

US EPA ARCHIVE DOCUMENT

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a “significant regulatory action” and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

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

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

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

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

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

Dated: December 19, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0046; FRL–8261–5]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Allen and Stark Counties to Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 20, 2005, the Ohio Environmental Protection Agency (Ohio EPA), submitted a request for EPA approval of redesignations of Allen County (Lima) and Stark County (Canton) to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS), and a request for EPA approval of ozone maintenance plans for Allen and Stark Counties as revisions to the Ohio State Implementation Plan (SIP). Additional supporting information was submitted on August 24, 2006, and December 4, 2006. EPA is proposing to approve Ohio’s requests and corresponding SIP revisions. EPA is also proposing to approve the Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_x) Motor Vehicle Emission Budgets (MVEBs) for Allen and Stark Counties, as supported by the ozone maintenance plans for these Counties, for purposes of conformity determinations.

DATES: Comments must be received on or before January 26, 2007. Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0046, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* mooney.john@epa.gov.
- *Fax:* (312) 886–5824.
- *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.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. Such deliveries are only accepted during the Regional Office’s normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office’s official hours of operation 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-2006-0046. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at 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 www.regulations.gov or e-mail. The 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 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 and any form of encryption, and should be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the 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 hardcopy. Publicly available docket materials are available either electronically in www.regulations.gov or in hardcopy 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. It is recommended that you telephone Edward Doty, Environmental Scientist, at (312) 886-6057, before visiting the Region 5 office.

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

SUPPLEMENTARY INFORMATION:

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

- I. What Action is EPA Proposing to Take?
- II. What is the Background for These Actions?
- III. What are the Criteria for Redesignation to Attainment?
- IV. What are EPA's Analyses of the State's Requests and What are the Bases for EPA's Proposed Actions?
- V. Has Ohio Adopted Acceptable Motor Vehicle Emissions Budgets for the End Year of the Ozone Maintenance Plans Which Can Be Used to Support Conformity Determinations?
- VI. What are the Effects of EPA's Proposed Actions?
- VII. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing to Take?

We are proposing to take several related actions for both Allen County and Stark County, Ohio. First, we are proposing to determine that Allen and Stark Counties have attained the 8-hour ozone NAAQS and that both of these Counties have met the requirements for redesignation to attainment of the 8-hour ozone NAAQS under section 107(d)(3)(E) of the CAA. We are, therefore, proposing to approve the request from the State of Ohio to change the designations of Allen and Stark Counties from nonattainment to attainment of the 8-hour ozone NAAQS.

Second, we are proposing to approve Ohio's ozone maintenance plans for Allen and Stark Counties as revisions to the Ohio SIP. The maintenance plans are designed to keep these Counties in attainment of the 8-hour ozone NAAQS for the next 12 years, through 2018. As supported by and consistent with the ozone maintenance plans, we are also proposing to approve the 2018 VOC and NO_x MVEBs for Allen and Stark Counties for conformity determination purposes.

II. What Is the Background for These Actions?

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS (62 FR 38856) of 0.08 parts per million parts of air (0.08 ppm) (80 parts per billion (ppb)). This

standard is violated in an area when any ozone monitor in the area (or in its impacted downwind environs) records 8-hour ozone concentrations with a three-year average of the annual fourth-highest daily maximum 8-hour ozone concentrations equaling or exceeding 85 ppb. This 8-hour ozone standard replaced a prior 1-hour ozone NAAQS, which was promulgated on February 8, 1979 (44 FR 8202), and revoked on June 15, 2005.

Ground-level ozone is not generally emitted directly by sources. Rather, emitted NO_x and VOC react in the presence of sunlight to form ground-level ozone along with other secondary compounds. NO_x and VOC are referred to as "ozone precursors."

The CAA required EPA to designate as nonattainment any area that violated the 8-hour ozone NAAQS. The **Federal Register** notice promulgating these designations was published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and emission control requirements for nonattainment areas (both are found in title I, part D of the CAA). Subpart 1 contains general, less prescriptive, requirements for nonattainment areas for any pollutant governed by a NAAQS, and applies to all nonattainment areas. Subpart 2 contains more specific requirements for certain ozone nonattainment areas, and applies to ozone nonattainment areas classified under section 181 of the CAA.

In the April 30, 2004 designation rulemaking, EPA divided 8-hour ozone nonattainment areas into the categories of subpart 1 nonattainment ("basic" nonattainment) and subpart 2 nonattainment ("classified" nonattainment) based on their 8-hour ozone design values (*i.e.*, on the three-year averages of the annual fourth-highest daily maximum 8-hour ozone concentrations at the worst-case monitoring sites in the designated areas) and on their 1-hour ozone design values (*i.e.*, on the fourth-highest daily maximum 1-hour ozone concentrations over the three-year period at the worst-case monitoring sites in the designated areas).¹ 8-hour ozone nonattainment areas with 1-hour ozone design values equaling or exceeding 121 ppb were designated as subpart 2, classified nonattainment areas. Classification of the subpart 2 nonattainment areas was based on the levels of the monitored 8-

¹ The 8-hour ozone design value and the 1-hour ozone design value for each area were not necessarily recorded at the same monitoring site. The worst-case monitoring site for each ozone concentration averaging time was considered for each area.

hour ozone design values for each nonattainment area. All other 8-hour nonattainment areas were designated as subpart 1, basic nonattainment areas, which have no area-specific classifications.

Emission control requirements for classified nonattainment areas are linked to area classifications. Areas with more serious ozone pollution problems are subject to more prescribed requirements. The requirements are designed to bring areas into attainment by their specified attainment dates, which also depend on the area classifications. For example, marginal nonattainment areas are subject to the fewest mandated control requirements and have the earliest attainment deadline. Severe nonattainment areas are required to meet more mandated emission controls, including tighter restrictions on the sizes of existing VOC and NO_x sources required to install emission controls and tighter restrictions on mandated emission controls and offsetting of new sources, and have a later attainment deadline. In contrast, the attainment deadline for basic nonattainment areas does not depend on the magnitude of the areas' 8-hour ozone design values, and the required emission controls are less prescriptive.

Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, less than or equal to 0.084 ppm or 84 ppb based on data rounding conventions specified in appendix I of 40 CFR part 50) at all monitors in an area and in nearby downwind environs (for further information, see 69 FR 23857, April 30, 2004). The supporting data must meet a minimum data completeness requirement. The completeness requirement (specified in appendix I of 40 CFR part 50) for ozone data supporting a determination of attainment and a redesignation to attainment is met when the annual average percent of days with valid ambient monitoring data is greater than 90 percent for the ozone seasons during the three-year period, with no single year with less than 75 percent data completeness during the ozone season.

In the April 30, 2004 designation/classification rulemaking, Allen and Stark Counties were both designated as subpart 1 nonattainment for the 8-hour ozone standard. The designations were based on ozone data collected during the 2001–2003 period.

On June 20, 2006, the State of Ohio requested redesignation of Allen and Stark Counties to attainment of the 8-hour ozone NAAQS based on ozone data collected in these Counties during the 2003–2005 period. On August 24, 2006, the State of Ohio completed the ozone redesignation request by submitting documentation of the public hearings conducted by the State for the ozone redesignation request and ozone maintenance plans. The information contained in the State's June 20, 2006 ozone redesignation request submittal was unchanged through the State's public review process. On December 4, 2006, the State submitted a clarification of the State's ozone maintenance plans, confirming that the State is committed to implement contingency emission control measures in the event of a violation of the 8-hour ozone standard in either Allen County or Stark County after these Counties are redesignated to attainment of the 8-hour ozone standard.

III. What Are the Criteria for Redesignation to Attainment?

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

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

“Ozone and Carbon Monoxide Design Value Calculations,” Memorandum from Bill Laxton, 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 (TSD's) for Redesignation of Ozone and Carbon Monoxide 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, 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.

IV. What Are EPA's Analyses of the State's Requests and What Are the Bases for EPA's Proposed Actions?

EPA is proposing to determine that Allen and Stark Counties have attained the 8-hour ozone standard, approve the ozone maintenance plans for these Counties, and approve the VOC and NO_x MVEBs supported by these ozone

maintenance plans. EPA is also proposing to approve the redesignation of these Counties to attainment of the 8-hour ozone NAAQS. The bases for our proposed determinations and approvals follow.

1. Allen and Stark Counties Have Attained the 8-Hour Ozone NAAQS

For ozone, as noted above, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and 40 CFR part 50 appendix I based on the most recent three complete, consecutive calendar years of quality-assured air

quality monitoring data at all monitoring sites in the area. To attain this standard, the average of the annual fourth-high daily maximum 8-hour average ozone concentrations measured and recorded at each monitor (the monitoring site's ozone design value) within the area and in its impacted downwind environs over a three-year period must not exceed the ozone standard. Based on the ozone data rounding convention described in 40 CFR part 50 appendix I, the 8-hour standard is attained if the area's ozone design value² is 0.084 ppm (84 ppb) or lower. The data must be collected and quality-assured in accordance with 40

CFR part 50, and must be recorded in EPA's Air Quality System (AQS).

As part of the June 20, 2006 ozone redesignation request, Ohio EPA submitted ozone monitoring data indicating the top four daily maximum 8-hour ozone concentrations for each monitoring site in Allen and Stark Counties during the 2003–2005 period. These ozone concentrations are part of the quality-assured ozone data collected and recorded in these Counties. These data have been entered into EPA's AQS. The annual fourth-high 8-hour daily maximum ozone concentrations, along with their three-year averages, are summarized in Table 1.

TABLE 1.—FOURTH-HIGH 8-HOUR OZONE CONCENTRATIONS IN PARTS PER BILLION (PPB)

County	Monitoring site	2003	2004	2005	Average
Allen	2650 Bible	88	76	81	82
Stark	Malone College	87	74	76	79
Stark	245 West Fifth	85	71	76	77
Stark	1175 West Vine	86	76	86	83

These data show that the site-specific ozone design values (average fourth-high daily maximum 8-hour ozone concentrations over the period of 2003–2005) for all monitoring sites in Allen and Stark Counties are below the 85 ppb ozone standard violation cut-off. These data support the conclusion that the Allen County and Stark County ozone monitors did not record a violation of the 8-hour ozone standard during the 2003–2005 period, and monitored attainment of the standard during this period. We note that the ozone data recorded in the AQS show that these monitoring sites met completeness requirements for the period covered here. Based on these data, we propose to find that Allen and Stark Counties have attained the 8-hour ozone NAAQS.

Based on available data (not fully quality assured), these monitoring sites continue to show attainment of the 8-hour ozone NAAQS through 2006.

The State of Ohio has committed to continue the operation of these ozone monitors through the ozone maintenance period, and will consult with the EPA if changes in the monitoring system are required.

2. Allen and Stark Counties Have Met All Applicable Requirements Under Section 110 and Part D of the CAA and These Areas Have a Fully Approved SIP Under Section 110(k) of the CAA

We have determined that Allen and Stark Counties and the State of Ohio

have met all currently applicable SIP requirements for Allen and Stark Counties, including the requirements under section 110 of the CAA (general SIP requirements) and the requirements under subpart 1 part D of title I of the CAA (requirements specific to basic ozone nonattainment areas). See section 107(d)(3)(E)(v) of the CAA. In addition, EPA has fully approved the pertinent elements of the Ohio SIP. See section 107(d)(3)(E)(ii) of the CAA. We note that SIPs must be fully approved only with respect to currently applicable requirements of the CAA, those CAA requirements applicable to Allen and Stark Counties at the time the State submitted the final, complete ozone redesignation request for these areas (August 24, 2006).

a. Allen and Stark Counties Have Met All Applicable Requirements Under Section 110 and Part D 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. To qualify for redesignation of an area to attainment under this interpretation, the state and the area must meet the relevant CAA requirements that come 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 66 FR 12459, 12465–12466 (March 7, 1995, redesignating 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 redesignation request remain applicable until a redesignation of the area to attainment of the standard is approved, but are not required as prerequisites 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, redesignating the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

General SIP requirements: Section 110(a) of title I of the CAA contains the general requirements for a SIP, which include: enforceable emission limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; programs to enforce the emission limitations; submittal of a SIP that has been adopted by the State after reasonable public notice and a hearing; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and part D requirements (New Source Review

² The worst-case monitoring site-specific ozone design value in the area.

