Estimated average annual burden hours per respondent: 4 hours, 15 minutes.

Estimated number of respondents: 20

Estimated annual frequency of responses: once

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 367(b). The temporary regulations contain rules that provide an election for certain taxpayers engaged in certain exchanges described in section 367(b).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the proposed regulations.

Proposed Effective Date

Except as otherwise specified, these regulations are proposed to apply to section 367(b) exchanges that occur on or after the date final regulations are published in the **Federal Register.**

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the number of section 367(b) exchanges that require reporting under these regulations is estimated to be only 20 per year. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed regulation and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 20, 2000, beginning at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic by (preferably a signed original and eight (8) copies) March 31, 2000. However, comments not to be presented at the hearing must be submitted by April 24, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Mark Harris of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Income taxes, Reporting and recordkeeping requirements.

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.367(b)–3 is amended by adding paragraph (b)(4) to read as follows:

§ 1.367(b)–3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

* * * * *

(b) * * *

(4) [The text of this proposed addition is the same as the text of § 1.367(b)–3T(b)(4) published elsewhere in this issue of the **Federal Register**].

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 00–1378 Filed 1–21–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH–132; KY–116; KY–84; FRL–6527–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to determine that the Cincinnati-Hamilton moderate ozone nonattainment area (Cincinnati-Hamilton area) has attained the public health-based 1-hour ozone National Ambient Air Quality Standard (NAAQS). If EPA takes final action on this proposal, the Cincinnati-Hamilton area will be redesignated to attainment of the 1-hour ozone NAAQS. The Cincinnati-Hamilton area includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. This proposed determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1996 to 1998 ozone seasons that demonstrate that the ozone NAAQS has been attained in the area. Preliminary ozone monitoring data for 1999 continue to show the area attaining the ozone NAAQS. On the basis of this determination, EPA is also determining that certain 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 Cincinnati-Hamilton area.

The EPA is also proposing to approve the State of Ohio Environmental Protection Agency's (OEPA) and the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) requests to redesignate the Cincinnati-Hamilton

area to attainment of the 1-hour ozone NAAQS. The redesignation request from OEPA was received on July 2, 1999 and completed on December 22, 1999. The Cabinet sent the redesignation request to EPA on October 29, 1999. Approval of these redesignation requests would put into place a plan for maintaining the 1-hour ozone standard for the next 10 years.

The EPA is also re-proposing to approve an exemption from the nitrogen oxides (NO_X) requirements as provided for in section 182(f) for the Kentucky portion of the Cincinnati-Hamilton area. Section 182(f) establishes NO_X requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO_X reductions would not contribute to attainment. On November 11, 1994, the Cabinet submitted a request for a 182(f) NO_X exemption and on May 10, 1995, EPA proposed approval for the exemption. Subsequently, since the area monitored an exceedance that constituted a violation of the ozone NAAQS, EPA did not publish a final notice approving the NO_X exemption. Because the Cincinnati-Hamilton area is currently attaining the ozone NAAQS, EPA is proposing to grant the Kentucky portion a NO_X exemption. If final action is taken, then the Kentucky portion of the Cincinnati-Hamilton area would no longer be subject to NO_X requirements, however, all controls previously approved by the Cabinet must continue to be implemented.

DATES: Comments on EPA's proposed action must be received by February 23, 2000.

ADDRESSES: Written comments should be addressed to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Kay Prince, Chief, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the OEPA's and the Cabinet's submittals and other information are available for inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file OH 132, KY–116 and KY 84. Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Planning Section, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: William Jones, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6058, (*jones.william@epa.gov*). Karla L. McCorkle, Environmental Scientist, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia, 30303, 404–562–9043, (*mccorkle.karla@epa.gov*).

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I. Determination of Attainment

A. What Action Is EPA Proposing To Take?

The EPA is proposing to determine that the Cincinnati-Hamilton moderate ozone nonattainment area has attained the NAAQS for ozone. The Cincinnati-Hamilton area includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements (section 172(c)(1)), along with certain other related requirements, of Part D of Title 1 of the CAA, specifically the section 172(c)(9) contingency measure requirement, the section 182(b)(1) attainment demonstration requirement and the 182(j) multi-state attainment demonstration requirement are not applicable to the Cincinnati-Hamilton area as long as it continues to attain the ozone NAAQS.

B. Why Is EPA Taking This Action?

The EPA proposes to redesignate the area because three years of ambient air monitoring data demonstrate that the ozone NAAQS has been attained and the area has satisfied the other requirements for redesignation. The EPA believes it is reasonable to interpret provisions regarding attainment demonstrations, along with certain other related provisions, so as not to require State Implementation Plan (SIP) submissions, as described further below, if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.,* attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). The EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1996 to 1998 ozone seasons that demonstrate that the ozone NAAQS has been attained in the entire Cincinnati-Hamilton area. Preliminary ozone monitoring data for 1999 continue to show that the area is attaining the ozone NAAQS.

C. What Would Be the Effect of This Action?

The requirements of section 172(c)(1), 182(b)(1) and 182(j) concerning the submission of the ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for reasonable further progress (RFP) or attainment will not be applicable to the area. This proposal does not revoke the 1-hour standard (see discussion in II (A) of this document.)

D. What Is the Background for This Action?

Subpart 2 of part D of Title I of the CAA contains various air quality planning and SIP submission requirements for ozone nonattainment areas. The EPA 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). EPA has 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, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 in the same manner. (See *Sierra Club* v. *EPA, 99 F.3d 1551 (10th Cir. 1996))*

The attainment demonstration requirements of section 182(b)(1) are 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 the CAA.'' If an area has in fact monitored attainment of the relevant NAAQS, EPA 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 EPA in the General Preamble to Title I. As EPA 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 13564). 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 CAA. The EPA 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 13564).

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 EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determinations made in this notice do not shield an area from future EPA 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 EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the CAA to require such emission reductions if necessary and appropriate to deal with transport situations.

