not impose any new requirements, I certify that it does not have a significant impact on any small entities. 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 EPA 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).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: April 12, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *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 Z—Mississippi

2. Section 52.1270 is amended by adding paragraph (c)(26) to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

(26) The Mississippi Department of Environmental Quality has submitted revision to Regulation APC-S–5. The purpose of this regulation is to adopt by reference Federal regulations for the prevention of significant deterioration of air quality as required by 40 CFR 51.166 and 52.21.

(i) Incorporation by reference.

(A) Regulations of the prevention of significant deterioration of air quality—Regulation APC–S–5 effective January 9, 1994.

(ii) Additional information—None.

[FR Doc. 95–11050 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[OH54–1–6164a; FRL–5201–2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: USEPA is approving, through ''direct final'' procedure, a redesignation request and maintenance plan for the Dayton-Springfield, Ohio area as a revision to Ohio's State Implementation Plan (SIP) for ozone. The revision is based on a request from the State of Ohio to redesignate Montgomery, Greene, Clark, and Miami Counties from nonattainment to attainment for ozone, and to approve the maintenance plan for the area. The State has met the requirements for redesignation contained in the Clean Air Act (CAA), as amended in 1990. The redesignation request is based on ambient monitoring data that show no violations of the ozone National Ambient Air Quality Standard (NAAQS) during the three-year period from 1990 through 1992. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of this requested redesignation and SIP revision, and is now soliciting public comments on this action. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a subsequent final rule based on the proposed rule.

DATES: This final rule is effective July 5, 1995 unless adverse or critical comments are received by June 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

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

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

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

SUPPLEMENTARY INFORMATION: On November 8, 1993, Ohio submitted a redesignation request and section 175A maintenance plan for Montgomery, Greene, Miami, and Clark Counties. The USEPA reviewed these submittals against the redesignation criteria set forth by section 107(d)(3)(E) of the Act, which are discussed in a September 4, 1992, memorandum from John Calcagni, Director of the Air Quality Management Division, Office of Air Quality Planning and Standards, to Directors of Regional Air Divisions, entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni Memorandum). A second memorandum dated September 17, 1993, signed by Michael Shapiro, Acting Assistant Administrator for Air and Radiation, entitled, ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS on or after November 15, 1992'' was also used to evaluate Ohio's request. An analysis of these submittals is contained in a Technical Support Document (TSD), dated January 17, 1995.

I. Background

The 1977 Act required areas that were designated nonattainment based on a failure to meet the ozone NAAQS, to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. For Ohio, Montgomery, Greene, Miami and Clark Counties were designated nonattainment for ozone, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR part 81.

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

More recently, ambient monitoring data show no violations of the ozone NAAQS in the Dayton-Springfield area during the period from 1990 through 1992. Therefore, the area became eligible for redesignation from nonattainment to attainment consistent with the amended Act. To ensure continued attainment of the ozone standard, Ohio submitted an ozone maintenance SIP for the Dayton Springfield area to USEPA on November 8, 1993. On November 8, 1993 Ohio requested redesignation of the area to attainment with respect to the ozone NAAQS. On December 20, 1993, Ohio held a public hearing on the maintenance plan and redesignation request.

II. Evaluation Criteria

The 1990 Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must

meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS.

2. The area has meet all relevant requirements under section 110 and part D of the Act.

3. The area has a fully approved SIP under section 110(d) of the Act.

4. The air quality improvement must be permanent and enforceable.

5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

Each of these requirements are addressed below.

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

Ohio submitted ozone monitoring data recorded in the Dayton-Springfield area during the years 1983 through June, 1993. The ozone monitoring network consists of five monitors. Two are located in Clark County, one in Montgomery County, and the other in Preble County. Two slight exceedances of the ozone standard have been monitored since 1989. One exceedance of 0.125 ppm occurred in 1993 at the Timberlane monitor in Montgomery County. The other exceedance which occurred at the Urbana Road monitor (Clark County) in 1994 also measured 0.125 ppm. Data stored in AIRS was used to determine the annual average expected exceedances for the years 1990, 1991, 1992, 1993, and 1994. Data contained in AIRS have undergone quality assurance review by the State and USEPA. Since the annual average number of expected exceedances for each monitor during the most recent three years are less than 1.0, the Dayton-Springfield area is considered to have attained the standard.