(NSR)) for new sources or major source modifications; criteria for stationary source emission control measures, monitoring, and reporting; provisions for air quality modeling; and provisions for public and local agency participation.

SIP requirements and elements are discussed in the following EPA documents: "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 (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and "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, September 17, 1993. See also other guidance documents listed above.

Section 110(a)(2)(D) of the CAA requires SIPs to contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA required states to establish programs to address transport of air pollutants (NO_x SIP call and Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) of the CAA to meet the interstate transport requirements of section 110(a)(2)(D)(i) of the CAA (70 FR 21147, April 25, 2005). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular area's designation. EPA believes that the requirements linked with a particular area's nonattainment 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.

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 that are 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 an area's designation and classification are the relevant measures for evaluating this aspect of 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 and 62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, 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 the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We believe that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Nonetheless, we also note that EPA has previously approved provisions in the Ohio SIP addressing section 110 elements under the 1-hour ozone standard. We have analyzed the Ohio SIP as codified in 40 CFR part 52, subpart KK and have determined that it is consistent with the requirements of section 110(a)(2) of the CAA. The SIP, which has been adopted after reasonable public notice and hearing, contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications of existing sources; provisions for adequate funding, staff, and associated resources necessary to implement its requirements; requires stationary source emissions monitoring and reporting; and otherwise satisfies the applicable requirements of section 110(a)(2).

Part D SIP requirements: EPA has determined that the Ohio SIP meets applicable SIP requirements under part D of the CAA. Under part D, an area's classification (subpart 1, marginal, moderate, serious, severe, and extreme) indicates the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment area plan requirements applicable to all nonattainment areas. Subpart 2 of part D, found in section 182 of the CAA, establishes additional specific requirements depending on the area's

nonattainment classification. Since Allen and Stark Counties are designated as subpart 1 nonattainment areas for the 8-hour ozone standard, the subpart 2 part D requirements do not apply to these Counties.

Part D, subpart 1 requirements: For purposes of evaluating this redesignation request, the applicable subpart 1 part D requirements are contained in sections 172(c)(1)–(9) and 176. A thorough discussion of the requirements of section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). See also 68 FR 4852–4853, in an ozone redesignation notice of proposed rulemaking for the St. Louis area, for a discussion of section 172 requirements.

No requirements for the 8-hour ozone standard under part D of the CAA came due for Allen and Stark Counties prior to when the State submitted the complete ozone redesignation request. For example, the requirement for an ozone attainment demonstration, as contained in section 172(c)(1), was not yet due when the State submitted the ozone redesignation request for these Counties, nor were the requirements for Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) (section 172(c)(1)), Reasonable Further Progress (RFP) (section 172(c)(2)), and attainment plan and RFP contingency measures (section 172(c)(9)). All of these required SIP elements are required for submittal after Ohio submitted the complete, adopted ozone redesignation request and maintenance plans for Allen and Stark Counties. Therefore, none of the part D requirements for the 8-hour ozone standard are considered to be applicable to Allen and Stark Counties for purposes of redesignation.

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 planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity SIP revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

As with other part D requirements, EPA interprets the conformity requirements as not applying for purposes of evaluating the ozone

redesignation request under section 107(d) of the CAA. In addition, please note that conformity rules are required for areas that are redesignated to attainment of a NAAQS, and that Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001). See also 60 FR 62748 (December 7, 1995) (Tampa, Florida).

Part D new source review requirements: EPA has determined that areas being redesignated need not comply with the requirement that a New Source Review (NSR) program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without emission reductions from part D NSR, since Prevention of Significant Deterioration (PSD) requirements will apply after redesignation. 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 Allen and Stark Counties will be able to maintain the 8-hour ozone standard without part D NSR in effect, and therefore, we conclude 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 Allen and Stark Counties 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); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

We conclude that Allen and Stark Counties have satisfied all applicable requirements under section 110 and part D of the CAA to the extent that these requirements apply for purposes of reviewing the State's ozone redesignation request.

b. Allen and Stark Counties Have a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the Ohio SIP for Allen and Stark Counties under section 110(k) of the CAA for all applicable requirements. EPA may rely on prior SIP approvals in approving a redesignation request (See the September 4, 1992 John Calcagni memorandum, page 3, *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 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 Allen and Stark Counties for purposes of ozone redesignation. No SIP provisions relevant to Allen or Stark Counties are currently disapproved, conditionally approved, or partially approved. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of review of the State's redesignation request. EPA believes that approval of section 110 SIP elements under the 1-hour ozone standard satisfies the prerequisite for approval of the ozone redesignation request for purposes of attaining and

maintaining the 8-hour ozone standard. EPA also believes that since the part D requirements for the 8-hour ozone standard did not become due prior to Ohio's submittal of the final, complete redesignation request, they also are not applicable requirements for purposes of redesignation.

3. The Air Quality Improvements in Allen and Stark Counties Are Due To Permanent and Enforceable Reductions in Emissions From Implementation of the SIP and Federal Air Pollution Control Regulations and Other Permanent and Enforceable Emission Reductions

We believe that the State of Ohio has adequately demonstrated that the observed air quality improvements in Allen and Stark Counties are due to permanent and enforceable emission reductions resulting from the implementation of the SIP, Federal measures, and other State-adopted measures. In making this demonstration, the State has documented the changes in VOC and NO_x emissions from all anthropogenic (man-made or man-based) sources in Allen and Stark Counties between 2002, an ozone standard violation year, and 2004, one of the years in which Allen and Stark Counties recorded attainment of the 8-hour ozone standard. The Ohio EPA has also identified permanent and enforceable emission reductions which occurred elsewhere in the State and in other upwind areas that have contributed to the air quality improvement in Allen and Stark Counties. Table 2 summarizes the VOC and NO_x emissions totals from the anthropogenic sources in 2002 and 2004 for both Counties as summarized in the State's ozone redesignation submittal.

