the proposed rule located in the proposed rules section of this Federal Register. If a public hearing is requested, USEPA will publish a document announcing a public hearing and reopening the public comment period until 30 days after the public hearing. At the conclusion of this additional public comment period, USEPA will publish a final rule responding to the public comments received and announcing final action.

This action has been classified as a Table 3 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, former Acting Assistant Administrator for the Office of Air and Radiation. A July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for the Office of Air and Radiation explains that the authority to approve/disapprove SIPs has been delegated to the Regional Administrators for Table 3 actions. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the USEPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less then $100 million in any one year, the USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements.

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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any 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 the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: February 7, 1996.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, 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 O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(127) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(127) On October 21, 1993, and May 26, 1995, Illinois submitted volatile organic compound control regulations for incorporation in the Illinois State Implementation Plan for ozone.

(i) Incorporation by reference.

(A) Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 219: Organic Material Emissions Standards and Limitations for Metro East Area, Subpart PP: 219.920, 219.923, 219.927, 219.928; Subpart QQ: 219.940, 219.943, 219.947, 219.948; Subpart RR: 219.960, 219.963, 219.967, 219.968; Subpart TT: 219.980, 219.983, 219.987, 219.988; and Subpart UU. These Subparts were adopted on September 9, 1993, Amended at 17 Ill. Reg. 16918, effective September 27, 1993.

(B) Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 219: Organic Material Emissions Standards and Limitations for Metro East Area, Subpart PP: 219.926; Subpart QQ: 219.946; Subpart RR: 219.966; and Subpart TT: 219.986. These Subparts were adopted on April 20, 1995, Amended at 19 Ill. Reg. 6958, effective May 9, 1995.

[FR Doc. 96–11202 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[OH92–1 & OH79–3; FRL–5458–8]

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

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is determining that the Cleveland-Akron-Lorain (CAL) ozone nonattainment area (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit) has attained the public health-based National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of complete, quality-assured, ambient air monitoring data for the 1993 to 1995 ozone seasons that demonstrate that the ozone NAAQS has been attained in each of these areas. On the basis of this determination, USEPA is also determining that certain reasonable-further-progress (RFP) and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act (CAA) are not applicable to the Cleveland-Akron-Lorain area.

In another part of this rulemaking, the USEPA is approving the Ohio Environmental Protection Agency (OEPA) request to revise the official designation of the Cleveland-Akron-Lorain (CAL) area as an area that is meeting the ozone air quality standard. The USEPA is also approving the CAL area maintenance plan as a revision to Ohio's State Implementation Plan (SIP) for ozone. The purpose of the maintenance plan is to provide for continued good ozone air quality levels in the area over the next 10 years.

EFFECTIVE DATE: This final rule is effective on May 7, 1996.

ADDRESSES: Copies of the determination of attainment, redesignation requests, public comments on the rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone William Jones at (312) 886–6058, before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION ON THIS ACTION CONTACT: William Jones, Air Programs Branch, Regulation Development Section (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6058.

SUPPLEMENTARY INFORMATION:

Determination of Attainment

I. Background

Subpart 2 of Part D of Title I of the CAA contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. The USEPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). As described below, USEPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995, USEPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) of the CAA states that, for purposes of part D of Title I, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.'' Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and USEPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

The USEPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, USEPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.'' (See 57 FR at 13564)[2]

Second, with respect to the attainment demonstration requirements of Section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act.'' As with the RFP requirements, if an area has in fact monitored attainment of the standard, USEPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by USEPA in the General Preamble to Title I. As USEPA stated in the Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR at 13564; *see also* September 1992 Calcagni memorandum

[1] USEPA notes that paragraph (1) of subsection 182(b) is entitled ''PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS'' and that subparagraph (B) of paragraph 182(c)(2) is entitled ''REASONABLE FURTHER PROGRESS DEMONSTRATION,'' thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the ''requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard'') (hereinafter referred to as ''September 1992 Calcagni memorandum'').

at page 6). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under Section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of section 172(c)(9) of the Act. The USEPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6).

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant USEPA guidance and recorded in USEPA's—Aerometric Information Retrieval System (AIRS).

The determinations made in this notice do not shield an area from future USEPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, any other States with respect to the NAAQS (see section 110(a)(2)(D)). The USEPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the Act to require such emission reductions if necessary and appropriate to deal with transport situations.

Analysis of Air Quality Data

The USEPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) for the Cleveland-Akron-Lorain ozone nonattainment area in Ohio from the 1992 through 1995 ozone seasons. The following ozone exceedances were recorded for the period from 1993 to 1995 (and the average number of expected exceedances for this three-year period is also presented):

Cleveland-Akron-Lorain: Medina County, 6364 Deerview Lane (1994)—0.127 parts per million (ppm); average expected exceedances: 0.3. Cuyahoga County, 891 E. 152 St. (1993)—0.126 ppm, (1994) 0.127 ppm and 0.125 ppm; average expected exceedances: 1.0. Data for 1995 shows no new exceedances of the ozone NAAQS were monitored in the Cleveland-Akron-Lorain area.

On the basis of this review, USEPA determines that the area has attained the ozone standard during the 1993–95 period, which is the most recent three-year time period of air quality monitoring data, and therefore are not required to submit a 15% emissions reduction plan, attainment demonstration, and a section 172(c)(9) contingency measure plan. See the June 29, 1995, proposed rulemaking published in the Federal Register at 60 FR 31433.

Public Comment/USEPA Response

These are the comments and responses that relate to the determination of attainment for the Cleveland-Akron-Lorain area. Comments that were received in support of the determination are not summarized below; only the adverse comments are summarized and responses are provided to these comments. No further action will be taken on the determination of attainment for the Dayton and Toledo areas since those areas have already been redesignated to attainment. In a later part of this rulemaking comments and responses are provided on the ozone redesignation request for the CAL area. Because of the potential for overlap of comments received on the issue of the determination of attainment and the redesignation, USEPA hereby incorporates by reference the responses contained in the section below on redesignation to the extent that they bear on the issues involved in the determination of attainment, and vice versa. To the extent that comments can be construed to bear on both rulemaking actions, responses should be construed to pertain to both.

(1) Comment: The determination action has been inappropriately segregated from the section 110(a)(2)(D) petition submitted by the State of New York which requested the Federal government to assess the implementation plans of upwind states to determine their contribution to nonattainment in the State of New York. Regional Oxidant Modeling indicates that areas to the west of the State of New York, including the State of Ohio, contribute to violations of the ozone NAAQS in the northeast United States, including the State of New York. Therefore these areas should continue to meet the statutory reasonable further progress requirements set forth in the Clean Air Act, at least until the State of New York's section 110(a)(2)(D) request has been acted on.

(1) Response: The issue of transported emissions is not relevant to this rulemaking action. The purpose of the requirements of section 182(b)(1) concerning reasonable further progress and attainment demonstration and the contingency measure requirements of section 172(c)(9) as they apply to CAL is not to address emissions from that area that may cause or contribute to air quality problems in downwind areas. The purpose of those requirements as they apply to CAL is to achieve attainment of the standard in that area. The issue of transported emissions is dealt with by other provisions of the Act, provisions that are not the subject of this rulemaking action. USEPA has authority, and the state has an obligation, under section 110(a)(2)(A) (in the case of intrastate areas) and section 110(a)(2)(D) (in the case of interstate areas), to address transported emissions from upwind areas that significantly contribute to air quality problems in downwind areas. The determination being made in this rulemaking is that, as CAL has attained the ozone standard, certain additional Act requirements whose purpose is to achieve attainment in the area do not apply to them. That determination does not mean that the area might not have to achieve additional reductions pursuant to other provisions of the Act if it is determined in the future that such reductions are necessary to deal with transport from the CAL area to downwind areas.

Currently, the issue of transported ozone and ozone precursors is being addressed by the Ozone Transport Assessment Group (OTAG) which is composed of Industry, Environmental Groups, Federal Government, State Governments (including the State of Ohio), and Local Governments from the Midwest and Eastern Regions. OTAG is performing ozone modeling to determine how ozone transport can be addressed on a regional basis. After this assessment is completed, The United States Environmental Protection Agency (USEPA) anticipates using its authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the Act to require emissions reductions where appropriate based on this assessment and any other relevant information.

(2) Comment: The determination of attainment fails to meet the purpose, intent and spirit of the Clean Air Act by not protecting and enhancing the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population. The ozone standard has been shown to be inadequate to protect public health. The American Lung

Association has provided ample evidence and new studies continue to confirm this. It is very clear to many people living here that the air is polluted and adversely affecting people's health. Furthermore, no one has demonstrated that the bad air and high pollution levels in Ohio's nonattainment areas are not adversely affecting the health of those downwind.

(2) Response: The determination of attainment is based on ozone monitoring data collected in the Cleveland-Akron-Lorain area. These data continue to show that the area has attained the standard. In a separate part of this rulemaking the ozone redesignation request is discussed. This request contains a maintenance plan which will provide for continued maintenance of the standard into the future. The maintenance plan is unaffected by the determination of attainment that finds that the 15% plan, attainment demonstration, and section 172(c)(9) contingency measures are no longer required.

USEPA is also reviewing the current ozone standard to see whether it should be revised in order to better protect the public health. Until the current NAAQS is revised, the current NAAQS of .12 parts per million is the appropriate standard against which to assess plans and measure attainment.