B. Section 107(d)(3)(iii). The Administrator determines that the improvement in air quality is due to permanent and enforceable measures. The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. To satisfy this requirement, Ohio estimated emission reductions from a nonattainment year (1988) to an attainment year (1990). Ohio submitted documentation which showed that in 1990 VOC emissions dropped almost ten percent from 1988 levels.

Most of the emission reductions which occurred over this time period resulted from federally mandated controls on the volatility of gasoline [1] and air pollution controls installed on new automobiles through the Federal Motor Vehicle Emissions Control Program (FMVCP). These controls reduced mobile source emissions by about 32 tons per day (tpd). Since these reductions result from federally mandated controls, the USEPA considers these reductions to be permanent and enforceable.

Stationary source shutdowns accounted for a decrease of 3.2 tpd in actual VOC emissions between 1988 and 1990. A 2.7 tpd increase in actual stationary source VOC emissions was estimated from permits to install (PTIs) issued in the area between 1988 and 1990. Since the operating permits for the shut down stationary sources have been revoked, and have been documented in the redesignation request, the USEPA considers the emission reductions to be permanent and enforceable. Overall, stationary source VOC emissions declined 0.5 tpd between 1988 and 1990.

Ohio used economic indicators to show that the area was not experiencing an economic downturn during this time period. Bureau of Economic Analysis (BEA) projections for manufacturing earnings from 1988 to 1995 indicate an annual growth rate of one percent for all Standard Industrial Classification (SIC) codes. BEA regional projections of population, personal income and earnings, and employment by place of work from 1973 to 1988 and from 1995 to 2040 increase from 1988 levels to 1995.

Ohio's demonstration that the improvement in air quality was due to permanent and enforceable reductions meets the requirements set forth in the Calcagni Memorandum.

C. The Area must have a fully approved maintenance plan meeting the requirements of Section 175A. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. The Calcagni Memorandum provides further guidance on the required content of a maintenance plan.

An ozone maintenance plan should address the following five areas: The attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment and a contingency plan. The attainment emissions inventory identifies the emissions level in the area which is sufficient to attain the ozone NAAQS, and includes emissions during the time period which had no monitored violations. Maintenance is demonstrated by showing that future emissions will not exceed the level established by the attainment inventory. Provisions for continued operation of an appropriate air quality monitoring network are to be included in the maintenance plan. The State must show how it will track and verify the progress of the maintenance plan. Finally, the maintenance plan must include contingency measures which ensure prompt correction of any violation of the ozone standard.

1. Attainment Inventory

The State has developed an adequate attainment emission inventory for 1990 that identifies the level of emissions in the Dayton-Springfield area sufficient to attain the ozone NAAQS. The 1990 attainment inventory was based on comprehensive inventories of VOC and NO_X emissions from area, stationary, and mobile sources for 1990. The 1990 base year emission inventory represents 1990 average summer day actual emissions for the Dayton-Springfield area, and was prepared in accordance with USEPA guidance. USEPA's TSD prepared for the 1990 base year emission inventory SIP revision contains a detailed analysis of this inventory. This inventory was approved as satisfying the requirements of section 182(a)(1) for an emissions inventory on March 22, 1995 (60 FR 15053).

2. Maintenance Demonstration

To demonstrate continued attainment, Ohio projected point, area, and mobile source VOC and NO_X emissions from the year 1990 to the year 2005. The projections incorporate reductions from existing controls, the enhanced vehicle inspection and maintenance I/M program (enhanced I/M) and Stage II vapor recovery program (Stage II). The Stage II Vapor Recovery program is currently being implemented in the Dayton-Springfield area. The enhanced

[1] The Reid Vapor Pressure changed from 11.5 psi in 1988 to 10.5 psi in 1990.

I/M program is expected to be operational in 1996. The emissions reductions from Stage II and enhanced I/M offset emissions increases during the maintenance period. The projections also provide for a growth cushion for existing and new industrial sources. These projections show that the level of emissions established by the attainment inventory will not be exceeded during the maintenance period 1990–2005. Table 1 lists the emissions for the years 1990, 1996, 2000, and 2005. All emissions were converted to tons per day for a typical summer day.

Area source emissions were projected using population as a growth indicator for all area source subcategories. This method is acceptable since the recommended growth factors for the four largest area source subcategories in terms of emissions in the Dayton-Springfield area are less than the population growth factor. The recommended growth factors for area source subcategories are listed in Table III.3 of USEPA's guidance document entitled ''Procedures for Preparing Emissions Projections'', dated July 1991. Projections of total population for the period 1990 to 2005 were obtained using data from the Ohio Data User's Center and population patterns. This data yields a growth rate of less than one percent. A one percent annual growth rate was used because of expected residential growth in Greene and Miami Counties, and because point source growth by SIC has been forecast by the Ohio Environmental Protection Agency (OEPA) to be about one percent per year for any category.