TABLE 2.—TOTAL ANTHROPOGENIC VOC AND NO_x EMISSIONS FOR 2002 AND 2004 IN ALLEN AND STARK COUNTIES (TONS PER SUMMER DAY)

Source category	2002	2004
Allen County Volatile Organic Compounds Emissions		
Point	4.77	4.92
Area	5.17	5.08
Non-Road Mobile	2.19	2.11
On-Road Mobile	7.72	6.51
Total	19.85	18.62
Allen County Nitrogen Oxides Emissions		
Point	12.14	12.57
Area	0.45	0.47
Non-Road Mobile	5.30	4.85
On-Road Mobile	11.71	10.13
Total	29.60	28.02

TABLE 2.—TOTAL ANTHROPOGENIC VOC AND NO_x EMISSIONS FOR 2002 AND 2004 IN ALLEN AND STARK COUNTIES (TONS PER SUMMER DAY)—Continued

Source category	2002	2004
Stark County Volatile Organic Compounds Emissions		
Point	2.90	2.97
Area	21.23	21.03
Non-Road Mobile	5.98	5.44
On-Road Mobile	16.56	14.03
Total	46.67	43.47
Stark County Nitrogen Oxides Emissions		
Point	5.12	4.85
Area	1.17	1.23
Non-Road Mobile	10.06	9.25
On-Road Mobile	25.35	22.00
Total	41.70	37.33

Information in the above table indicates that both Counties experienced decreases in VOC and NO_x anthropogenic emissions between 2002 and 2004. The State of Ohio concludes that the differences in the 2002 and 2004 emissions are due primarily to the implementation of permanent and enforceable emission control requirements. The State asserts that these emission reductions, along with those occurring elsewhere in the State and in upwind areas, have led to observed improvements in air quality in Allen and Stark Counties.

The State notes a significant decline in regional NO_x emissions between 2002 and 2004 as the result of the implementation of State NO_x emission control rules for combustion sources, primarily Electric Generating Units (EGUs), in compliance with EPA's NO_x SIP call and acid rain control requirements under title IV of the CAA. Besides the NO_x emission reductions occurring within the State itself, the implementation of statewide NO_x emission control rules occurred in many States east of the Mississippi River. EPA believes these emission reductions contributed significantly to the air quality improvements in Allen and Stark Counties through the reduction of transported ozone and ozone precursors. Although both Allen and Stark Counties have no significant EGUs, these Counties have benefited from the NO_x emission reductions occurring in the surrounding areas. These regional NO_x emission reductions are considered to be permanent and enforceable.

Besides implementation of the regional NO_x emission controls, the State of Ohio notes that, in the mid-1990's, the State of Ohio promulgated statewide rules requiring Reasonably

Available Control Techniques (RACT) for significant sources of VOC emissions (those with potential VOC emissions of 100 tons or more per year) whose construction or modification commenced on or after October 19, 1979. RACT rules for smaller sources have been implemented in the ozone nonattainment areas.

Additional implemented, or soon to be implemented, emission control rules include several Federal rules: (1) Tier II emission standards for vehicles and gasoline sulfur content standards (promulgated by EPA in February 2000 and currently being implemented); (2) heavy-duty diesel engine emission control rules (promulgated by the EPA in July 2000 and currently being implemented); and (3) clean air non-road diesel rule (promulgated by the EPA in May 2004 and currently being phased in through 2009).

All of these rules have contributed to reducing VOC and NO_x emissions throughout the State of Ohio (and in other States surrounding Ohio) and will contribute to further, future emission reductions in Ohio. The emission limits in the SIP will assure that these emission reductions will remain in place even after redesignation of Allen and Stark Counties to attainment of the 8-hour ozone NAAQS, and the State commits to maintaining these emission controls after the redesignation.

4. Allen and Stark Counties Have Fully Approvable Ozone Maintenance Plans Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate Allen and Stark Counties to attainment of the 8-hour ozone NAAQS, Ohio submitted SIP revision requests to provide for maintenance of the 8-hour ozone NAAQS in Allen and Stark

Counties through 2018, exceeding the 10 year minimum maintenance period required by the CAA.

a. What Is Required In an Ozone Maintenance Plan?

Section 175A of the CAA sets forth the required elements of air quality maintenance plans for areas seeking redesignation from nonattainment to attainment of a NAAQS. Under section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves the redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that maintenance of the standard will continue for 10 years following the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary, to assure prompt correction of any future NAAQS violations. The September 4, 1992 John Calcagni memorandum provides additional guidance on the content of maintenance plans. An ozone maintenance plan should, at minimum, address the following items: (1) The attainment VOC and NO_x emissions inventories; (2) a maintenance demonstration showing maintenance for the first 10 years of the maintenance period; (3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment; and (5) a contingency plan to prevent and/or correct a future violation of the NAAQS.

b. What Are the Attainment Emission Inventories for Allen and Stark Counties?

Ohio EPA prepared VOC and NO_x emission inventories for Allen and Stark Counties, including point (significant stationary sources), other (area sources, smaller and widely-distributed stationary sources), Marine, Aircraft, and Railroad (MAR) mobile sources, non-road (off-road) mobile sources, and on-road mobile sources for 2002 (the base nonattainment year), 2004 (the attainment year), 2009, and 2018 (the projected maintenance year). To develop the 2004, 2009, and 2018 emission inventories, the Ohio EPA projected the 2002 emissions applying various source category-specific growth factors and emission control factors. The State has documented how the 2002 base year emissions were derived and how these emissions were projected to derive the 2004, 2009, and 2018 emissions. The following summarizes the procedures and sources of data used by the Ohio EPA to derive the 2002 emissions.

i. *Point Sources.* The primary source of point source information was facility-specific emissions and source activity data collected annually by the State for sources covered by Title V³ source permits. This information includes emissions, process rates, source operating schedules, emissions control data, and other relevant source information. The State also used emissions data provided by EPA's EGU emission inventory, maintained to support the NO_x SIP call emissions trading program and the acid rain control/trading program. The sources included in the 2002 point source emissions inventory were identified using Ohio's Title V STARS database system. The emissions included in this database are facility-reported actual emissions.