(3) Comment: The piecemeal approach which USEPA is taking to ozone attainment and redesignation is promoting backsliding and encouraging doing the least possible to protect public health and actually clean up the air. A holistic approach to solving environmental problems is always needed. This is no exception. Reviewing emissions inventories in one rulemaking, NO_X in another, the SIP in another, Reasonable Further Progress in another, transportation modeling in another, etc. is a methodology which effectively puts blinders on and prevents complete analysis of interdependence aspects. Furthermore this piecemeal approach is an out-of-sequence, illogical process.

USEPA must first determine if attainment has been reached in accordance with the Clean Air Act's redesignation criteria given in section 107. Without ascertaining that attainment has actually been reached it is premature to alleviate the requirements for further controls or Reasonable Further Progress. It appears that USEPA is only applying the first redesignation requirement that the area has attained the NAAQS and ignoring the other requirements for redesignation and proceeding to relax the standards.

(3) Response: Nothing requires that all of the SIP revisions submitted by the State be reviewed together. The CAA has differing submittal dates for the SIPs and requires USEPA to act on each within a specific time period of its submittal. This would probably not allow adequate time for USEPA to process all of the submittals at once, given that some of the submittals were submitted years apart from each other. Where possible USEPA has sought to consolidate responses to submittals but the CAA is not always conducive to this approach. The determination of attainment is not the same as a redesignation to attainment, and therefore the requirements of section 107, which apply to redesignations to attainment are not applicable. See also the response to comments below. The determination of attainment is only based on the area's ozone monitoring data. USEPA has decided to address the determination of attainment and the State's ozone redesignation request for Cleveland-Akron-Lorain together in this Federal Register action. This rulemaking does not circumvent the redesignation requirements. See the discussion in the redesignation rulemaking, below, and in USEPA's Responses to Comments in its Determination of Attainment of Ozone Standard for Salt Lake and Davis Counties, Utah 60 FR 36723 (July 18, 1995). USEPA in this portion of the rulemaking, its determination of attainment, is simply making a factual determination that since CAL is attaining the standard, certain provisions of the CAA, whose express purpose is to achieve attainment of the standard, do not require SIP revisions. In the redesignation portion of this rulemaking, USEPA explains its basis for concluding that CAL has met the requirements of section 107 for redesignation to attainment.

With respect to the determination of attainment, USEPA set forth in the June 29, 1995 notices on CAL its basis for interpreting certain CAA requirements as inapplicable to an area that is attaining the ozone standard.

This interpretation is consistent with USEPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (''General Preamble''), 57 FR 13,498 (April 16, 1992), which directly addressed requirements for redesignations. *Id.* at 13,561–64. USEPA interpreted the general reasonable further progress requirement and contingency measures as not applying to redesignation requests because an area must have attained the standard before it could be redesignated to attainment, making reasonable further progress and contingency measures, unnecessary.

USEPA's May 10 memorandum set forth USEPA's interpretation of the requirements of CAA sections 172(c)(9) and 182(b)(1)(A), with respect to ozone nonattainment areas that have achieved the ozone NAAQS. USEPA explained that because the purpose of those requirements has already been fulfilled for areas that have attained the standard, the requirements do not apply to those areas for as long as they stay in attainment. It further explained that this interpretation is consistent with USEPA's interpretation of the general reasonable further progress requirements and section 172(c)(9) contingency measure requirements with respect to redesignation requests as set forth in its General Preamble, and with related USEPA guidance on the procedures to be used when USEPA is processing redesignation requests.

USEPA has concluded that Congress included the 15 percent plan as a specification of ''reasonable further progress''. Section 182(b)(1) is entitled ''Plan provisions for reasonable further progress.'' The heading's reference to ''reasonable further progress'' indicates Congress' overall intent in enacting the provision. The term ''reasonable further progress'' is defined as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by (USEPA) for the purpose of ensuring attainment of the applicable (NAAQS) by the applicable date.'' 42 U.S.C. section 7501(l). This definition applies for ''the purposes of * * * part'' D of Title I of the CAA, which includes section 182(b). *Id.* Thus, the term ''reasonable further progress'' requires only such reductions in emissions as are necessary to attain the NAAQS by the attainment date and no more. 42 U.S.C. section 7501(l). Accordingly, USEPA has interpreted section 182(b)(1)(A)(I) consistent with the statutory definition of ''reasonable further progress'' and with section 182(b)(1)(A)(I)'s express purpose of assuring progress to bring violating areas into attainment. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and USEPA does not believe that the area need submit revisions providing for the further emissions reductions described in section 182(b)(1).

The legislative history expressly supports USEPA's interpretation of section 182(b)(1)(A)(I). In describing the 15 percent plan, the House Report stated:

The emissions reductions called for in this subsection * * * provide a concrete translation of how much an area must do to achieve ''reasonable further progress'' toward attainment of the standards, as required in section 172 and defined in section 171. Areas that fail, as determined by USEPA, to achieve reasonable further progress are in violation of the Act.

H.R. Rep. no. 490, 101st Cong., 2d Sess., pt. 1 (1990) at 236. Thus, Congress contemplated that the requirements of section 182(b)(1)(A)(I) were simply a specification of the more general reasonable further progress requirements of the Act, with the same goals and definition.

Moreover, USEPA's interpretation of the requirements of section 182(b)(1)(A)(I) is consistent with its interpretation of the general reasonable further progress requirements of CAA section 172.

USEPA has also determined that section 172 (c)(9), 42 U.S.C. section 7502(c)(9) does not require a contingency measures plan for an area such as CAL, which has attained the standard. The contingency measures plan is required for an area which ''fails to make reasonable further progress, or to attain the (NAAQS) by the attainment date * * *'' 42 U.S.C. section 7502(c)(9). If, as USEPA has determined with respect to CAL, an area has already attained the standard, then by definition such an area is not one to which contingency measures apply. There simply is no failure to attain or make progress for which additional measures need be contingent. However, as with section 182(b)(1)(A)(I), USEPA interprets section 172(c)(9)'s requirements to be applicable to areas that lapse back into violation prior to redesignation, and which therefore need additional progress toward attainment. Moreover, USEPA's interpretation of 172(c)(9) is consistent with its interpretation of these requirements in the context of redesignation requests. 57 FR 13564. USEPA's interpretation also vindicates the policy objective of reducing the burden on states and sources of adopting and implementing additional control measures that are not necessary to attain the standard.

(4) Comment: The number of ''close calls'' and the use of voluntary measures to reduce ozone raises real questions about the overall air quality. Modeling would answer some of these questions and give a truer picture of what the air is really like. Some initial analysis of the weather patterns in 1995 indicates that they may be similar to 1988, a supposedly ''unusually hot, dry summer'' when numerous exceedances were recorded. In fact, the weather in Ohio in 1988 or thus far in 1995 is not all that unusual. Even higher temperature have been recorded. It can be expected that there will be more exceedances, unless there are reductions in ozone precursor emissions.

USEPA policy (September 4, 1992, procedures for processing requests to redesignate areas to attainment, from John Calcagni) states that data from the monitors be from areas of highest concentration and that modeling may be necessary to determine the representativeness of the monitor data.

(4) Response: While voluntary measures were used in Cleveland during the summer of 1995 to involve the community in keeping their air clean, the Ohio Environmental Protection Agency (OEPA) did not claim that this measure was responsible for the Cleveland area attaining the NAAQS. Ohio's request claimed that the improvement in air quality was due to permanent and enforceable measures, namely the Federal Motor Vehicle Emissions Control Program and the Federal fuel volatility requirements that reduced the emissions from gasoline. In addition, the basic automobile inspection and maintenance program, required as a part of the carbon monoxide SIP, would also have provided volatile organic compound (VOC), and oxide of nitrogen (NOx) emissions reductions in the area, as a side benefit. These measures resulted in the area's VOC emissions decreasing by about 14 percent from 1990 to 1994, enabling the area to reach attainment of the ozone NAAQS.

USEPA policy on the determination of attainment is provided in a May 10, 1995, memorandum from John S. Seitz, Director of the Office of Air Quality Planning and Standards. This memorandum sets forth USEPA's interpretation of certain requirements of subpart 2 of part D of title I of the Clean Air Act as they relate to ozone nonattainment areas that are meeting the ozone NAAQS. The USEPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with the related requirements, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is in fact attaining the ozone standard (i.e., attainment of the NAAQS is demonstrated with 3 consecutive years of complete, quality-assured air quality monitoring data). The USEPA has previously interpreted the general provisions of subpart 1 of part D of title I (section 171 and 172) so as not to require the submissions of SIP revisions concerning RFP, attainment demonstrations, or contingency measures, and USEPA believes it is appropriate to interpret the ozone-specific provisions of subpart 2 in the same manner. This is further discussed under section I covering the background on the determination of attainment.

The determination of attainment is based only on ozone monitoring data for the area. The data for at least the last four years show that the area has achieved attainment. We believe that the monitoring data is adequate and representative of the area and that modeling is not necessary to show attainment. These data show that the area is in attainment and the monitoring data for 1995 show that no exceedances were monitored in the entire Cleveland-Akron-Lorain area. This shows that the provisions related to submitting a SIP revision to bring an area into attainment of the ozone NAAQS, such as the attainment demonstration, RFP, and contingency measures requirements are not necessary since the area is already in attainment of the ozone NAAQS.