The EPA 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 Cincinnati-Hamilton moderate ozone nonattainment area from the 1996 through 1998 ozone seasons. This data is summarized in Table 1 covering EPA's analysis of the redesignation request. Preliminary monitoring data for 1999 show the area continues to attain the 1-hour ozone NAAQS. On the basis of this review, EPA determines that the area has attained the 1-hour ozone standard during the 1996–98 period, which is the most recent three-year time period of air quality monitoring data, and therefore is not required to submit an attainment demonstration, and a section 172(c)(9) contingency measure plan.

E. Where Is the Public Record and Where Do I Send Comments?

The official record for this proposed rule is located at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document. Public comments are solicited on EPA's proposed rulemaking action. Public comments received by February 23, 2000, will be considered in the development of EPA's final rulemaking action.

II. Redesignation Request

A. What Action Is EPA Proposing To Take?

The EPA is proposing approval of the maintenance plan submitted by the OEPA and the Cabinet and redesignation of the Cincinnati-Hamilton moderate ozone nonattainment area to attainment of the 1-hour ozone NAAQS. The Cincinnati-Hamilton area consists of the Ohio Counties of Butler, Warren, Clermont, and Hamilton and the Kentucky Counties of Boone, Campbell, and Kenton.

B. Why Is EPA Taking This Action?

The Cincinnati-Hamilton area meets the redesignation and maintenance plan requirements of the CAA.

EPA issued a proposal to determine the 1-hour ozone NAAQS inapplicable to the Cincinnati-Hamilton area in light of the new 8-hour ozone NAAQS on June 10, 1999 (64 FR 110), when the U.S. Court of Appeals for the D.C. Circuit issued its opinion in *American Trucking Ass'ns, Inc.* v. *EPA,* 175 F.3d 1027 (D.C. Cir. 1999) and modified in rehearing on October 29, 1999, WL 979463, which created uncertainty regarding the 8-hour ozone standard. Thus, EPA proposed to rescind findings of inapplicability of the 1-hour ozone standard on October 25, 1999 (64 FR 57424). Therefore, the 1-hour ozone standard remains applicable in the Cincinnati-Hamilton area.

C. What Would Be the Effect of the Redesignation?

The redesignation would change the official designation of the Ohio Counties of Butler, Warren, Clermont, and Hamilton and the Kentucky Counties of Boone, Campbell, and Kenton from nonattainment to attainment for the 1-hour ozone standard. It would also put into place a plan for maintaining the 1-hour ozone standard for the next 10 years. This plan includes contingency measures to correct any future violations of the 1-hour ozone standard.

D. What Is the Background for This Action?

The OEPA and the Cabinet submitted requests on August 16, 1999 and October 29, 1999, respectively, to redesignate the Ohio and Kentucky portions of the Cincinnati-Hamilton area from nonattainment to attainment for ozone.

Under section 107(d) of the 1977 amended CAA, the EPA promulgated the ozone attainment status for each geographic area of the country. All counties in the Cincinnati-Hamilton area were designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 15, 1990, the CAA Amendments of 1990 were enacted. Pursuant to section 107(d)(4)(A), on November 6, 1991 (56 FR 56694), the Ohio Counties of Butler,

Clermont, Hamilton, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton were designated as the Cincinnati-Hamilton moderate ozone nonattainment area, as a result of monitored violations of the ozone NAAQS during the 1987–1989 time frame. On November 14, 1994, OEPA submitted a redesignation request for the Ohio portion of the Cincinnati-Hamilton area and EPA published a proposed redesignation rulemaking on May 5, 1995 (60 FR 22337), for the Ohio portion of the Cincinnati-Hamilton area. On November 11, 1994, the Cabinet submitted a redesignation request for the Kentucky portion of the Cincinnati-Hamilton area and revised the request on July 19, 1995.

During July of 1995, an ozone monitor in the area recorded an exceedance of the ozone standard resulting in a violation of the 1-hour ozone NAAQS. As a result of the violation the area was no longer attaining the ozone air quality standard. On September 27, 1996 (61 FR 50718), EPA disapproved the redesignation request for the Kentucky portion of the Cincinnati-Hamilton area and on February 18, 1997 (62 FR 7194), EPA proposed to disapprove the redesignation request for the Ohio portion based on the area's violation of the ozone NAAQS. Both Ohio and Kentucky were not meeting the requirements for redesignation specified under section 107(d)(3)(E) of the CAA during the time period when these actions were taken by EPA. The EPA will not respond to comments received on the February 18, 1997, proposed rulemaking, since that request is now moot, having been superseded by a new request. This subsequent request is the subject of this proposed rulemaking.

The Cincinnati-Hamilton area has since recorded three years of complete, quality-assured, ambient air quality monitoring data for the 1996 to 1998 ozone seasons, thereby demonstrating that the area has attained the 1-hour ozone NAAQS. Preliminary ozone monitoring data for 1999 continue to show the area is attaining the ozone NAAQS. On July 2, 1999, EPA received a redesignation request from OEPA which supersedes its request submitted on November 14, 1994. On August 16, 1999, OEPA submitted additional information for the request and on December 22, 1999, EPA received the results of OEPA's public hearing on the proposed revision which was the final portion of the initial request. On October 29, 1999, EPA received a request from the Cabinet to parallel process the prehearing redesignation submittal. On December 13, 1999, the Cabinet submitted to EPA the final redesignation request including the Cabinet's public hearing results.

E. What Are the Redesignation Review Criteria?

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

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

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

2. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

3. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.

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

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

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

7. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), April 16, 1992.

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

1. The Area Must Be Attaining the 1-Hour Ozone NAAQS

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

The OEPA and the Cabinet submitted ozone monitoring data for the April through October ozone season from 1996 to 1998. Table 1 below summarizes the air quality data from 1996–1998.