Ohio EPA defines point source emissions as those which occur at an identifiable stationary stack or vent. Point source emissions not emitted from discrete stacks or vents are defined to be fugitive emissions. Facility-specific fugitive emissions are also reported by each Title V facility and stored in the Title V STARS database.

Point source emissions included in the 2002 base year emissions inventory were provided to the Lake Michigan Air Directors Consortium (LADCO) in

National Emissions Inventory Input Format (NIF) 3.0 format. LADCO imported and processed the NIF files in the Emissions Modeling System (EMS) and applied temporal and spatial profiles to calculate July weekday emissions rates. The Allen and Stark Counties' emissions derived from this set of emissions data were split into EGU emissions and non-EGU emissions for inclusion in the base year emissions inventory used to support the Allen and Stark Counties ozone redesignation requests. Since no EGUs exist in Allen and Stark Counties, there are no EGU emissions in these Counties.

ii. *Area (Other) Sources.* Area sources are those sources which are generally small, numerous, and have not been inventoried as specific point, mobile, or biogenic sources. The emissions for these sources are generally calculated using various surrogates, such as population, estimates of employees in various occupational groups, etc., and grouped by general source types. The area source emissions are typically defined at the county level.

Ohio EPA has either used published Emission Inventory Improvement Program (EIIP) emissions estimation methodologies or other methodologies typically used by other states to estimate the area source emissions. Area source categories include: Various stationary combustion sources (not including the EGU sources included in the point source portion of the emissions inventory); agricultural pesticides; architectural surface coatings; auto body refinishing; consumer and commercial solvent usage; solvent cleaning; fuel marketing; graphic arts; hospital sterilizers; industrial surface coating (minus point source emissions for this source category); municipal solid waste disposal; portable fuel containers; privately owned treatment works; traffic markings; human cremation; industrial fuel combustion; residential fuel combustion; structural fires; and miscellaneous source categories. The State has documented the data sources used for each of these source categories.

iii. *Non-Road Mobile Sources.* The non-road mobile source emissions inventory was generated regionally by running EPA's National Mobile Inventory Model (NMIM). The output of the NMIM was converted to the NIF format and submitted to LADCO for processing in the EMS to obtain spatially and temporally allocated emissions for a July weekday. The basic non-road algorithm for calculating emissions in NMIM uses base year equipment populations, average load factors, available engine powers, activity hours and emission factors to calculate

the emissions. To address concerns about the accuracy of NMIM results for some source categories, LADCO contracted with a consultant to review the base data and to make recommended changes. The non-road mobile source emissions inventory has been appropriately adjusted based on the contractor recommendations.

iv. *Marine, Aircraft, and Rail (MAR) Sources.* Due to the significance of the emissions from these mobile source types, the Ohio EPA has decided to treat these source categories separately from other non-road mobile sources. The MAR emissions include emissions from commercial marine, aircraft, and locomotive sources.

Commercial marine vessels consist of several different categories of vessel types. For each vessel type, there are unique engine types, emission rates, and activity data sets. The emissions inventory documentation lists the vessel types and activity data sources by vessel type, along with special distribution of each vessel type.

Locomotive activity was divided into various rail categories: Class I operations; Class II/III operations; passenger trains; commuter lines; and yard operations. Since Class I operations are expected to be the most significant rail operations in the two Counties, operators of Class I operations were queried for activity and emissions-related information for each railroad line. This approach provided for more specific estimates of emissions by railroad line. Class II/III emissions were based on national fuel consumption and per employee fuel consumption estimates. The number of railroad employees in each county was used to allocate the fuel consumption to each county and, therefore, the emissions to each county. For passenger trains and commuter lines, the Ohio EPA obtained information from AMTRAK concerning train schedules, miles of transport, and schedules of operation. This information was coupled with a fuel usage rate estimate of 2.35 gallons per train-mile of travel to obtain the total fuel usage per unit time in each of the Counties. Total fuel use by county was used to assign emissions from this source category to each county.

EPA provided the aircraft emission estimates based on Federal Aviation Administration (FAA) published Landing and Take-Off (LTO) rates by engine type for each airline and major airport in the State of Ohio. The LTO-engine information was combined with engine type-specific emission factors developed by the International Civil Aviation Organization (ICAO), and, through use of a FAA Emissions and

³ Title V of the CAA requires source-specific emission permits detailing all applicable emission control requirements and emission limits, as specified in the SIP, for each source facility covered by the State's Title V source permit program and requirements.

Dispersion Modeling System (EDMS), emissions were calculated and assigned to each county in the State, including Allen and Stark Counties.

The MAR data were processed by LADCO using the EMS to calculate July 2002 daily emissions of VOC and NO_x.

v. *On-Road Mobile Sources*. The inventories of on-road mobile source emissions for both Allen County and Stark County were developed by the Ohio EPA in conjunction with the Ohio Department of Transportation (Ohio DOT), LADCO, and EPA. The Ohio DOT provided the daily vehicle miles traveled data and vehicle age and type distribution data. The Ohio DOT and the Ohio EPA jointly developed estimated vehicle speeds for functional roadway class categories (the Ohio DOT also provided the roadway miles by functional class). Traffic monitoring conducted by the Ohio DOT was used to modify the vehicle speeds and traffic levels for specific roadway segments where deemed necessary. This vehicle travel information, along with the MOBILE 6.2 vehicle emission factor model, was used to estimate mobile source VOC and NO_x emissions for Allen and Stark Counties.

vi. *Projected Emissions for the Attainment Year*. Ambient ozone air quality data showed that Allen and Stark Counties met the 8-hour ozone NAAQS in the 2003–2005 period. Ohio EPA selected 2004, the central year of this period, to estimate the “attainment year” emissions for both Counties, needed as the base period emissions for the demonstrations of maintenance. The 2004 emissions were estimated by growing the emissions from the 2002 base year emission levels.