The weather in 1995 was more conducive toward forming ozone in many parts of the Country. Even though this was the case no exceedances were monitored at any of the monitors in the CAL area showing that the area has reduced its emissions to a level that has brought the CAL area into attainment of the ozone NAAQS.

(5) Comment: The Southwestern Pennsylvania Growth Alliance (Growth Alliance) is concerned that the redesignation of the Cleveland-Akron-Lorain area could adversely affect both the economy and air quality in southwestern Pennsylvania, and it feels that action on the applications from these regions should be suspended until a more comprehensive national solution to interstate transport of ozone and ozone precursors is developed and implemented. The Growth Alliance believes that Southwestern Pennsylvania is being unfairly disadvantaged compared to neighboring states by the requirements created by the Clean Air Act, by USEPA, and by the Northeast Ozone Transport Commission.

(5) Response: USEPA's proposed action to determine that the Cleveland-Akron-Lorain area has reached attainment and that it is not necessary for it to have an attainment demonstration, 15% rate of reduction plan, and a contingency plan is different from redesignating the Cleveland-Akron-Lorain area as an attainment area for ozone. In order for USEPA to make a determination concerning the 15% plan and other requirements, it is only necessary to show that the area has attained the ozone standard through

monitoring data. In order to be redesignated from nonattainment to attainment the area must meet the five redesignation requirements of section 107 of the CAA. One of the five redesignation requirements is that the area have met all of the SIP requirements applicable to the area. A determination of attainment renders some of those requirements as inapplicable, based on the area attaining the standard, but the area would still have to meet the remaining applicable SIP requirements before it could satisfy part of the requirements for redesignation. The ozone redesignation request for Cleveland-Akron-Lorain is being addressed in a separate part of this same Federal Register action. A discussion of the comments and responses received on the redesignation is given in that part of this action. In order for the CAL area to be redesignated from nonattainment to attainment it would have to meet all of the applicable redesignation requirements. If an area meets the criteria for redesignation nothing in the CAA suggests that redesignations should be delayed. Any issue regarding transport of ozone and its precursors can and is expected to be dealt with through the Ozone Transport and Assessment Group (OTAG) and USEPA's authority under section 110 (a)(2)(A) and (a)(2)(D) of the Act. See also Response to comment 2.

Determination Conclusion

The USEPA has determined that the Cleveland-Akron-Lorain (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit) has attained the ozone standard and continues to attain the standard at this time.

As a consequence of this determination that the Cleveland-Akron-Lorain ozone nonattainment area has attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the Cleveland-Akron-Lorain area. Additionally since this determination is occurring simultaneously with the ozone redesignation to attainment, the determination will not be revoked in the event of a violation. Rather, in the event of a violation, the contingency measures in the approved maintenance plan would be triggered by a violation.

Ozone Redesignation Request

I. Background

On November 14, 1994, the OEPA submitted to the USEPA a request for redesignation to attainment for ozone for the CAL area of Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage. Additional information on the State public hearing and response to comments was submitted to USEPA on February 22, 1995. The redesignation requests were supported by technical information demonstrating that the requirements of section 107(d)(3)(E) of the Clean Air Act Amendments (CAAA) were met. On June 15, 1995, a notice was published in the Federal Register (60 FR 31433) which proposed approval of the redesignation requests to attainment for ozone and the maintenance plans for the Ohio CAL moderate ozone nonattainment area counties.

II. Summary of Proposed Rulemaking

The proposed rulemaking detailed how the State submittal fulfilled the redesignation requirements of the CAAA. Specifically, section 107(d)(3)(E) provides for redesignation if: (i) The Administrator determines that the area has attained the National Ambient Air Quality Standards (NAAQS); (ii) The Administrator has fully approved the applicable implementation plan for the area under section 110(k); (iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175(A); and (v) the State containing such area has met all requirements applicable to the area under section 110 and Part D.

Included in the State submittal was a maintenance plan. A component of the maintenance plan is the maintenance demonstration which shows that the level of emissions projected out 10 years will not exceed the attainment year inventory. The proposed rulemaking presented summary tables of Volatile Organic Compounds (VOC) emissions, and NO_X emissions projections for the CAL area counties. The OEPA has revised the base year and projected year inventories numbers in response to comments made by Region 5. The VOC and NO_X point source emissions projections for the year 2000 were estimated by USEPA based on an average growth rate for the 1996 to 2006 period. These estimates show that the total emissions in the area are expected to remain below the attainment level of emissions. In addition, the NO_X point source emission projections do not account for emission reductions due to the Title IV Acid Rain requirements of the CAA, which would further reduce NO_X emissions in the area. The changes did not affect the State's ability to demonstrate maintenance. The revised tables are presented below.

SUMMARY OF VOC EMISSIONS

[Tons/day]

	1990 base	1993 attain	1996 projected	2000 projected	2006 projected
Point	82.22	75.75	78.55	82.44	88.63
Area	201.05	201.37	201.45	201.63	200.86
Mobile	248.4	181.4	131.2	78.4	48.8
Totals	531.7	458.5	411.2	362.5	338.3

SUMMARY OF NO_X EMISSIONS

[Tons/day]

	1990 base	1993 attain	1996 projected	2000 projected	2006 projected
Point	245.59	254.61	263.91	277.05	298.00

SUMMARY OF NO_X EMISSIONS—Continued

[Tons/day]

	1990 base	1993 attain	1996 projected	2000 projected	2006 projected
Area	80.46	80.56	80.51	80.61	80.18
Mobile	176.6	159.9	142.2	95.5	75.4
Totals	502.6	495.1	486.6	453.2	453.6

Additionally, the VOC and NO_X emissions projected for the year 2006 in the above tables are considered emission budgets for purposes of transportation conformity.

The proposal stated that final approval of the CAL moderate nonattainment area counties was contingent upon final approval of VOC reasonably available control technology (RACT) rules, the 1990 Base-year inventory, the section 182(f) NO_X waiver request, the 182(b)(1) reasonable further progress plan (15% plan), the 182(b)(4) inspection and maintenance plan, the attainment demonstration, and the 172(c)(9) contingency measures. All of these requirements have either been met through full approval of state submittals or have been determined in this rulemaking to be no longer applicable. The final approval of most of the VOC RACT rules were published on March 23, 1995 (60 FR 15235), and became effective on May 22, 1995. Final approval of RACT rules for major stationary sources not specifically covered by a USEPA Control Technique Guideline for RACT became effective on October 31, 1995, in a letter notice action from Regional Administrator Adamkus to the individual companies. A formal announcement of this was made in the Federal Register. The Base-year inventories were approved on December 7, 1995 (60 FR 62737) and effective on January 8, 1996. The NO_X waiver request was approved on July 13, 1995 (60 FR 36051) and became effective on August 14, 1995. The I/M plan was approved on April 4, 1995 (60 FR 16989) and became effective on June 3, 1995.

A May 10, 1995, memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'', states that upon a determination made by USEPA that an area has attained the NAAQS for ozone, that area need not submit SIP revisions concerning reasonable further progress (15%) plan, 182(b)(1) attainment demonstrations, and 172(c)(9) contingency measures for as long as the area continues to meet the standard. Such a determination is made for the CAL area in a separate part of this rulemaking. Consequently, final approval of the redesignation request for the CAL counties of Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit, and Portage is no longer dependent upon approval of the 15% plan, attainment demonstration, or section 172(c)(9) contingency measures.

Public Comment/USEPA Response

In response to the request for written comments on the proposed rulemaking, USEPA received about 50 comment letters. Letters were received from concerned citizens, environmental groups, and industry. Over 30 of these letters were adverse comments on the propose rulemaking. The remaining comments were in support of the proposed rule. The following summarizes the adverse comments received and responds to them. The comments in support of the rule are not summarized below, but are available for public review in USEPA's docket. In an earlier part of this rulemaking comments and responses are provided on the determination of attainment for the CAL area. To the extent that any comments under the determination section also apply to the ozone redesignation action for the CAL area they are also incorporated into the comments/responses under this section covering the ozone redesignation action for the CAL area.

(1) Comment: Many of the commenters are opposed to the redesignation of the Cleveland-Akron-Lorain area to attainment on the grounds that they believe that more stringent emission control requirements and sanctions are needed to avoid unsafe pollution levels. These commenters believe that the benefits of health and environmental improvements to be achieved through stricter standards outweigh the increased costs of emission controls on industry and on the public. Several commenters state that the ozone standard itself should be tightened, expressing concerns over long term health impacts, impacts on children and the elderly, and impacts on smog levels still visible in the area.

(1) Response: The NAAQS were established to protect the public's health and welfare with an adequate margin of safety. Although additional reductions in VOCs may provide further health improvements, it is noted that the issue here is attainment of the ozone standard. The State of Ohio has met the requirements for the redesignation of the Cleveland-Akron-Lorain area to attainment of the ozone standard, including attainment of the ozone NAAQS. It is not clear that further reduction in ozone levels will provide significant health improvements.

With regard to a revised ozone standard, it should be noted that the USEPA along with States and science advisors, is the process of reconsidering the ozone standard. If the ozone standard is revised a number of ozone attainment and nonattainment areas may be affected. A redesignation of Cleveland-Akron-Lorain to attainment at this time will not prevent this area from being redesignated to nonattainment if it is subsequently found to be in violation of a revised ozone standard. Until the NAAQS is revised, however, the 0.12 ppm NAAQS for ozone is the only appropriate standard against which to judge attainment.