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE CINCINNATI-HAMILTON, OHIO—KENTUCKY AREA FROM 1996 TO 1998

Site	County	Year	Exceedances measured	Expected exceedances
Middletown	Butler	1996	1	1.0
Middletown	Butler	1997	1	1.0
Middletown	Butler	1998	0	0.0
Hamilton	Butler	1996	0	0.0
Hamilton	Butler	1997	0	0.0
Hamilton	Butler	1998	0	0.0
4430 SR 222	Clermont	1996	0	0.0
4430 SR 222	Clermont	1997	0	0.0
4430 SR 222	Clermont	1998	1	1.0
11590 Grooms Rd.	Hamilton	1996	0	0.0
11590 Grooms Rd.	Hamilton	1997	1	1.0
11590 Grooms Rd.	Hamilton	1998	1	1.0
6950 Ripple Road	Hamilton	1996	0	0.0
6950 Ripple Road	Hamilton	1997	0	0.0
6950 Ripple Road	Hamilton	1998	0	0.0
Cincinnati	Hamilton	1996	0	0.0
Cincinnati	Hamilton	1997	0	0.0
Cincinnati	Hamilton	1998	0	0.0
Lebanon	Warren	1996	0	0.0
Lebanon (230 Cook Road)	Warren	1997	1	1.0
Lebanon (230 Cook Road)	Warren	1998	1	1.0
KY 338	Boone	1996	0	0.0
KY 338	Boone	1997	0	0.0
KY 338	Boone	1998	0	0.0
Dayton	Campbell	1996	1	1.0
Dayton	Campbell	1997	0	0.0
Dayton	Campbell	1998	0	0.0
Covington	Kenton	1996	1	1.0
Covington	Kenton	1997	0	0.0
Covington	Kenton	1998	1	1.0

This data has been quality assured and is recorded in AIRS. During the 1996 to 1998 time period, the Middletown, Grooms Road, Lebanon, and Covington monitors each recorded a total of 2.0 expected exceedances. This equates to 0.67 average expected exceedances per year and shows that the monitoring sites with the most exceedances are attaining the 1-hour ozone NAAQS. In addition, preliminary 1999 ambient air quality monitoring data indicate that the area continues to attain the 1-hour ozone standard. As a result, the Cincinnati-Hamilton area is currently meeting the air quality requirement for redesignation to attainment of the ozone NAAQS.

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

Before the Cincinnati-Hamilton area may be redesignated to attainment for ozone, it must have fulfilled the applicable requirements of section 110 and part D. The Calcagni memorandum dated September 4, 1992, states that areas requesting redesignation to attainment have to fully adopt rules and programs that come due prior to the submittal of a complete redesignation request. If unimplemented and not necessary, these rules/programs may be moved into the area's maintenance plan as contingency measures rather than fully approved into the SIP. As described below in the section of this notice addressing Volatile Organic Compounds (VOC) reasonably available control technology (RACT) rules, however, the EPA is allowing an exception to this policy. While all requirements that come due prior to the submission of the redesignation request remain applicable requirements, the EPA believes it is appropriate, in this instance, to allow an exception to policy (Calcagni, September 4, 1992) to provide that the requirement for certain VOC RACT rules may be complied with simply through their incorporation among the contingency measures in the maintenance plan. For reasons described later in this action, these measures need not be fully adopted and approved prior to redesignation. Furthermore, requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request would continue to be applicable to the area until a redesignation is approved, but are not required as a prerequisite for redesignation (see section 175A(c)). If the redesignation is disapproved, the States remain obligated to fulfill those requirements.

Section 110 Requirements. General SIP elements are delineated in section 110(a)(2) of Title I, part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the state after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and Part D, New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling, and provisions for public and local agency participation. For purposes of redesignation, the Ohio and Kentucky SIPs were reviewed to ensure that all requirements under the amended CAA were satisfied through approved SIP provisions.

Transport of Ozone Precursors to Downwind Areas. Modeling results utilizing EPA's regional oxidant model (ROM) indicate that ozone precursor

emissions from various states west of the ozone transport region (OTR) in the northeastern United States contribute to increases in ozone concentrations in the OTR. The EPA issued a SIP call on October 27, 1998, (63 FR 57356) requiring the District of Columbia (DC) and 22 states, including Ohio and Kentucky to reduce their emissions of oxides of nitrogen in order to reduce the transport of ozone and ozone precursors. The SIP Call submittal date of September 1999 has been stayed by the DC Circuit Court. Because of the stay of the submittal date, this is not an applicable requirement and thus, need not be met for purposes of redesignation.

EPA has determined that the Ohio and Kentucky SIPs for the Cincinnati-Hamilton 1-hour ozone nonattainment area satisfy all of the section 110 SIP requirements of the CAA.

Part D: General Provisions for Nonattainment Areas. Before the Cincinnati-Hamilton area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification determines the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under Table 1 of section 181(a). As described in the General Preamble for the Implementation of Title 1, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501, April 16, 1992). The Cincinnati-Hamilton area was classified as moderate ozone nonattainment. Therefore, in order to be redesignated, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, as well as the applicable requirements of subpart 2 of part D.

Section 172(c) Requirements. EPA has determined that the redesignation request received from the OEPA and the Cabinet for the Cincinnati-Hamilton area has satisfied all of the relevant submittal requirements under section 172(c) necessary for the area to be redesignated to attainment. In the first part of this proposed rulemaking, EPA is proposing to determine that the requirement for a SIP revision providing an attainment demonstration to meet section 172(c)(1), 182(b)(1), and 182(j) is not applicable. The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. Section 182(b)(1)(A) sets forth the specific requirements for RFP. On March 14, 1994, Ohio submitted an RFP plan for Cincinnati and on January 28, 1998 (63 FR 4188) EPA approved the RFP plan as meeting the 15 percent RFP requirements of section 182(b)(1)(A). By meeting the specific 15% RFP requirements of section 182(b)(1)(A), Cincinnati is also meeting the RFP requirement of section 172(c)(2). Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The OEPA submitted an actual emission inventory under section 182(a)(1) and EPA approved it on December 7, 1995 (60 FR 62737). The Cabinet submitted on September 11, 1998, a 15 Percent VOC Reduction Plan and the 1990 base year inventory for the Kentucky Counties of Boone, Campbell, and Kenton and EPA approved the submittal on December 8, 1998 (63 FR 67586). EPA has determined that the RFP and actual emission inventory requirement for Ohio and Kentucky is satisfied.