Ohio EPA used point source growth data provided by individual point source facilities along with other source category-specific growth estimates and emission control estimates to estimate stationary source VOC and NO_x emissions for Allen and Stark Counties. LADCO provided growth and source control projection data to project VOC and NO_x area source emissions. The Ohio DOT provided projections of vehicle travel estimates (Vehicle Miles Traveled (VMT)) to allow the projection of mobile source emissions, with MOBILE 6.2 providing the projected changes in vehicle emission factors. The estimated 2004 emissions have been compared to the 2002 base year emissions to demonstrate the basis for the improved air quality in Allen and Stark Counties. See Table 2 above for a summary of the 2004 VOC and NO_x emissions and for a comparison of these emissions with the 2002 emissions.

There are no EGU facilities in Allen and Stark Counties, but the emissions from these source types have been derived by the Ohio EPA for other Counties in Ohio and have been factored into the State’s demonstration of maintenance. Reductions in NO_x emissions in surrounding counties are assumed to reduce ozone levels in Allen and Stark Counties through reductions in transported ozone and NO_x.

c. Demonstration of Maintenance

As part of the June 20, 2006 redesignation request submittal, Ohio EPA requested revisions to the Ohio SIP to incorporate ozone maintenance plans for Allen and Stark Counties as required under section 175A of the CAA. The maintenance plans demonstrate maintenance of the 8-hour ozone

NAAQS through 2018 by documenting attainment year and future projected VOC and NO_x emissions and showing that future emissions of VOC and NO_x will remain at or below the attainment year emission levels. An ozone maintenance demonstration need not to be based on ozone 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), and 68 FR 25430–25432 (May 12, 2003).

The Ohio EPA projected the VOC and NO_x emissions in Allen and Stark Counties to the years of 2009 and 2018 to demonstrate maintenance of the 8-hour ozone NAAQS for at least 10 years after the expected redesignation dates for these areas. For both Counties, Ohio EPA used source growth estimates provided by LADCO along with mobile source growth estimates generated using VMT projections provided by the Ohio DOT and MOBILE 6.2 to project the Allen and Stark Counties VOC and NO_x emissions.

Table 3 summarizes the VOC and NO_x emissions projected to occur in Allen County during the demonstrated maintenance period. Similarly, Table 4 summarizes the VOC and NO_x emissions projected to occur in Stark County during the demonstrated maintenance period. The State of Ohio chose 2018 as a maintenance year to meet the 10-year maintenance requirement of the CAA, allowing several years for EPA to complete the redesignation rulemaking process. The State also chose 2009 as an interim year to demonstrate that VOC and NO_x emissions will remain below the attainment year levels throughout the 10-year maintenance period.

TABLE 3.—PROJECTED VOC AND NO_x EMISSIONS IN ALLEN COUNTY (TONS/DAY)

Source sector	2004 Attainment	2009 Interim	2018 Maintenance	Safety margin
VOC Emissions:				
Point	4.92	5.28	6.44	
Area (Other)	5.08	4.85	4.89	
Non-Road Mobile	1.98	1.77	1.24	
On-Road Mobile	6.51	*5.08	*2.89	
Marine-Air-Railroad	0.13	0.12	0.12	
Total VOC Emissions	18.62	17.10	15.58	**3.04
NO _x Emissions:				
Point	12.57	13.66	15.98	
Area (Other)	0.47	0.52	0.55	
Non-Road Mobile	2.29	1.92	1.13	
On-Road Mobile	10.13	*8.28	*3.47	
Marine-Air-Railroad	2.56	1.80	1.69	
Total NO _x Emissions	28.02	26.18	22.82	**5.20

* Includes 15 percent growth cushion increase to mobile source budget.

** Difference between 2004 attainment year emissions and 2018 maintenance year emissions.

TABLE 4.—PROJECTED VOC AND NO_x EMISSIONS IN STARK COUNTY (TONS/DAY)

Source sector	2004 Attainment	2009 Interim	2018 Maintenance	Safety margin
VOC Emissions:				
Point	2.97	3.14	3.77	
Area (Other)	21.03	20.49	21.93	
Non-Road Mobile	5.29	3.92	3.22	
On-Road Mobile	14.03	*10.02	*5.37	
Marine-Air-Railroad	0.15	0.14	0.14	
Total VOC Emissions	43.47	37.71	34.43	**9.04
NO _x Emissions:				
Point	4.85	4.16	4.72	
Area (Other)	1.23	1.40	1.46	
Non-Road Mobile	6.22	4.81	2.50	
On-Road Mobile	22.00	*18.03	*7.08	
Marine-Air-Railroad	3.03	2.39	2.22	
Total NO _x Emissions	37.33	30.79	17.98	**19.35

* Includes 15 percent growth cushion increase to mobile source budget.

** Difference between 2004 attainment year emissions and 2018 maintenance year emissions.

The Ohio EPA also notes that the State's EGU NO_x emissions control rules stemming from EPA's NO_x SIP call and Clean Air Interstate Rule (CAIR), to be implemented after 2006, will further lower NO_x emissions throughout the State and upwind of Allen and Stark Counties. This will result in decreased ozone and ozone precursor transport into Allen and Stark Counties, and will support maintenance of the 8-hour ozone standard in these areas.

The emissions projections for Allen and Stark Counties lead to the conclusion that Allen and Stark Counties should maintain the 8-hour ozone NAAQS throughout the required 10-year maintenance period and through 2018. The projected decreases in local VOC and local and regional NO_x emissions indicate that peak ozone levels in Allen and Stark Counties may actually further decline during the maintenance period.