(2) Comment: People in the Cleveland-Akron-Lorain area suffer from sinus problems, and increased occurrence of asthma and other life-threatening respiratory illnesses that are directly attributable to air pollution. The air is often oppressive and really unbreathable, especially in the kind of hot, humid weather that the area has experienced this summer. Infants and the elderly are affected by the higher tolerance of ozone levels now in force. We see people who become ill from polluted air whenever the ozone level rises. The current ozone standard is not health based. We want to breathe cleaner air. We are opposed to the redesignation of Cleveland-Akron-Lorain because of the asthma epidemic and increasing number of asthma deaths. The pervasiveness of the health threat posed far outweighs the inhibition of industrial expansion and limits on smokestack pollution.

(2) Response: The current ozone standard is a health based standard. It was recently reviewed and reaffirmed, see 58 FR 13008 (March 9, 1995). However, the ozone NAAQS is currently being reviewed to see if the standard should be changed and what the new standard would be, see 59 FR 5164 (February 3, 1994). A staff report was recently released that discusses this review of the ozone NAAQS. But unless and until the ozone NAAQS is changed - it remains the standard to use for comparison against ozone monitoring data in the area. Those data indicates attainment of the ozone standard.

(3) Comment: In Cleveland-Akron-Lorain the air smells. There are also foul odors coming from factories during the early morning hours that are waking us up and making us nauseated.

(3) Response: At the Federal level the Clean Air Act (CAA) does not provide specific requirements for companies to control odors. Odor is not an issue pertinent to the ozone standard or the attainment of that standard. We have, however, made our enforcement group aware of these complaints to see what can be done. Further, existing facilities must continue to operate existing air pollution control equipment in accordance with applicable rules, regulations and permits, and sources that are problematic in terms of posing a nuisance to area residents may be referred to the State and local environmental enforcement staff for investigation.

(4) Comment: Several commenters expressed concern that trucks and buses pollute the air by blowing out black smoke and that cleaning up emissions from cars is not sufficient.

(4) Response: The USEPA agrees that cleaning up emissions from cars is not enough. Trucks and buses also produce significant pollution. The USEPA has set stringent standards for new heavy duty diesel engines beginning with the 1988 model year, with additional improvements to be made with the 1991 and 1994 model year engines. The black smoke from diesel trucks and buses is particulate matter which is a visible air pollutant. Trucks and buses also contribute to ozone air pollution because they produce hydrocarbons and NO_X. The NO_X emission standard has been tightened from 10.7 grams per brake horsepower per hour (g/bhp-hr) in 1985 to 6.0 in 1988 and 5.0 in 1991. The hydrocarbon emission rate for diesel engines is set at 1.3 g/bhp-hr. Particulate emission standards have been tightened from 0.60 g/bhp-hr in 1988 to 0.10 g/bhp-hr in 1994 for all new heavy duty engines. As the older trucks and buses are replaced by the newer, cleaner engines the pollution from these vehicles will be significantly reduced.

In October 1993, the USEPA required the use of a cleaner diesel fuel throughout the country. Diesel fuel used in on-highway compression ignition engines contains less sulphur than earlier fuels. Lower sulphur reduces the amount of indirect particulate and improves the operation of new diesel engines using particulate trap oxidizers to control direct particulate emissions. It is estimated that the use of low-sulphur diesel fuel reduces direct and indirect particulate by approximately 28 percent from the baseline fuel. Air quality impacts of fuel controls are projected to reduce particulate by 2.3 to 8.3 micrograms per cubic meter and sulphur dioxide by 7 to 16 micrograms per cubic meter in a metropolitan area the size of Cleveland-Akron-Lorain.

The State of Ohio will implement its inspection and maintenance (I/M) program beginning in 1996. The authorizing State legislation for the I/M program requires the testing of diesel powered vehicles up to 10,000 pounds for opacity (smoke). Buses are also required to meet emission standards for smoke, hydrocarbons and carbon monoxide.

The reductions in hydrocarbon, and NO_X emissions from trucks and buses will contribute to maintaining the ozone standard and protecting the public's health. Particulate issues are separate from ozone issues and are not relevant for consideration here. While the standards for particulate emissions will greatly reduce the amount of smoke emitted from trucks and busses, it is not expected to have a significant effect on ozone levels and as a result is not pertinent to an ozone redesignation request.

(5) Comment: Several commenters have expressed confusion over the relationship between the proposed redesignation and the protection of the ''ozone layer.'' One commenter in particular requests that the USEPA explain the ''whole ozone picture.''

(5) Response: At the very outset of this response, it must be noted that ''ozone'' referred to in the proposed redesignation is chemically identical to the ''ozone'' referred to in the term ''ozone layer.'' In both situations ozone refers to a gas composed of molecules with three oxygen atoms each.

In the case of the ''ozone layer'', one is referring to the layer of the Earth's stratosphere where ozone is found in relatively high concentrations. Ozone in this layer is formed through the reaction of oxygen molecules (two oxygen atoms each) and high energy electromagnetic radiation from the Sun. Oxygen atoms are freed when oxygen molecules are impacted by the high energy radiation. Some of these freed oxygen atoms combine with oxygen molecules to form ozone molecules. Within this layer of the atmosphere, ozone is a significant absorber of high energy ultraviolet radiation from the Sun. If this ultraviolet radiation reached the surface of the earth in sufficient intensity, significant, undesirable biological damage could result to surface organisms. Concerns over potential damage to the protective ozone layer has led to efforts to reduce the emissions of gasses which are believed to directly or indirectly eliminate ozone molecules.

In the case of the proposed of Cleveland-Akron-Lorain, one is dealing with ozone found in the lowest levels of the atmosphere. At this level of the atmosphere, high ozone levels are not typically found (natural processes can lead to peak ozone levels of 0.04 to 0.06 parts per million, well below the ozone standard of 0.12 parts per million). Man-made (anthropogenic) emissions of volatile organic compounds, oxides of nitrogen, and other gases, in the presence of sunlight and relatively warm temperatures, can lead to ozone formation of considerably higher concentrations. This chemical formation process involves hundreds of chemical reactions and differs significantly from the process that forms ozone in the stratosphere. There is no significant exchange of ozone between the lower atmosphere, where high ozone levels are undesirable, and the stratosphere, where high ozone levels are desirable for the protection of life on earth.

Ozone concentrations in excess of the ozone standard are shown, based on numerous health studies and correlation of health data and monitored ozone concentrations, to be damaging to human health, particularly causing problems with the human respiratory system. For this reason, ozone has been listed as a primary pollutant with a defined health-based standard.

(6) Comment: The air quality in Cleveland-Akron-Lorain is lousy and there has been no improvement in the quality of our air. If anything, I would say things are worse.

(6) Response: With respect to ozone levels in the CAL, the air quality has improved significantly since the late 1980's. During 1988 there were a number of monitored readings above .150 parts per million in the area. During the last four years the highest concentration monitored was .127 ppm. CAL achieved attainment of the ozone standard at the end of 1994, by monitoring attainment of the ozone NAAQS during the three previous years

(which are 1992, 1993, and 1994). The area continued to attain the standard since that time.

Section 107(d)(3)(E)(iii) requires that, for the USEPA to approve a redesignation, it must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions. The September Calcagni memorandum, at page 4, clarifies this requirement by stating that ''[a]ttainment resulting from temporary reductions in emission rates (e.g., reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.'' As discussed in the June 15, 1995 Federal Register proposed rulemaking, the State of Ohio demonstrated that permanent and enforceable emission reductions are responsible for the recent improvement in air quality. This demonstration was accomplished through an estimate of the reductions (from 1990 to 1993) of VOC achieved through Federal measures such as the Federal Motor Vehicle Emissions Control Program (FMVECP) and fuel volatility rules implemented from 1990–1993, as suggested by the September Calcagni memorandum.

Volatile Organic Compound (VOC) emissions are one of the precursors that help to form ozone. The total emission reductions achieved from 1990 to 1993 were 65 tons of VOC per day. This is a 14 percent reduction in VOCs, which corresponds to the drop in ozone concentrations in the area. These emission reductions were primarily the result of the FMVECP, Automobile Inspection and Maintenance program, and Gasoline Reid Vapor Pressure (RVP) reductions from 10.5 pounds per square inch (psi) in 1989, to 9.0 psi in 1992. The VOC emissions are expected to continue to decrease in the future due to the Federal Motor Vehicle Emissions Control Program, Stage II vapor recovery program, and the Enhanced Automobile Inspection and Maintenance Program. The NO_X emissions are also expected to decrease in the future due to the Federal Motor Vehicle Emissions Control Program and the Enhanced Automobile Inspection and Maintenance Program.

(7) Comment: I am sure you are being bombarded with requests to change the designation to attainment, on the grounds that the region will be hurt economically if this is not done. To me, such arguments ignore two fundamental points. First, there is not evidence that stricter environmental regulations hurt the economy. A clean environment does not mean less jobs, it can mean more jobs. In fact, there is evidence that indicates the opposite. Second, even if this is true, we would be selling our health, and the health of our world and our children, for economic benefit. This does not seem a good trade. There is entirely too much emphasis on business economic considerations over health considerations. The cost to industry may be high, but what about the cost to pay for increased health problems? Air pollution results in hundreds of thousands of dollars worth of asthma illnesses and deaths each week. This should be spent on pollution controls instead.