Section 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Section 182(b)(5) requires all major new sources or modifications in a moderate nonattainment area to achieve offsetting reductions of VOCs at a ratio of at least 1.15 to 1.0. The EPA has determined that areas being redesignated do not need to comply with the requirement that a NSR program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 14, 1994. See discussion in the Grand Rapids, Michigan document published on June 21, 1996 (61 FR 31831). The States have demonstrated that the Cincinnati-Hamilton area will be able to maintain the standard without part D NSR in effect, and, therefore, the States need not have fully approved part D NSR programs prior to approval of the redesignation request for the Cincinnati-Hamilton area. The OEPA's federally delegated PSD program will become effective in the Cincinnati area upon redesignation to attainment. The Cabinet has a statewide NSR rule. EPA approved the latest version of the NSR rule on June 23, 1994 (59 FR 32343) and the latest version of the statewide PSD rule on June 24, 1998 (63 FR 39741). Kentucky's PSD requirements will remain enforceable after the redesignation of the Cincinnati-Hamilton area.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. of the Federal Transit Act (''transportation conformity''), as well as to all other Federally supported or funded projects (''general conformity''). Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate. The EPA believes it is reasonable to interpret the conformity requirements as not applying 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 CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, the EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. Consequently, EPA may approve the ozone redesignation request for the Ohio and Kentucky portion of the Cincinnati-Hamilton area without a fully approved conformity SIP. See Detroit, Michigan, carbon monoxide redesignation published on June 30, 1999 (64 FR 35017), Cleveland-Akron-Lorain ozone redesignation published on May 7, 1996 (61 FR 20458), and Tampa, Florida, published on December 7, 1995 (60 FR 52748).

Subpart 2 Section 182 Requirements. The Cincinnati-Hamilton area is classified moderate nonattainment; therefore, part D, subpart 2, section 182(b) requirements apply. In accordance with the September 17, 1993, EPA guidance memorandum, the requirements which came due prior to the submission of the request to redesignate the area must be fully approved into the SIP before or at the time of the request to redesignate the area to attainment. Those requirements are discussed below:

1990 Base Year Inventory. The 1990 base year emission inventory was due on November 15, 1992. OEPA submitted

the 1990 base year emission inventory on March 14, 1994, for the Ohio portion and EPA approved it on December 7, 1995 (60 FR 62737). The Cabinet submitted the 1990 base year emission inventory on September 11, 1998, and EPA approved it on December 8, 1998 (63 FR 67586).

Periodic Emissions Inventory. Periodic inventories were required to be submitted on November 15, 1995, and November 15, 1998, providing an estimate of emissions for 1993 and 1996, respectively. This inventory is not considered a SIP requirement for the Cincinnati-Hamilton area, therefore they do not need to be approved into the SIP. Ohio provided its most recent estimates of emissions for 1993 and 1996 in its redesignation request and these emissions are summarized in the tables provided in this proposed action. Kentucky also provided EPA with periodic emissions for 1993 and 1996.

Emission Statements. The emission statement SIP was due on November 15, 1992. The OEPA submitted an emission statement SIP for Ohio on March 18, 1994 and EPA approved it on October 13, 1994 (59 FR 51863). The Cabinet submitted the emission statement SIP for Kentucky on January 15, 1993 and supplemented the submittal on December 29, 1994 to satisfy the federal requirements. EPA published approval of the Kentucky emission statement on May 2, 1995 (60 FR 21445).

15 Percent Plan. The 15 percent RFP plan for VOC reductions was required to be submitted by November 15, 1993, and, therefore, is applicable to the Cincinnati-Hamilton moderate ozone nonattainment area. The OEPA submitted the 15 percent RFP plan on March 14, 1994 and EPA approved it on January 28, 1998 (63 FR 4188). The Cabinet originally submitted a 15 percent plan in November 1993 and revised the plan in March 1994. By the end of the 1994 ozone season, air quality monitoring data for the entire Cincinnati area showed attainment of the 1-hour ozone NAAQS. Therefore, on June 29, 1995, the Cabinet requested that EPA take no further action on the submitted 15 percent plan. Subsequently, during the 1995 ozone season the area monitored a violation making the 15 percent plan again an applicable requirement for the area. On September 11, 1998, the Cabinet submitted a revised 15 percent VOC Reduction Plan and EPA approved it on December 8, 1998 (63 FR 67586).

VOC RACT Requirements. SIP revisions requiring RACT for three classes of VOC sources are required under section 182(b)(2). The categories are: (1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment; (2) All sources covered by a CTG issued prior to November 15, 1990; (3) All other major non-CTG stationary sources. The non-CTG rules were due by November 15, 1992, and apply to the Ohio and Kentucky submittal. The EPA approved Ohio's VOC RACT rules on April 25, 1996 (61 FR 18255), September 7, 1994 (59 FR 46182) and October 23, 1995 (60 FR 54308). EPA approved Kentucky's VOC RACT rules on January 25, 1980 (45 FR 6092), August 7, 1981 (46 FR 40188), February 7, 1990 (55 FR 4169), June 23, 1994, (59 FR 32344), and June 28, 1996 (61 FR 33674). Upon redesignation of the area, all new major VOC sources locating in Kentucky and all major modifications to existing major VOC sources will continue to be subject to the RACT requirements. These actions satisfy requirements (2) and (3) above for the Ohio and Kentucky portion of the Cincinnati-Hamilton area. Since November 15, 1990, EPA has issued CTG documents for the VOC source categories of aerospace, synthetic organic compound manufacturing industry (SOCMI) reactor and distillation processes, shipbuilding, and wood furniture. To satisfy the requirement of (1) above, the Cabinet submitted a negative declaration on December 14, 1999 for the CTG categories of aerospace, SOCMI reactor and distillation processes, shipbuilding, and wood furniture. Ohio has satisfied requirement (1) above by including these CTG categories as contingency measures in their maintenance plan. This is discussed below.