Based on the comparison of the projected emissions and the attainment year emissions, we conclude that Ohio EPA has successfully demonstrated that the 8-hour ozone standard will be maintained in Allen and Stark Counties. As also noted by Ohio EPA, this conclusion is further supported by the fact that other states in the eastern portion of the United States are also expected to reduce regional NO_x emissions through implementation of their NO_x emission control rules for EGUs and other NO_x sources through the implementation of the NO_x SIP call and CAIR.

d. Contingency Plan

The contingency plan provisions of the CAA are designed to result in prompt correction or prevention of violations of the NAAQS that might

occur after redesignation of an area to attainment of the NAAQS. 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 might occur after redesignation. The maintenance plan must identify the contingency measures to be considered for possible adoption, a schedule and procedure for adoption and implementation of the selected 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 continue to implement all measures with respect to control of the pollutant(s) that were included in the SIP before the redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted contingency plans to address possible future ozone air quality problems in Allen and Stark Counties. The contingency plans have two levels of actions/responses depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level Response) or has actually occurred or appears to be imminent (Action Level Response).

A Warning Level Response will be triggered whenever an annual (1-year) fourth-high monitored 8-hour ozone concentration of 88 ppb occurs in Stark County or an annual fourth-high monitored 8-hour ozone concentration of 85 ppb occurs in Allen County. A Warning Level Response will consist of

a study to determine whether the high ozone value indicates a trend toward higher ozone concentrations and/or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue. If so, the control measures necessary to reverse the trend will be selected by the State for evaluation and possible adoption. Implementation of necessary controls in response to a Warning Level Response triggering will occur as expeditiously as possible, but in no event later than 12 months from the conclusion of the most recent ozone season (September 30).

An Action Level Response will be triggered whenever a two-year averaged annual fourth-high monitored 8-hour ozone concentration of 85 ppb occurs within either of the maintenance areas or whenever a violation of the 8-hour ozone standard is actually monitored in either of the maintenance areas. An Action Level Response will also be triggered if a violation of the 8-hour ozone NAAQS is recorded in either Allen County or in Stark County after these two Counties are redesignated to attainment of the 8-hour ozone NAAQS. In the event that an Action Level Response is triggered and is not due to an exceptional event, malfunction, or noncompliance with a source permit condition or rule requirement, Ohio EPA will determine the additional emission control measures needed to assure future attainment of the ozone NAAQS. Emission control measures that can be implemented in a short time will be selected in order to be in place within 18 months from the close of the ozone season that prompted the Action Level Response. If a new emission control measure is already promulgated

and scheduled to be implemented at the Federal or State level and if that emission control measure is determined to be sufficient to address the ozone air quality problem, additional local measures may be unnecessary. Ohio EPA will submit to the EPA an analysis to demonstrate that the proposed emission control measures are adequate to reverse the upward trend in peak ozone concentrations and to maintain the 8-hour ozone standard in the subject maintenance area (the area in which the Action Level Response is triggered). The selection of emission control measures will be based on cost-effectiveness, emission reduction potential, economic and social considerations, or other factors that the Ohio EPA deems to be appropriate. Selected emission control measures will be subjected to public review and the State will seek public input prior to selecting new emission control measures. Finally, emission control measures that can be implemented in a short period of time will be selected so that they can be in place within 18 months from the close of the ozone season in which the Action Level Response is triggered.

The State's ozone maintenance plans list the following emission control measures as possible contingency measures:

- Low Reid vapor pressure gasoline;
- Tightening of RACT on existing sources covered by EPA Control Technique Guidelines issued in response to the 1990 Clean Air Act amendments;
- Application of RACT to smaller existing sources;
- One or more transportation control measures sufficient to achieve at least half of a percent reduction in actual area-wide VOC emissions. The transportation control measures to be considered include:
 - Trip reduction programs, including: employer-based transportation management plans; area-wide rideshare programs; work schedule changes; and telecommuting;
 - Traffic flow and transit improvements; and,
 - Other new or innovative transportation measures not yet in widespread use that affect state and local governments deemed appropriate;
 - Alternative fuel and diesel retrofit programs for fleet vehicle operations;
 - Controls on consumer products consistent with those adopted elsewhere in the United States;
 - Requirements for VOC or NO_x emission offsets for new and modified major sources;

- Requirements for VOC or NO_x emission offsets for new and modified minor sources;

- Increase of the ratio of emission offsets required for new sources; and,

- Requirements for VOC or NO_x emission controls on new minor sources (with emissions of less than 100 tons per year).

No contingency measures will be adopted and implemented without providing the opportunity for full public participation and comment in the contingency measure selection process.

A list of VOC and NO_x source types potentially subject to future emission controls include:

NO_x RACT:

- EGUs
- Asphalt batching plants
- Industrial/commercial and institutional boilers
- Process heaters
- Internal combustion engines
- Combustion turbines
- Other sources with NO_x emissions exceeding 100 tons per year

VOC RACT:

- Consumer products
- Architectural and industrial maintenance coatings
- Stage I gasoline dispensing facilities
- Automobile refinishing shops
- Cold cleaner degreasers
- Portable fuel containers
- Synthetic organic compound manufacturing
- Wood manufacturing
- Industrial wastewater
- Aerospace industry
- Ship building
- Bakeries
- Plastic parts coating
- Volatile organic liquid storage
- Industrial solvent cleaning
- Offset lithography
- Industrial surface coating
- Other VOC sources with emissions exceeding 50 tons per year

e. Provisions for a Future Update of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, the State commits to review the maintenance plans 8 years after redesignation of Allen and Stark Counties to attainment of the 8-hour ozone NAAQS and to submit revised maintenance plans extending the maintenance period for an additional 10 years. We find Ohio's ozone maintenance demonstration and contingency plan acceptable.

V. Has Ohio Adopted Acceptable Motor Vehicle Emissions Budgets for the End Year of the Ozone Maintenance Plans Which Can Be Used To Support Conformity Determinations?

A. What Are Motor Vehicle Emission Budgets and Are They Adequate?

Under the CAA, states are required to submit, at various times, SIP revisions and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard or revising existing ozone maintenance plans). These emission control SIP revisions (e.g. reasonable further progress and attainment demonstration SIP revisions), including ozone maintenance plans, must create MVEBs based on on-road mobile source 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 of the ozone NAAQS.