It would be reprehensible if the agency charged with the protection of health and the environment capitulated to vested, self-serving interests that place the almighty dollar ahead of human health and welfare. The redesignation request should not be approved.

(7) Response: The approval of the ozone redesignation request for Cleveland-Akron-Lorain is based on the area meeting the five requirements of section 107 of the CAA. It is not based on economic grounds. The first of the five requirements of section 107 is that the area has attained the National Ambient Air Quality Standard for ozone, which it has. The NAAQS for ozone is set at a level designed to protect the public's health and monitoring data show that the area is meeting the standard.

(8) Comment: One commenter, although not expressing opposition to the proposed redesignation, does express opposition to the approach used in the Cleveland-Akron-Lorain area of trying to get the public to reduce emissions only during critical high ozone potential periods. The commenter favors a permanent curtailment of emissions so that people with related health risks, such as asthma, will not have to seek the shelter of air-conditioned places during such periods.

(8) Response: It is agreed that, where possible, permanent emission controls should be implemented to minimize ozone levels and to attain the ozone standard. It should be recognized that many permanent emission controls, such as reasonably available control technology, transportation control measures, and vehicle inspection/maintenance, have been implemented in the Cleveland-Akron-Lorain area. The maintenance plan takes into account that these emission controls will be maintained despite the redesignation of the area as an area in attainment of the ozone standard. The permanent and enforceable emissions reductions are discussed under comment number six, and in comment 4 in the determination of attainment section.

(9) Comment: A number of commenters believed the air monitoring in the area was inadequate. Several concerns were noted: Commenters stated that there is presently insufficient monitoring both in terms of what is monitored and the number of monitoring stations (specifically, a lack of ozone monitoring in Geauga County was cited by several commenters).

(9) Response: The requirements for ambient air quality monitoring are detailed in 40 CFR part 58. The federal requirements include: The use of approved air monitoring equipment; quality assurance of monitoring data; appropriate network design; operating schedule; and siting of individual monitors. In determining attainment or nonattainment status of an area for the NAAQS for ozone, only air monitors sampling for ozone are relevant. Monitoring for precursors of ozone (such as VOC_S and NO_X) can be beneficial in understanding ozone formation. For determining the air quality concentrations of ozone in an area and determining attainment of the ozone standard, ambient ozone monitors are considered.

The Cleveland-Akron-Lorain ozone monitoring network consists of ten ambient ozone monitors: three in Cuyahoga County, two in Lake County, and one each in Ashtabula, Lorain, Medina, Portage and Summit Counties. The monitoring network is reviewed by the USEPA. The individual monitoring sites meet the federal monitoring requirements. The commenters are correct in noting that Geauga County is downwind of the urban area and in a location that would be expected to receive high ozone concentrations. However, the USEPA believes that decisions on the air quality can be made with the current network because the monitors cover an adequate geographic area to be representative of the nonattainment area. Ozone monitors are located in every county that is contiguous to Geauga County. All of these monitors are in attainment of the ozone NAAQS, including Lake County which is also downwind of the main urban area and would be expected to have similar air quality to Geauga County. Based on this USEPA believes that Geauga County is also in attainment of the ozone NAAQS.

(10) Comment: One commenter believed that the original readings that brought about the ''bad rating'' were taken in an industrial area surrounded by freeways inundated with Cleveland Browns fans. The commenter believed

the monitoring readings to be unrepresentative.

(10) Response: The highest ozone readings are not typically found in industrial areas or near freeways. Industries and traffic produce hydrocarbons (also called volatile organic compounds) and NO_X pollution that react in the presence of sunlight to form ozone. This reaction takes place over a period of several hours and thus the highest ozone concentrations are typically found 20 to 40 miles in the downwind direction. The USEPA considers all valid, quality assured monitoring data in the area in assessing the air quality. The moderate ozone nonattainment designation was based on 3 years of ozone monitoring data (1987–1989) and was based on the fourth highest reading (.157 the design value) at the monitoring site in Akron, Ohio. Other ozone monitoring sites in the area also had ozone concentrations in the range of a moderate classification. For example, the site at Jefferson Elementary School in Eastlake, Ohio had a design value of .152 for the 1987–1989 time period. The ozone monitoring data now shows an improvement in air quality that demonstrates attainment of the health based ozone standard. All air monitoring data is available to the public from the national USEPA Aerometric Information and Retrieval System (AIRS) data bank.

(11) Comment: The fact that this region did not adopt reformulated, less ozone-producing gasoline with fewer VOC's for summertime use clearly demonstrates the lack of commitment to clean air.

(11) Response: While the Cleveland-Akron-Lorain area was not required to adopted reformulated gasoline in order to be redesignated, they did choose an Enhanced Automobile Inspection and Maintenance program (I/M) as a maintenance measure to be implemented in the area. This program was chosen as the most cost effective program that the area could use for maintaining the standard while still providing room for growth in the area.

(12) Comment: Several commenters expressed dissatisfaction with the inspection and maintenance program for automobiles. Some were concerned about gaps in the I/M program that reduced the effectiveness. One commenter suggested other pollution reduction measures. A commenter believed that the vehicle inspection and maintenance program was not effective. The commenter believed that the I/M funds would be better spent on enforcing the speed limit, getting rid of high polluting vehicles, doing more on ''Ozone Action Days'' or making these mandatory, and giving incentives for sharing rides. One commenter was against the more stringent I/M program.

(12) Response: The I/M program for automobiles is a very cost-effective program for reducing pollution. Studies show that a small percentage of vehicles are producing a large portion of the pollution in a metropolitan area. Automobiles that are not well-maintained or that have pollution control equipment that has been disabled emit air pollution that can increase ozone concentrations. The I/M program will identify these automobiles and require repairs. Compared to other forms of pollution control, the I/M program is a low-cost alternative. The enhanced I/M program is estimated to cost between $500 to $900 dollars per ton of VOC pollution reduced. This compares to a cost of approximately $5,000 per ton for a basic program, $5,000 to $10,000 dollars per ton of VOC reduced for additional stationary source controls beyond the current RACT required in the Cleveland-Akron-Lorain area. The USEPA agrees that an effective I/M program is important. The enhanced I/M program adopted by Ohio and which began in January 1996, is the best and most cost effective testing program recommended by the USEPA.

An additional feature of the State's enhanced I/M program, designed to improve repair-effectiveness, is the requirement that automobile technicians become certified to repair vehicles which fail the test. The auto technician training program requires technicians to undergo a training program to ensure they are able to perform repairs on current new-technology vehicles and vehicles of the future. Technicians and repair facilities will be graded on the effectiveness of repairs and this information will be available to the public in order to make informed decisions on where to take their vehicle for repairs. This technician training and certification program began implementation in October 1995, and is being supervised by the OEPA.

(13) Comment: A commenter expresses the concern that control of emissions from aircraft as they travel over the area (and over the United States in general) have not been given enough consideration. The commenter believes aircraft emissions must be considered along with emissions from industries and automobiles in the control of air pollution.

(13) Response: It should be noted that States, under the requirements of section 182(a)(1) of the Clean Air Act, have included aircraft emissions in a base year emissions inventory for each ozone nonattainment area. These aircraft emissions were projected to the 10-year maintenance period in Ohio's maintenance plan for the Cleveland-Akron-Lorain area, and were shown, along with emissions from other sources, to not cause a projected violation of the ozone standard.

(14) Comment: A number of commenters were concerned that the redesignation would affect transportation choices and transportation planning and would contribute to more pollution. Concerns were expressed about: The need for more bike paths, the need for improved public transit, the need to discourage driving. Specific concern was expressed about express lanes on I–271 which would impact the environment. Another commenter had concerns about a subway being dropped from the transportation planning, a lack of bicycle facilities, more interchanges and freeways and new lane additions. There was concern about a tollway from Toledo to Portsmouth instead of light rail that would be upwind of the populated current nonattainment areas and would add pollution to the areas. The commenter wanted pollution prevention through better transportation choices.

(14) Response: The redesignation to attainment does not negate the need for the area to make smart transportation choices. The transportation conformity requirements still apply to the area as a maintenance area. The area will need to demonstrate that emissions are not exceeding the mobile source emission budget in the maintenance plan. The Northeast Ohio Area wide Coordinating Agency (NOACA) is the local metropolitan planning organization for the Cleveland-Akron-Lorain area and performs the conformity analysis on the transportation plan. Conformity to the emission budget is designed to prevent the area from increasing mobile source emissions to the point where the air quality standards are exceeded. Conformity will also provide assurance that a project will not be done if it would cause or contribute to a violation of the ozone NAAQS in the CAL area.

The commenters are correct in noting that transportation measures such as improvements in bicycle paths and facilities and improved public transit will contribute to better air quality by reducing the number of automobiles and the number of vehicle miles of travel. The commenters are also correct in their concerns about increasing freeway capacity and tollways, as these types of projects will encourage additional vehicular traffic. The USEPA believes that the conformity requirements will allow the area to make local decisions

on transportation planning while assuring that mobile source emissions will not increase. Increases to the mobile source budget are only allowed if there is an excess in the total projected emissions for the area.

Projects such as tollways that are built in the maintenance area would also be subject to conformity. Tollways that are in attainment areas are not currently required to meet any conformity tests. It is possible that projects of this type could affect air quality downwind; however, the USEPA believes that the cleaner vehicle standards will contribute to preventing degradation of the air. See also the response to comment 18.