In regards to requirement (1) above, EPA's policy on redesignations would require full adoption, submission and approval of these rules prior to approval of the redesignation request. Since the due date for the CTG RACT rules at issue preceded the submission of the redesignation request, EPA believes, however, that, in the context of the particular circumstances of this redesignation, that it is permissible to depart from that policy and instead accept a commitment to implement these RACT rules as contingency measures in the maintenance plan rather than require full adoption and approval of the rules prior to approval of the redesignation. See Grand Rapids, Michigan, redesignation (61 FR 31831, June 21, 1996). The State of Ohio has included these RACT rules as contingency measures in its maintenance plan for Cincinnati. The reasons justifying this exception to EPA's general policy are explained in the above cited Grand Rapids, Michigan, redesignation and as explained below. The EPA believes that several factors in combination justify this approach with respect to the Cincinnati-Hamilton redesignation. First, the RACT rules at issue in this redesignation were not needed to bring about attainment of the standard in Cincinnati. Second, Ohio has demonstrated continued maintenance of the ozone standard through 2010 without the implementation of these measures. Third, Ohio has placed other contingency measures in the maintenance plan that would bring about far greater emission reductions than the RACT rules and would therefore be substantially more effective in terms of correcting violations attributable to local emissions from the Cincinnati area that may occur after redesignation. An analysis of emission reduction estimates, based on documentation contained in Ohio's 15 percent RFP Plan, shows that the implementation of low Reid Vapor Pressure (RVP) or Reformulated Gasoline programs would bring about greater reductions than the CTG VOC RACT rules issued since 1990. As a consequence, EPA believes that the other, more effective contingency measures, should and would be implemented first even if the RACT rules were to be fully adopted prior to redesignation. The EPA emphasizes that even under the exception to its policy proposed herein, the requirement for these RACT rules remains an applicable requirement for purposes of evaluating the redesignation request since it predated the submission of the request. The requirement, however, would be met in the form of the submission and full approval of a commitment to adopt and implement these rules as contingency measures in the maintenance plan. (Under EPA's existing policy, contingency measures in maintenance plans may consist of commitments to adopt and implement measures upon a violation of the standard (Calcagni, September 1992)).

The EPA further notes that even without this exception to its general policy, the State would have been able to have the RACT rules become a part of the contingency measures in the maintenance plan upon approval of the redesignation. That could have occurred only after or upon EPA's full approval of the adopted RACT rules, however. Thus, the only difference between EPA's general policy and the exception to that policy described in this proposal is that a commitment to adopt and implement the RACT rules in an expeditious

manner, rather than fully adopted RACT rules, would be among the contingency measures in the maintenance plan. In light of the combination of factors discussed above, including in particular the presence of other, significantly more effective, contingency measures in the maintenance plan, EPA believes that this difference has no significant environmental consequence and that it is legally permissible to approve the Cincinnati-Hamilton redesignation on this basis.

Stage II Vapor Recovery. Section 182(b)(3) requires states to submit Stage II rules no later than November 15, 1992. The Ohio Stage II rules were submitted as a SIP revision on June 7, 1993 and on October 20, 1994. The EPA partially approved and partially disapproved Ohio's SIP revision for implementation of Stage II (58 FR 52911). As stated in that rulemaking action, with the exception of paragraph 3745–21–09 (DDD)(5), EPA considers Ohio's Stage II program to fully satisfy the criteria set forth in the September 17, 1993, EPA guidance document for such programs entitled ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs.'' On February 3, 1998 the Cabinet submitted Stage II controls and EPA approved the rule on December 8, 1998 (63 FR 67586).

Only those Stage II provisions previously approved by EPA are part of the Cincinnati-Hamilton area maintenance plan. The September 17, 1993, guidance memorandum listed above states that once onboard vapor recovery regulations are promulgated, the Stage II regulations are no longer applicable for moderate ozone nonattainment areas. The EPA promulgated onboard vapor recovery rules in February 1994. Therefore, pursuant to section 202(a)(6) of the CAA, Stage II would no longer be required. However, both Ohio and Kentucky have opted to include reductions in VOCs from the Stage II program as part of the submitted maintenance plan and the previously approved 15 percent RFP plans (63 FR 4188 and 63 FR 67586).

Vehicle Inspection and Maintenance (I/M). The EPA's final I/M regulations in 40 CFR Part 85 require the States to submit a fully adopted I/M program by November 15, 1993. Ohio submitted rules for an enhanced I/M program (E–Check), on May 26, 1994 and EPA published approval of the rules on April 4, 1995 (60 FR 16989). On September 11, 1998, the Cabinet submitted the Kentucky I/M program and EPA approved the program rule on December 8, 1998 (63 FR 67586).

NO_X Requirement. Section 182(f) establishes NO_X requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO_X reductions would not contribute to attainment. The Administrator made such a determination for the Ohio portion of the Cincinnati-Hamilton nonattainment area on July 13, 1995 (60 FR 36060). After this waiver was approved, the Cincinnati-Hamilton area monitored a violation of the 1-hour ozone standard. Since that time the area has returned to monitoring attainment and continues to do so. EPA is leaving the NO_X waiver in place based on the area returning to attainment. Since the NO_X waiver is approved as a final rule, OEPA is not required to impose NO_X control measures pursuant to section 182(f) for the Cincinnati-Hamilton area to be redesignated. OEPA has committed to adopt NO_X RACT rules as a contingency measure to be implemented upon a violation of the ozone NAAQS which occurs after initial contingency measures are in place for the Cincinnati-Hamilton area.

On May 10, 1995, EPA proposed approval for an exemption from NO_X requirements for the Kentucky portion of the Cincinnati-Hamilton area. Subsequently, since the area monitored an exceedance that constituted a violation of the ozone NAAQS, EPA did not publish a final notice approving the NO_X exemption. As discussed below, EPA is also re-proposing to approve a request from the Cabinet for a section 182(f) NO_X exemption for the Kentucky portion of the Cincinnati-Hamilton area. This proposal is based on the area attaining the ozone NAAQS. Therefore, upon redesignation the Kentucky portion of the Cincinnati-Hamilton area would no longer be subject to NO_X requirements. However, all controls previously approved by the Cabinet must continue to be implemented, but no additional NO_X measures would be required.