Under 40 CFR part 93, MVEBs for an area seeking a redesignation to attainment of the NAAQS are established for the last year of the maintenance plan (for the maintenance demonstration year). The MVEBs serve as ceilings on mobile source emissions from an area's planned transportation system and are used to test planned transportation system changes or projects to assure compliance with the emission limits assumed in the SIP. 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 MVEBs in the SIP and how to revise the MVEBs 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, trucks, and other on-roadway vehicles. Conformity to the SIP means that transportation activities will not cause new air quality standard 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 the roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA's policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must find that the MVEBs are

“adequate” for use in determining transportation conformity. Once EPA 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 SIPs as required by section 176(c) of the CAA. EPA’s substantive criteria for determining the adequacy of MVEBs are specified in 40 CFR 93.118(e)(4).

EPA’s process of determining adequacy of MVEBs consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEBs during a public comment period; and (3) making a 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 finalized in the Transportation Conformity Rule Amendments for the “New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous 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 Transportation Conformity Rule, in 40 CFR 93.118(f), provides for adequacy findings through two mechanisms. First, 40 CFR 93.118(f)(1) provides for posting a notice to the EPA conformity Web site at: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm> and providing a 30-day public comment period. Second, a mechanism is described in 40 CFR 93.118(f)(2) which provides that EPA can review the adequacy of an implementation plan submission simultaneously with its review of the implementation plan itself. We have opened the public comment period on the adequacy of the submitted MVEBs for Allen and Stark Counties at the adequacy review Web site.

The Allen County and Stark County ozone maintenance plans contain VOC and NO_x MVEBs for 2018. EPA has reviewed the submittal and the proposed VOC and NO_x MVEBs for Allen and Stark Counties, and finds that the MVEBs meet the adequacy criteria in the Transportation Conformity Rule. Any comments on the adequacy of the MVEBs should be noted through the adequacy review Web site.

B. What Is a Safety Margin?

A “safety margin” is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan for a future maintenance year. As noted in Tables 3 and 4 above, Allen County is projected to have a VOC safety margin of 3.04 tons per day and a NO_x safety margin of 5.20 tons per day in 2018, and Stark County is projected to have a VOC safety margin of 9.04 tons per day and a NO_x safety margin of 19.35 tons per day in 2018 (the differences between the 2004, attainment year, and 2018 VOC and NO_x emissions for all sources in these Counties).

C. Are the MVEBs Approvable?

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in Allen and Stark Counties because EPA has determined that the budgets are consistent with the control measures and future emissions projected in the SIP and that Allen and Stark Counties can maintain attainment of the 8-hour ozone NAAQS for the relevant required 10-year period with mobile source emissions at the levels of the MVEBs. Ohio EPA has determined the 2018 MVEBs for Allen County as 2.89 tons per day for VOC and 3.47 tons per day for NO_x and the 2018 MVEBs for Stark County as 5.37 tons per day for VOC and 7.08 tons per day for NO_x. These MVEBs exceed the on-road mobile source VOC and NO_x emissions projected by the Ohio EPA for 2018, but do match the on-road mobile source emissions for 2018 summarized in Tables 3 and 4 above. Through discussions with all organizations involved in transportation planning for Allen and Stark Counties, Ohio EPA decided to include 15 percent safety margins in the MVEBs to provide for mobile source growth not anticipated in the projected 2018 emissions. Ohio EPA has demonstrated that Allen and Stark Counties can maintain the 8-hour ozone NAAQS with mobile source emissions at the levels of the MVEBs since total source emissions with the increased mobile source emissions will remain under the attainment year levels.

The VOC and NO_x MVEBs for Allen and Stark Counties are approvable because they maintain the total emissions for Allen and Stark Counties at or below the attainment year emission inventory levels, as required by the transportation conformity regulations.

VI. What Are the Effects of EPA’s Proposed Actions?

Approval of the redesignation request would change the official designations of Allen and Stark Counties for the 8-hour ozone NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Final rulemaking approving the redesignation request would also incorporate into the Ohio SIP plans for maintaining the ozone NAAQS through 2018 in these areas. The maintenance plans include contingency measures to remedy possible future violations of the 8-hour ozone NAAQS, and establishes 2018 MVEBs for these Counties.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a “significant regulatory action” and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

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

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

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

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

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program

submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

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

Dated: December 19, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E6-22156 Filed 12-26-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2006-0841; FRL-8261-8]

Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the East St. Louis, IL Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 211(k)(6) of the Clean Air Act, the Administrator of EPA shall require the sale of reformulated gasoline (RFG) in an ozone nonattainment area upon the application of the Governor of the State in which the nonattainment area is located. This notice proposes to extend the Act's prohibition against the sale of conventional (i.e., non-reformulated) gasoline in RFG areas to the Illinois portion of the St. Louis, Missouri-Illinois 8-hour ozone nonattainment area hereafter referred to as the East St. Louis, Illinois nonattainment area. The Agency proposes to implement this prohibition on May 1, 2007, for all persons other than retailers and wholesale purchaser-consumers (i.e., refiners, importers, and distributors). For retailers and wholesale purchaser-consumers, EPA proposes to implement the prohibition on June 1, 2007. On June 1, 2007, the East St. Louis ozone nonattainment area would be a covered area for all purposes in the federal RFG program. EPA seeks comment on alternative implementation dates it could establish if unexpected delays in issuing the final rule render the proposed implementation dates impractical.

DATES: Comments on this proposed rule must be received in writing by January 26, 2007. To request a public hearing,

contact Kurt Gustafson at (202) 343-9219 or gustafson.kurt@epa.gov. If a hearing is requested no later than January 16, 2007, a hearing will be held at a time and place to be published in the **Federal Register**. Persons wishing to testify at a public hearing must contact Kurt Gustafson at (202) 343-9219, and submit copies of their testimony to the docket and to Kurt Gustafson at the addresses below, no later than 10 days prior to the hearing. After the hearing, the docket for this rulemaking will remain open for an additional 30 days to receive comments. If a hearing is held, EPA will publish a document in the **Federal Register** extending the comment period for 30 days after the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0841, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- **Mail:** Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2006-0841. Comments may also be e-mailed to a-and-r-docket@epamail.epa.gov. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0841. 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