(15) Comment: Over Lake Erie there is a gray and yellow mass of pollution. There is also a trail of smoke that rises from the smoke stacks of the East Lake Electric Power plant, and the trucks and buses are also emitting smoke. When I am at a high point on a hill looking down at downtown Cleveland, I can barely see the buildings. It's as if they are behind a cloud of dirt, smoke, and other pollution. We need to change this.

(15) Response: USEPA has a variety of programs addressing the commenter's concerns. The ''trail of smoke'' from the East Lake power plant is particulate matter, which is regulated both by limits on the mass of particulate matter and by limits on the opacity of the plume. Smoke from trucks and buses is being limited by new emissions standards that have been made achievable by new limitations on the sulfur content of diesel fuel. USEPA is updating its visibility regulations to reduce the impairment of visibility due to air pollution. Nevertheless, USEPA evaluates attainment of the air quality standards based on quantitative measurements of air pollutant concentration. Since these measurements indicate that the ozone standard is being attained, USEPA must conclude that this criterion for redesignation is satisfied.

(16) Comment: Several commenters are opposed to the redesignation because they believe it will lead to less USEPA oversight of existing emission control regulations and, therefore, to increased air pollution.

(16) Response: All volatile organic compound emission control regulations in place at the time of the redesignation of the Cleveland-Akron-Lorain area will remain in place unless it is ultimately shown through photochemical dispersion modeling that such control measures are not necessary for continued attainment of the ozone standard. These regulations will continue to be enforced by the State and will remain federally enforceable.

(17) Comment: One commenter asserted that section 107(d)(e)(E)(v) requires that a state meet all applicable requirements under section 110 and Part D. While claiming that Cleveland satisfies all 172(c) requirements, USEPA acknowledges that some components have not yet completed regulatory review. 60 FR 31437.

(17) Response: All applicable components, including those were referred to in the proposal as pending regulatory review, have now completed regulatory review. The Clean Air Act requires that the Cleveland-Akron-Lorain area meet all applicable requirements before the area is redesignated. USEPA approved the 1990 base year emissions inventory in a final rulemaking published on December 7, 1995 (60 FR 62737). The remaining VOC RACT rules for the area were approved in letter notice rulemakings dated October 31, 1995 and announced in the Federal Register. In a separate part of this final rulemaking USEPA determined that the 15% plan and contingency measures requirements are no longer applicable to the Cleveland-Akron-Lorain area. USEPA's rational for this action is contained in the rulemakings dated August 25, 1995 (60 FR 44277), June 29, 1995 (60 FR 33742, and 60 FR 33781), and this final rulemaking. As a result of these actions the Cleveland-Akron-Lorain area has met all of the fully approved SIP requirements. These requirements were met before USEPA published this final rulemaking taking action on the redesignation requests.

In response to the comment on the protection of the public health. The public's health is protected as evidenced by the monitoring data collected in the area. The data show that the air quality levels are meeting the NAAQS for ozone. These standards were set to protect the public health and welfare.

(18) Comment: By this proposed approval, USEPA claims the redesignation request relieves Ohio from submitting SIP revisions providing transportation and general conformity criteria guidance.

(18) Response: USEPA in this notice does not relieve Ohio from conformity requirements. Rather, USEPA has determined that those requirements will continue to apply after the area is redesignated, and therefore need not be fulfilled as a condition of redesignation. Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. 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 the States must be consistent with Federal conformity regulations that the Act required the USEPA to promulgate. Congress provided for the State revisions to be submitted one year after the date of promulgation of final USEPA conformity regulations.

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 section 175A of the Act. Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 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, and November 30, 1994, respectively. Ohio submitted transportation and general conformity SIP revisions on August 17, 1995. The USEPA has not yet approved the transportation conformity rules as part of the SIP. Final rulemaking on the general conformity rules is expected soon.

The USEPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continue to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both

nonattainment and maintenance areas. Second, USEPA's federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, the USEPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

For the reasons just discussed, the USEPA believes that the ozone redesignation request for the CAL area may be approved notwithstanding the lack of fully approved State transportation and general conformity rules. This policy was also exercised in the Tampa, Florida ozone redesignation finalized on December 7, 1995 (60 FR 62748).

(19) Comments: A commenter argued that the submission is defective under section 107(d)(3) because of the absence of a complete and fully approved implementation plan. The commenter asserted that USEPA cannot excuse Ohio's failure to submit required SIP revisions coming due after the November 15, 1994 filing of the redesignation request. The commenter complained that USEPA in its proposal was illegally attempting to rectify gaps by waiving applicability of necessary SIP requirements, including the requirements of 15 percent RFP, attainment demonstration, and contingency measures. Under section 107(d)(3)(E)(ii), a nonattainment area may be redesignated only after USEPA has fully approved the applicable implementation plan for the area under section 110(k).

Under the APA, the Administrator may not suspend applicability of SIP requirements except by redesignation pursuant to 107(d)(e)(E). This can be done only if USEPA has fully approved the SIP under 110(k). See 107(d)(3)(E)(iii). Congress allotted USEPA no discretion in determining what constitutes the applicable plan, but directed it to look at section 110(k), which does not give the Administrator authority to decide what constitutes the ''applicable requirements of this Act.'' Under section 107(d), the Administrator can only grant a request to redesignate to attainment if the state has met all applicable requirements under section 110 and Part D, and after the state has adopted a complete implementation plan.

(19) Response: USEPA has not suspended or granted the CAL an exemption from any applicable requirements. Rather, USEPA has interpreted the requirements of section l82(b)(1)(A)(i) and l72 (c)(9) as not being applicable once an area has attained the standard, as long as it continues to do so. This is not a waiver of requirements that by their terms clearly apply; it is a determination that certain requirements are written so as to be operative only if the area is not attaining the standard.

The May 10 Policy was clear about the consequences of the policy for redesignations. First, it made plain that a determination of attainment is not tantamount to a redesignation of an area to attainment. Attainment is only one of the criteria set forth in 107(d)(3)(E). To be redesignated, the State must satisfy all of the criteria of 107(d)(3)(E), including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions, and the requirements that the area have a fully-approved SIP which meets all of the applicable section 110 and part D requirements, and a fully approved maintenance plan.

Upon a determination of attainment, however, the 182(b)(1)(A)(i) requirements of RFP and attainment plans, and the 172(c)(9) requirement of contingency plans are no longer considered applicable requirements under section 107(d)(3)(E). They would no longer be included among those measures whose approval is part of the requirement of having a fully approved SIP.

A commenter contended that, by relying upon its determination of attainment, USEPA is avoiding the redesignation requirements of 107(d). This is not the case. What USEPA has done is make a determination that since the area is attaining the standard, which is a factual determination, certain provisions of the CAA, whose express purpose is to achieve attainment of the standard, do not require SIP revisions to be made by the State for so long as the area continues to attain the standard. This has long been USEPA's policy with respect to the section 172(c)(9) contingency measures and section 172(c)(2) RFP requirement. *See* general preamble at 57 FR 13498. USEPA has also made determinations regarding section 182(f) NOx waivers at or before the redesignation of an area and therefore not required NOx RACT submissions to approve such redesignations. *See* the Bay Area redesignation at 59 FR 49361.

USEPA disagrees with the commentor's analysis of the language and structure of the CAA. USEPA's statutory analysis was explained in detail in the June 8, 1995 direct final rule and in the May 10, 1995 memorandum from John Seitz. USEPA further elaborated upon this analysis, and responded to many of the concerns raised by the plaintiffs, in its final determination of attainment of Ozone Standard for Salt Lake and Davis Counties, Utah, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements. See 60 FR 36,723 (July 18, 1995). To the extent here pertinent, such portions of that notice, including the responses to comments, are incorporated herein by reference.

Thus, USEPA disagrees with the commentors' view that USEPA is not complying with all the redesignation requirements of 107(d)(3)(E). The area has a fully approved plan for and has met all applicable requirements. USEPA has interpreted SIP submission requirements of section 182(b)(1) regarding reasonable further progress and attainment demonstration plans, and of section 172(c)(9) regarding contingency measures to be implemented in the event an area fails to make reasonable further progress or attain the standard by the attainment date, not to apply for so long as the area continues to attain the standard. Since they are not applicable, fulfillment of these requirements is not necessary to meet the redesignation criteria of 107(d)(3)(E).

The commenter challenges USEPA's authority to determine certain SIP requirements inapplicable, and then bootstraps that argument to complain that since CAL has not met these requirements, the redesignation request only partially fulfills 107(d)(E)(v). The commenter argues that this is because the state has not met all ''applicable'' requirements under section 110 and Part D; but the requirements it points to are the very ones that USEPA has determined are inapplicable.

USEPA rejects this kind of circular argument. Since USEPA has determined that the statute does not require certain submissions so long as the area is in attainment, those inapplicable requirements cannot serve as the basis for concluding that the redesignation request is defective. Under the criteria of section 107(d)(E)(3) itself, a state need only meet all *applicable* requirements, and have a fully approved plan that contains all *required* elements. Thus USEPA's interpretation is fully consistent with the criteria of section

107(d)(3). Since USEPA has determined that the 15%, attainment demonstration, and contingency plan requirements are not applicable to CAL, and has found the SIP to be fully approvable without them, the CAL area has fairly met the criteria of section 107(d)(3). Certainly USEPA, after determining that these requirements are inapplicable, could not in good faith conclude that the redesignation request is defective because it fails to meet them.