Ohio and Kentucky have satisfied the requirement that the area must have a fully approved SIP under section 110(k) and the area must have met all applicable requirements under section 110 and part D.

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

The improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from the SIP, Federal measures, and other state adopted measures. The improvement in air quality in the Ohio portion of the Cincinnati-Hamilton area is due to emissions reductions from the Federal Motor Vehicle Emissions Control Program (FMVECP), Stage II vapor recovery program, VOC RACT controls, and the partial implementation of E-Check. Between 1993 and 1996, the Ohio area's VOC emissions were reduced by 6.7 percent. Kentucky attributes the improvement in air quality to emission reductions achieved prior to the attainment year of 1996 through the following programs: FMVECP; VOC RACT; fleet turnover of automobiles; low Reid Vapor Pressure (RVP) gasoline; reformulated gasoline; and ceased operation and improved technology at facilities in the area. Between 1990 and 1996, the Kentucky area's VOC emissions were reduced by 2.93 tons per day. Additional programs have been implemented in the Kentucky area since the 1996 attainment year which have provided substantial emission reductions for Kentucky. These programs include: Stage II vapor recovery; vehicle emission testing program, increased rule effectiveness of Stage I vapor control; Architectural Coatings, Traffic Paints, Auto Body Refinishing, and Commercial/Consumer Products rules; and Open Burning controls. The State control programs listed above have been approved into the Ohio and Kentucky SIP. Based on the listed programs, Ohio and Kentucky have shown that the improvement in air quality is based on permanent and enforceable reductions in emissions and meets this requirement.

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

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the required content of a maintenance plan. An ozone maintenance plan should address the following five areas: the attainment emissions inventory, maintenance demonstration, monitoring network, verification of continued attainment and, a contingency plan. The attainment emissions inventory identifies the emissions level in the area which is sufficient to attain the 1-hour ozone NAAQS, and includes emissions during the time period which had no monitored violations. Maintenance is demonstrated by showing that future

emissions will not exceed the level established by the attainment inventory. Provisions for continued operation of an appropriate air quality monitoring network are to be included in the maintenance plan. The state must show how it will track and verify the progress of the maintenance plan. Finally, the maintenance plan must include a list of potential contingency measures which ensure prompt correction of any violation of the ozone standard.

The OEPA and the Cabinet included a 1996 emissions inventory as the attainment inventory. Both of the maintenance plans for Ohio and Kentucky portion of the Cincinnati-Hamilton area provide emissions estimates from 1990 to 2010 for VOCs, NO_X, and carbon monoxide. The emissions in the Cincinnati-Hamilton area are projected to decrease from 1996 levels. The results of this analysis show that the area is expected to maintain the air quality standard for at least 10 years into the future after redesignation. Table 2 and Table 3 provide the emissions summary for VOCs and NO_X for the Ohio portion and Table 4 and Table 5 provide the emission summary for VOCs and $_X$ for the Kentucky portion of the Cincinnati-Hamilton area. Table 6 and Table 7, respectively provides the emissions summary for VOCs and NO_X for the entire Cincinnati-Hamilton area. Although carbon monoxide levels were provided, there is no requirement to evaluate these for an ozone area.

TABLE 2.—VOC EMISSIONS IN TONS PER SUMMER DAY FOR OHIO COUNTIES (HAMILTON, BUTLER, CLERMONT, AND WARREN)

	1990 base	1993	1996 attainment	1999 projected	2002 projected	2005 projected	2010 projected
Point	70.9	72.8	74.9	77.0	79.2	81.4	83.0
Area	69.0	69.8	70.7	71.4	72.3	73.1	75.0
Mobile	125.8	85.3	67.1	49.6	41.6	36.8	37.9
Totals	265.7	227.9	212.7	198.0	193.1	191.3	195.9

TABLE 3.—NO_X EMISSIONS IN TONS PER SUMMER DAY FOR OHIO COUNTIES (HAMILTON, BUTLER, CLERMONT, AND WARREN)

	1990 base	1993	1996 attainment	1999 projected	2002 projected	2005 projected	2010 projected
Point	280.0	279.4	279.0	278.6	278.3	277.6	277.4
Area	29.8	30.3	30.9	31.4	32.1	32.2	34.0
Mobile	130.7	115.6	101.3	84.4	72.0	65.5	52.3
Totals	440.5	425.3	411.2	394.4	382.4	375.3	363.7

TABLE 4.—VOC EMISSIONS IN TONS PER SUMMER DAY FOR KENTUCKY COUNTIES (BOONE, CAMPBELL, AND KENTON)

	1990 base	1996 attainment	1999 projected	2002 projected	2005 projected	2008 projected	2010 projected
Point	3.9	4.14	3.96	4.07	4.19	4.33	4.4
Area	12.6	13.57	10.27	10.45	10.76	11.13	11.35
Mobile	17.54	12.69	12.07	8.25	7.38	6.47	5.83
Non-Highway	8.6	9.31	9.58	9.82	10.23	10.65	10.97
Total	42.64	39.71	35.88	32.59	32.56	32.58	32.55

TABLE 5.—NO_X EMISSIONS IN TONS PER SUMMER DAY FOR KENTUCKY COUNTIES (BOONE, CAMPBELL, AND KENTON)

	1990 base	1996 attainment	1999 projected	2002 projected	2005 projected	2008 projected	2010 projected
Point	43.59	29.06	29.47	29.9	30.34	30.77	31.07
Area	0.42	12.07	0.33	0.34	0.34	0.35	0.37
Mobile	15.4	24.90	25.55	22.73	20.14	16.99	15.13
Non-Highway	9.23	0.51	12.87	13.27	13.95	14.69	15.2
Total	68.64	66.54	68.22	66.24	64.77	62.8	61.77

