cable industry began the trend toward vertical integration." Whether or not CNN, BET and Nickelodeon achieved some initial independent success, there is evidence in the record that these and other programmers would have had difficulty