Thus USEPA concludes that, where it has made a determination of attainment that results in the suspension of requirements, it may rely on that determination and its consequences in considering the approvability of a redesignation request.

For the reasons stated above and elsewhere in this Notice, in the June 29, 1995 Federal Register notices (60 FR 3372, 33781), in the May 10, 1995 memorandum, and in the 60 FR 36,723 (July 18, 1995) Utah notice, USEPA does not believe that the rulemaking violates any section of the CAA, nor does it circumvent the redesignation requirements under section 107(d)(3)(E).

(20) Comment: Citizens Commissions for Clean Air in the Lake Michigan Area stated that USEPA's action is not a reasonable interpretation of USEPA's nondiscretionary mandate ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population[.]}. section 101(b)(1).

(20) Response: The USEPA disagrees with the commentor's statement that its action violates section 101(b)(1). Section 101(b)(1) does not establish a nondiscretionary duty; it is a statement of purpose—a purpose that USEPA is not disregarding in this action. the area has attained the primary ozone standard, a standard designed to protect public health with an adequate margin of safety. (*see* section 109(b)(1)). USEPA's action does not relax any of the requirements that have led to the attainment of the standard. Rather, its action has the effect of suspending requirements, for additional pollution reductions, above and beyond those that have resulted in the attainment of the health-based standard.

(21) Comment: A commentor asserts that USEPA's action violates the Administrative Procedure Act and the CAA through its reliance on unpublished memoranda of John Calcagni and John Seitz and the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR l3498 (April 16, 1992). According to the commentor, reliance on those documents is inappropriate and illegal since those documents were issued without opportunity for notice and comment and are not enforceable regulations.

(21) Response: USEPA's reference to and reliance on those documents, all of which are either published or publicly available and a part of the record of this rulemaking, is in no way illegal under provisions of either the CAA or the Administrative Procedures Act. (The commentor cited no specific provisions of either act). USEPA agrees that such documents do not establish enforceable regulations; they do not purport to be anything but guidance. That is precisely why USEPA has performed this rulemaking—a notice-and-comment rulemaking to take comment on its statutory interpretations and factual determinations in order to make a binding and enforceable determination regarding the CAL area. The June 29, 1995 Federal Register notice referred to USEPA's prior policy memoranda not as binding the Agency to adopt the interpretations being proposed therein, but rather as a useful description of the rationale underlying those proposed interpretations. USEPA has explained the legal and factual basis for its rulemaking in the June 29, 1995 Federal Register notice and afforded the public a full opportunity to comment on USEPA's proposed interpretation and determination fully consistent with the applicable procedural requirements of the Administrative Procedures Act. (The procedural requirements of section 307(d) of the CAA do not apply to this rulemaking since it is not among the rulemakings listed in section 307(d)(1).)

(22) Comment: USEPA claims that, in accordance with the October 1994 Nichols memorandum, ''that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation so [long] as they have an approved Prevention of Significant Deterioration (PSD) SIP or delegated PSD authority.'' 60 FR at 31439. USEPA apparently believes it can replace NSR with PSD, but the CAA does not grant the Administrator such discretion.

(22) Response: The USEPA believes that the CAL area may be redesignated to attainment notwithstanding the lack of a fully-approved NSR program meeting the requirements of the 1990 Act amendments and the absence of such an NSR program from the contingency plan. This view, while a departure from past policy, has been set forth by the USEPA as its new policy in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled *Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.*

The USEPA believes that its decision not to insist on a fully-approved NSR program as a prerequisite to redesignation is justifiable as an exercise of the Agency's general authority to establish de minimis exceptions to statutory requirements. *See Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1979). Under *Alabama Power Co.* v. *Costle,* the USEPA has the authority to establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally.

In this context, the issue presented is whether the USEPA has the authority to establish an exception to the requirements of section 107(d)(3)(E) that the USEPA have fully-approved a SIP meeting all of the requirements applicable to the area under section 110 and part D of title I of the Act. Plainly, the NSR provisions of section 110 and part D are requirements that were applicable to the Ohio area seeking redesignation at the time of the submission of the request for redesignation. Thus, on its face, section 107(d)(3)(E) would seem to require that the State have submitted and the USEPA have fully-approved a part D NSR program meeting the requirements of the Act before the areas could be redesignated to attainment.

Under the USEPA's de minimis authority, however, it may establish an exception to an otherwise plain statutory requirement if its fulfillment would be of little or no environmental value. In this context, it is necessary to determine what would be achieved by insisting that there be a fully-approved part D NSR program in place prior to the redesignation of the CAL area. For the following reasons, the USEPA believes that requiring the adoption and full-approval of a part D NSR program prior to redesignation would not be of significant environmental value in this case.

Ohio has demonstrated that maintenance of the ozone National Ambient Air Quality Standards (NAAQS) will occur even if the emission reductions expected to result from the part D NSR program do not occur. The emission projections made by Ohio to demonstrate maintenance of the NAAQS considered growth in point source emissions (along with growth for other source categories) and were premised on the assumption that the Prevention of Significant Deterioration (PSD) program, rather than the part D NSR, would be in effect, during the

maintenance period. Under NSR, significant point source emissions growth would not occur. Michigan assumed that NSR would not apply after redesignation to attainment, and therefore, assumed source growth factors based on projected growth in the economy and in the area's population. (It should be noted that the growth factors assumed may be overestimates under PSD, which would restrain source growth through the application of best available control techniques.) Thus, contrary to the assertion of the commentor, Ohio has demonstrated that there is no need to retain the part D NSR as an operative program in the SIP during the maintenance period in order to provide for continued maintenance of the NAAQS. (If this demonstration had not been made, NSR would have had to have been retained in the SIP as an operative program since it would have been needed to maintain the ozone standard.)

The other purpose that requiring the full-approval of a part D NSR program might serve would be to ensure that NSR would become a contingency provision in the maintenance plan required for these areas by section 107(d)(3)(E)(iv) and 175A(d). These provisions require that, for an area to be redesignated to attainment, it must receive full approval of a maintenance plan containing ''such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.'' Based on this language, it is apparent that whether an approved NSR program must be included as a contingency provision depends on whether it is a ''measure'' for the control of the pertinent air pollutants.

As the USEPA noted in the proposal regarding this redesignation request, the term ''measure'' is not defined in section 175A(d) and Congress utilized that term differently in different provisions of the Act with respect to the PSD and NSR permitting programs. For example, in section 110(a)(2)(A), Congress required that SIPs include ''enforceable emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of the Act.'' In section 110(a)(2)(C), Congress required that SIPs include ''a program to provide for the enforcement of the *measures* described in subparagraph (A), *and* regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.'' (Emphasis added.) If the term measures as used in section 110 (a)(2)(A) and (c) had been intended to include PSD and NSR there would have been no point to requiring that SIPs include both measures *and* preconstruction review under parts C and D (PSD or NSR). Unless ''measures'' referred to something other than preconstruction review under parts C and D, the reference to preconstruction review programs in section 110(a)(2)(C) would be rendered mere surplusage. Thus, in section 110(a)(2) (A) and (C), it is apparent that Congress distinguished ''measures'' from preconstruction review. On the other hand, in other provisions of the Act, such as section 161, Congress appeared to include PSD within the scope of the term ''measures.''

The USEPA believes that the fact that Congress used the undefined term ''measure'' differently in different sections of the Act is germane. This indicates that the term is susceptible to more than one interpretation and that the USEPA has the discretion to interpret it in a reasonable manner in the context of section 175A. Inasmuch as Congress itself has used the term in a manner that excluded PSD and NSR from its scope, the USEPA believes it is reasonable to interpret ''measure,'' as used in section 175A(d), not to include NSR. That this is a reasonable interpretation is further supported by the fact that PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR.[3] This distinguishes NSR from other required programs under the Act, such as inspection and maintenance and Reasonably Available Control Technology (RACT) programs, which have no corollary for attainment areas. Moreover, the USEPA believes that those other required programs are clearly within the scope of the term ''measure.''[4]

The USEPA's logic in treating part D NSR in this manner does not mean that other applicable part D requirements, including those that have been previously met and previously relied upon in demonstrating attainment, could be eliminated without an analysis demonstrating that maintenance would be protected. As noted above, Ohio has demonstrated that maintenance would be protected with PSD in effect, rather than part D NSR. Thus, the USEPA is not permitting part D NSR to be removed without a demonstration that maintenance of the standard will be achieved. Moreover, the USEPA has not amended its policy with respect to the conversion of other SIP elements to contingency provisions, which is that they may be converted to contingency provisions only upon a showing that maintenance will be achieved without them being in effect. Finally, as noted above, the USEPA believes that the NSR requirement differs from other requirements, and does not believe that the rationale for the NSR exception extends to other required programs.

As the USEPA has recently changed its policy, the position taken in this action is consistent with the USEPA's current national policy. That policy permits redesignation to proceed without otherwise required NSR programs having been fully approved and converted to contingency provisions provided that the area demonstrates, as has been done in this case, that maintenance will be achieved with the application of PSD rather than part D NSR.

(23) Comment: A violation does not occur until the third ''exceedance'', this is deceptive and doesn't help people get information that the air is polluted. Even though .124 ppm is above the ''standard'' of 0.12 ppm; because of rounding that terrible air wouldn't even be counted as an exceedances or violation.