TABLE 6.—VOC EMISSIONS IN TONS PER SUMMER DAY FOR THE ENTIRE CINCINNATI-HAMILTON AREA

	1990 base	1996 attainment	1999 projected	2002 projected	2005 projected	2010 projected
Point	74.8	79.04	80.96	83.27	85.59	87.4
Area	90.2	93.58	91.25	92.57	94.09	97.32
Mobile	143.34	79.79	61.67	49.85	44.18	43.73

TABLE 6.—VOC EMISSIONS IN TONS PER SUMMER DAY FOR THE ENTIRE CINCINNATI-HAMILTON AREA—Continued

	1990 base	1996 attainment	1999 projected	2002 projected	2005 projected	2010 projected
Total	308.34	252.41	233.88	225.69	223.86	228.45

TABLE 7.—NO_X EMISSIONS IN TONS PER SUMMER DAY FOR THE ENTIRE CINCINNATI-HAMILTON AREA

	1990 base	1996 attainment	1999 projected	2002 projected	2005 projected	2010 projected
Point	323.59	308.06	308.07	308.2	307.94	308.47
Area	39.45	43.48	44.6	45.71	46.49	49.57
Mobile	146.1	126.2	109.95	94.73	85.64	67.43
Total	509.14	477.74	462.62	448.64	440.07	425.47

The OEPA and the Cabinet commit to continue the operation of the monitors in the area in accordance with 40 CFR part 58. The States will also track maintenance by regularly updating the emissions inventory for the area. The emission projections for 2010 are the budgets for transportation conformity.

The contingency plan for the Cincinnati-Hamilton area contains three major components: Attainment tracking, contingency measures to be implemented in the event that a violation of the ozone NAAQS occurs in the Cincinnati-Hamilton area, and a mechanism with which to trigger the implementation of the contingency measures.

Two methods of attainment tracking will be utilized in the Ohio portion of the Cincinnati-Hamilton area: (1) Air quality monitoring using the existing ozone monitoring network, and (2) inventory updates on a regular schedule. Stationary, mobile, and area source inventories will be updated at a minimum of once every three years beginning with 1996. Area emission inventories will be updated using revised census data. Mobile source emission inventories will be updated using new vehicle miles traveled (VMT) estimates and any new EPA mobile emission models. Annual progress reports will summarize available VOC and NO_X emissions data.

The contingency measures to be considered for implementation for the Ohio portion of the Cincinnati-Hamilton area are listed below.

1. Lower RVP gasoline.
2. Reformulated gasoline.
3. Broader geographic coverage of existing regulations.
4. Application of RACT on sources covered by new control technology guidelines issued in response to the 1990 CAA Amendments.
5. Application of RACT to smaller existing sources.
6. Implementation of one or more transportation control measures sufficient to achieve at least a 0.5 percent reduction in actual area wide VOC emissions. The transportation control measures to be considered would include: (1) Trip reductions programs, including but not limited to employer-based transportation management programs, area wide rideshare programs, work schedule change, and telecommuting; (2) transit improvements; (3) traffic flow improvements; and, (4) other measures.
7. Alternative fuel programs for fleet vehicle operations.
8. Controls on consumer products consistent with those adopted elsewhere in the United States.
9. VOC offsets for new or modified major sources.
10. VOC offsets for new or modified minor sources.
11. Increased ratio of VOC offsets required for new sources.
12. Requirements of VOC controls on new minor sources.

Selection of one or more of the contingency measures will be based on various considerations including cost-effectiveness, VOC reduction potential, economic and social consideration, and other factors the State determines to be appropriate.

Consideration and selection of one or more of the contingency measures will take place in the event the ozone NAAQS is violated. Initially, the State of Ohio will conduct an analysis to determine the level of control measures needed to assure expedient future attainment. If a subsequent violation of the ozone NAAQS occurs after implementation of the VOC controls measures, NO_X RACT will be activated. Contingency measures on the Ohio portion of the area will be implemented according to the following schedule:

TABLE 8.—CONTINGENCY MEASURE SCHEDULE FOR OHIO

Activity—VOC measure implementation	Completion time after triggering event
Verify a violation has occurred	1 month.
Identify VOC plan and submit schedule for implementation	3 months.
Implement VOC control program	12 months.
Activity—NO_X measure implementation	**Completion time for second triggering event after implementation of the VOC contingency measure**
Verify a violation has occurred	1 month.
Submit schedule for implementation of NO_X RACT	3 months.
Implement NO_X RACT	18 months.

Reformulated gasoline and low RVP gasoline would not be able to be implemented as contingency measures by the State of Ohio unless the State first requested and received from EPA a waiver of federal preemption under section 211(c)(4) of the CAA. However, in light of the State's listing of other potential contingency measures and the State's commitment to implement contingency measures within 12 months of a violation, the identification of reformulated gasoline and low RVP gasoline does not detract from the approvability of the contingency plan.

The Cabinet commits to perform triennial reviews of actual emissions for the redesignated area using the latest emission factors, models, and methodologies. The Cabinet will begin the triennial assessments in 2000 for calendar year 1999. At the time of this periodic inventory, the Cabinet will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth in activity levels. If any of these assumptions appear to have changed substantially, then the Cabinet will re-project emissions.

In the event that exceedances of the 1-hour ozone standard are measured in any portion of the nonattainment area, or if periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in ozone precursor emissions, the Cabinet will evaluate existing control measures to determine the further emission reduction measures that should be implemented at that time.

In the event of a monitored violation of the 1-hour ozone standard, the Cabinet commits to adopt, within nine months, one or more of the following contingency measures to achieve reductions sufficient to bring the area back into attainment with the 1-hour ozone NAAQS. All regulatory programs will be implemented within 18 months. The Cabinet will also evaluate existing control measures to see if any further emission reductions should be implemented at that time.

1. Implementation of a program to require additional emission reductions on stationary sources.

2. New Source Review.

3. Implementation of a more frequent, or more stringent vehicle emissions testing program.

4. Restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles.

5. Trip-reduction ordinances.

6. Employer based transportation management plans, including incentives.

7. Programs to limit or restrict vehicle use in downtown areas, or other areas of emission concentration, particularly during periods of peak use.

8. Programs for new construction and major construction of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

The OEPA and the Cabinet submittals adequately address the five basic components which comprise a maintenance plan (attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan) and therefore, satisfy the maintenance plan requirement.

The CAA section 175A(b) also requires the OEPA and the Cabinet to submit a revision of the SIP eight years after the original redesignation request is approved to provide for maintenance of the NAAQS for an additional 10 years following the first-10 year period. The Cabinet has committed to submit the revision to the SIP 8 years after redesignation of the Cincinnati-Hamilton area. Ohio did not formally commit to submit this revision in the redesignation request, however, OEPA is still required to submit a revision to the SIP 8 years after this request is approved.

G. Where Is the Public Record and Where Do I Send Comments?

The official record for this proposed rule has been established under OH–132 and KY–116 and is located at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document.

Public comments are solicited on EPA's proposed rulemaking action. Public comments received by February 23, 2000, will be considered in the development of EPA's final rulemaking action. EPA will not respond to comments received on the February 18, 1997 (62 FR 7194), proposed rulemaking, since a new request has been submitted and is the subject of this proposed rulemaking.

III. 182(f) NO_X Exemption for Kentucky

A. What Action Is EPA Proposing To Take?

EPA is also re-proposing to approve an exemption from the NO_X requirement as provided for in Section 182(f) for the Kentucky portion of the Cincinnati-Hamilton area. Section 182(f) establishes NO_X requirements for ozone nonattainment areas which require the same provisions for major stationary sources of NO_X as apply to major stationary sources of VOCs. One of the requirements of major sources of VOCs is RACT. Therefore, pursuant to section 182 of the CAA, RACT is a requirement for major sources of NO_X in an ozone nonattainment area. However, it provides that these requirements do not apply to a nonattainment area outside an ozone transport region if the Administrator determines that NO_X reductions would not contribute to attainment. A NO_X exemption request must be based upon the most recent three years of monitoring data, and demonstrate that additional reductions of NO_X would not contribute to attainment of the NAAQS.

The EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated February 8, 1995, entitled, ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions-Revised Process Criteria,'' decouples the section 182(f) exemptions from NO_X transport issues. The memorandum states that for an area that did not implement section 182(f) NO_X requirements, but did attain the ozone standard as demonstrated by ambient air monitoring data (consistent with 40 CFR part 58 and recorded in the AIRS), it is apparent that additional NO_X reductions required by section 182(f) would not contribute to attainment of the NAAQS in the area.

On November 11, 1994, the Cabinet submitted a request for a 182(f) NO_X RACT exemption for the Kentucky portion of the Cincinnati-Hamilton area and on May 10, 1995 (60 FR 24813), EPA proposed approval of the exemption. Subsequently, since the area monitored an exceedance that constituted a violation of the ozone NAAQS, EPA did not publish a final notice approving the NO_X exemption.

Based on evidence that the area is currently demonstrating compliance with the ozone NAAQS, EPA is re-proposing approval of Kentucky's request to exempt the Kentucky portion of the Cincinnati-Hamilton area from the 182(f) NO_X requirement. Discussed in detail above, the EPA is also proposing to determine the Cincinnati-Hamilton area has attained the 1-hour ozone NAAQS. This proposed determination of attainment is based on three years of complete, quality-assured, ambient air monitoring data for the 1996 to 1998 ozone seasons that demonstrate that the ozone NAAQS has been attained in the area. Because the Cincinnati-Hamilton area has presently attained the ozone NAAQS, this

exemption request for the area meets the applicable requirements. If final action is taken on this proposal to exempt the Kentucky portion from 182(f) requirements, upon redesignation it would no longer be subject to NO_X requirements for moderate nonattainment areas. However, all controls previously approved by the Cabinet must continue to be implemented, but no additional NO_X measures would be required. If there is a violation of the ozone NAAQS in any portion of the Cincinnati-Hamilton area, the exemption would no longer be applicable.

B. Where Is the Public Record and Where Do I Send Comments?

The official record for this proposed rule has been established under KY–84 and is located only at the EPA Region 4 address in the **ADDRESSES** section at the beginning of this document. The address for sending comments to EPA Region 4 is also provided in the **ADDRESSES** section at the beginning of this document.

Public comments are solicited on EPA's proposed rulemaking action. Public comments received by February 23, 2000, will be considered in the development of EPA's final rulemaking action.

IV. Disclaimer Language Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law Kentucky—''KRS 224.01–040'' or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

V. What Administrative Requirements Were Considered?

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial

number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 12, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

Dated: January 7, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–1555 Filed 1–21–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6526–8]

RIN 2060–A177

National Emission Standards for Hazardous Air Pollutants: Aerospace Manufacturing and Rework Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: This action proposes to amend the national emission standards for hazardous air pollutants (NESHAP) for Aerospace Manufacturing and Rework Facilities to include a separate emission standard for exterior primers used for large commercial aircraft components (parts or assemblies) or fully assembled large commercial aircraft at existing facilities that produce fully assembled large commercial aircraft. We are proposing these amendments based on review of data that support significant technical concerns of an aircraft manufacturer's ability to achieve the current 350 grams per liter (g/L) (2.9 pounds per gallon (lb/gal)) hazardous air pollutant (HAP) and volatile organic compound (VOC) content limit requirements when using exterior primers.

DATES: *Comments:* Written comments must be received by February 23, 2000, unless a hearing is requested by February 3, 2000. If a hearing is requested, written comments must be received by March 9, 2000.

ADDRESSES: *Comments:* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–20, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below in **FOR FURTHER INFORMATION CONTACT.** Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Public Hearing: Anyone requesting a public hearing must contact the EPA by February 3, 2000. If requested, a public hearing will be held February 7, 2000. If a public hearing is requested, the comment period will end 30 days after the date of the public hearing, in which case EPA will publish a document in the **Federal Register** announcing the hearing information and the extended comment period. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium. Persons interested in attending the hearing to present oral testimony should contact Ms. Dorothy Apple; Policy, Planning, and Standards Group (MD-13); U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–4487.

Docket: Docket number A–92–20, containing information relevant to this proposed rulemaking, is available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460, telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.