[3] The USEPA is not suggesting that NSR and PSD are equivalent, but merely that they are the same type of program. The PSD program is a requirement in attainment areas and designed to allow new source permitting, yet contains adequate provisions to protect the NAAQS. If any information including preconstruction monitoring, indicates that an area is not continuing to meet the NAAQS after redesignation to attainment, 40 CFR part 51 appendix S (Interpretive Offset Rule) or a 40 CFR 51.165(b) program would apply. The USEPA believes that in any area that is designated or redesignated as attainment under section 107, but experiences violations of the NAAQS, these provisions should be interpreted as requiring major new or modified sources to obtain VOC emission offsets of at least a 1:1 ratio, and as presuming that 1:1 NO_X offsets are necessary. See October 14, 1994 memorandum from Mary Nichols entitled *Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.*

[4] The USEPA also notes that in the case of the Cleveland, Ohio area, all permits to install for major volatile organic compound (VOC) emission sources and major VOC emission source modifications issued by the State in the moderate ozone nonattainment areas since November 15, 1992 have complied with the 1.15 to 1.0 VOC emissions offset ratio. In addition, permits to install cannot be issued under the Prevention of Significant Deterioration (PSD) program unless the applicant can demonstrate that the increased emissions from the new or modified source will not result in a violation of the NAAQS.

Cleveland-Akron-Lorain's ozone monitors are not on all year. We should be monitoring year-round. We get unusual weather in northeast Ohio. We've had temperatures in the 80's during every month when we are not required by law to monitor. If we had a violation during these months (we have had extreme haze then and lots of emergency room visits from respiratory patients), we have no way of knowing, so these days don't count, either. I am against the redesignation of Cleveland-Akron-Lorain for these reasons.

(23) Response: Published guidance (*Guideline for the Interpretation of Ozone Air Quality Standards,* January 1979, EPA–450/4–79–003), which is part of the ozone standard by reference in 40 CFR part 50, appendix H, notes that the stated level of the standard is determined by defining the number of significant figures to be used in comparison with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and therefore, 0.125 ppm is the smallest three-decimal concentration value in excess of the level of the standard that is considered an exceedance.

Since ozone levels decrease significantly in the colder parts of the year in many areas, ozone is required to be monitored at monitors only during the ''ozone season'' which is listed in Appendix D to 40 CFR part 58 for Ohio as April through October. This seasonal definition was initially set in 1986 based on temperature data. Months where the monthly mean daily maximum temperature is less than 55 degrees Fahrenheit were generally excluded from the season. In Cleveland-Akron-Lorain, this occurs from November through March. In different areas of the country where months are cooler than 55 degrees Fahrenheit, ozone concentrations greater than .08 ppm are unlikely to occur. In addition actual ozone monitoring data for the Cleveland-Akron-Lorain area collected from 1987 though 1994 for the months of April and October show only three recorded concentrations above .100 parts per million. The highest monitored concentration was .109 parts per million during October 1992. The ozone NAAQS of .12 ppm was not exceeded in the Cleveland-Akron-Lorain area for the months of April and October from 1987 though 1994. Given the generally lower temperatures of the other winter months compared to April and October, it is expected that these months would not have monitored an exceedance of the ozone NAAQS.

(24) Comment: A commenter was concerned that because of the redesignation to attainment the area would become exempt from congestion mitigation and air quality (CMAQ) funds which local transit agencies relied on for new buses and expanded service thus increasing air pollution.

(24) Response: The federal CMAQ program is designed to give additional money for air quality nonattainment areas to use on transportation projects that will improve the air quality and bring the area into attainment of the air quality standards. The United States Department of Transportation (USDOT) revised their CMAQ guidance on July 13, 1995, to allow redesignated areas to have a 2 year transition period to insure continuity in CMAQ funding for projects which are programmed in the first 2 years of the transportation improvement program at the time the area is redesignated to attainment. Although Cleveland-Akron-Lorain will lose the additional CMAQ funds after the 2-year transitional period, the projects already programmed for funding will now be able to continue implementation. Air pollution is not expected to increase because the stricter standards for new cleaner cars, trucks and buses will help to decrease pollutant emissions. The USEPA believes the air pollution emissions will thus continue to decrease or at least maintain the levels that have brought the area into attainment.

(25) Comment: The 15% plan approved for Greater Cleveland-Akron-Lorain fell short of the required reduction because the area did not choose to do reformulated gasoline. The area has not met this requirement and should not be redesignated.

(25) Response: USEPA determined that, based on USEPA's determination of attainment, the requirement for a 15% reduction in volatile organic emissions in the area is no longer applicable. See the final action also contained in this final rulemaking. Since this is no longer an applicable requirement, the area is not required to meet it before the CAL area can be redesignated. The 15% reduction plan that was submitted for the CAL area did not rely on reformulated gasoline to achieve the emissions reduction.

(26) Comment: Several commenters believed there was a potential conflict of interest when the same entity (i.e. the City of Cleveland) does the monitoring and also applies for redesignation.

(26) Response: The ambient air data collected by State and local agencies are required to meet very specific quality assurance measures that are detailed in 40 CFR 58.10 and appendix A. The USEPA Quality Assurance manual gives more detailed guidance on operation of ambient air monitors. The USEPA audits the State and local agencies on a regular basis to ascertain that the appropriate quality assurance measures are being implemented. In the case of the Cleveland local agency, the State air agency (Ohio Environmental Protection Agency) is responsible for conducting accuracy audits on the air monitoring equipment being operated by the Cleveland local agency. In addition, the USEPA conducts audits of the air monitoring network. Precision and Accuracy audits are reported on a regular basis to the USEPA and recorded in the national AIRS data bank. This information is available to the public. This oversight ensures the quality of the data relied upon for redesignation.

III. Rulemaking Action

On June 29, 1995, USEPA proposed to determine that the 15% plan, attainment demonstration, and contingency measures plan for the Cleveland-Akron-Lorain area are no longer applicable requirements, since the area has attained the ozone NAAQS. The USEPA received several comments pertaining to the proposed rulemaking. These comments were considered and responses are detailed in the above section of the rulemaking on the determination of attainment. USEPA believes that the determination of attainment is still warranted and is taking final action to determine that the requirements for a 15% emissions reduction plan, attainment demonstration, and contingency measures plan are not applicable at this time.

On June 15, 1995, USEPA proposed to approve the OEPA request for redesignation to attainment and the maintenance plan for ozone for the CAL moderate nonattainment area counties of Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit, and Portage. The USEPA received about 50 comment letters pertaining to the proposed rulemaking. The comments were considered and responses are detailed in the above section of the rulemaking on the ozone redesignation request. The USEPA believes that the redesignation requirements of Section 107(d) are satisfied and is taking final action to approve the requests for redesignation to attainment and the maintenance plan for the CAL counties of Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit, and Portage.

IV. Boilerplate Regulatory Language

USEPA finds that there is good cause for this redesignation, SIP revision, and

determination of attainment to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, determination of attainment, which exempts the areas from certain Clean Air Act requirements that would other wise apply to it. The immediate effective date for this redesignation is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP 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 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has 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.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

SIP approvals under section 110 and subchapter I, Part D of the CAA 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 any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The rules and commitments being proposed for approval in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being proposed for approval by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, USEPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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 8, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Nitrogen Oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control.

Dated: April 4, 1996.

Valdas V. Adamkus,

Regional Administrator.

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.

2. Section 52.1885 is amended by adding paragraphs (b)(10) and (w) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(b) * * *

(9) Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit, and Portage Counties.

* * * * *

(w) Determination—USEPA is determining that, as of May 7, 1996, the Cleveland-Akron-Lorain ozone nonattainment area (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit) have attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES—OHIO

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.336 the ozone table is amended by revising the entry for the Cleveland-Akron-Lorain Area to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Cleveland-Akron-Lorain Area	May 7, 1996	Attainment.		
Ashtabula County				
Cuyahoga County				
Geauga County				
Lake County				
Lorain County				
Medina County				
Portage County				
Summit County				
* * *	*	*	*	*

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

* * * * *

[FR Doc. 96–11133 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5468–7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the East Bethel Demolition Landfill Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the East Bethel Demolition Landfill site in Anoka, Minnesota from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Minnesota have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further response by responsible parties under CERCLA is appropriate.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Rita Garner-Davis at (312) 886–2440, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at: EPA Region V docket room at the above address and at the East Bethel City Hall and the Minnesota Pollution Control Agency Public Library, 520 Lafayette RD. St. Paul, MN 55155–4194.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the East Bethel Demolition Landfill Site in Anoka County, Minnesota. A Notice of Intent to Delete was published March 13, 1996, (61 FR 10298) for this site. The closing date for comments on the Notice of Intent to Delete was April 12, 1996. EPA received no comments.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous Waste, Chemicals, Hazardous substances, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 22, 1996.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the East Bethel Demolition Landfill Site, East Bethel Township, Minnesota.P

[FR Doc. 96–11218 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 355

[Docket 300 PQ–R2; FRL–5468–5]

RIN 2050–AD50

Extremely Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA is implementing one of its regulatory reform commitments set forth in its June 1, 1995, Report to the President. EPA is taking final action on two proposed rules that modify the extremely hazardous substances (EHS) list and reportable quantities under section 302 of the Emergency Planning and Community Right-to-Know Act of 1986