Ohio projected point source emissions by estimating changes in emissions expected from source shutdowns, growth from new sources and potential growth from existing sources. Historical data for point source growth from 1988 to 1992 indicate that PTIs averaged about 700 tons per year (tpy). Shutdowns from 1988 to 1992 accounted for a reduction of 300 tons per year of actual emissions. Based on this information, Ohio added 400 tons of VOC emissions to each year out to the year 2005 to account for new, non-offset source growth. Existing companies were assumed to expand their actual emissions to permitted levels. The difference between actual and allowable emissions is 3250 tons. This was spread equally, areawide, over the 15 year period from 1990 to 2005. Ohio accounted for known changes to sources for each year between 1990 and 2005 and applied a growth factor based on manufacturing employment data provided by the Bureau of Economic Analysis (BEA), United States Department of Commerce, to derive inventories for all ensuing years. (BEA manufacturing employment growth for the aggregate of source categories is one percent.) To account for growth of existing sources, Ohio added 217 TPY each year to the total emissions from the previous year.

Mobile source emissions were projected by forecasting vehicle miles travelled (VMT) from the year 1990 to the year 2005. A 1.28 percent per year VMT growth rate was used for the four county area. This growth rate was determined by considering the future highway network, forecasts of socio-economic data, and 1990 Highway Performance Modeling System (HPMS) data. Stage II and enhanced I/M were accounted for in the MOBILE5a program which was used to determine the emission factors for the Dayton-Springfield area. Mobile source emissions for the year 2005 were produced by multiplying MOBILE5a VOC and NO_X emission factors by the projected average weekday VMT for each county.

TABLE 1.—MAINTENANCE DEMONSTRATION

Source category	1990	1996	2000	2005
VOC Emissions (tons per day)				
Point	37.4	61.6	77.7	97.4
Biogenic	105.2	105.2	105.2	105.2
Area	54.9	58.3	60.6	64.4
Mobile (on-road)	103.6	45.5	39.4	31.7
Total	301.1	270.6	282.9	298.7
NO_X Emissions (tons per day)				
Point	32.2	34.4	36.0	38.2
Area	36.5	38.5	39.9	41.7
Mobile (on-road)	60.9	42.7	41.2	39.4
Total	129.6	115.6	117.1	119.3

3. Maintenance Measures

Ohio chose to implement Stage II and enhanced I/M in the Dayton-Springfield area as maintenance measures. The Ohio Stage II rule requires owners and operators of gasoline dispensing facilities that dispense greater than 10,000 gallons of fuel per month (50,000 gallons per month in the case of an independent small business marketer) to install and operate gasoline vehicle refueling vapor recovery systems. Vapor recovery systems control the release of VOC, benzene, and toxics emitted during the refueling process. Enhanced I/M will be implemented in Green, Montgomery and Clark Counties (Miami County is excluded because its population is less than 100,000). Ohio's emissions projections show that the Stage II rule and enhanced I/M requirements provide the necessary VOC emissions reductions to offset desired new source growth and allow for maintenance of the ozone NAAQS.

The Stage II and enhanced I/M SIP revisions must be fully approved before USEPA can consider the maintenance plan to be fully approved. On October 20, 1994, the USEPA partially approved and partially disapproved Ohio's SIP revision for implementation of the Stage II program (58 FR 52911). As stated in that rulemaking action, with the exception of paragraph 3745–21–09 (DDD)(5), USEPA considers Ohio's Stage II program to fully satisfy the criteria set forth in the USEPA guidance document for such programs entitled ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs.'' Only those Stage II provisions previously approved by USEPA are part of the Dayton-Springfield maintenance plan. Ohio's I/M SIP revision, which allows an area to opt into enhanced I/M, was approved on April 4, 1995 (60 FR 16989). (The approval of the redesignation is contingent upon the approval of the I/M SIP revision. Consequently, should the direct final notice approving the I/M SIP Revision be withdrawn as a result of adverse comment, this direct final notice approving the redesignation will also be withdrawn and final action will be taken on the redesignation at a later date.)

All existing VOC RACT controls required in the ozone SIP for the Dayton-Springfield area and new RACT controls incorporated in the VOC RACT SIP revision approved on March 23, 1995, remain in effect after redesignation of the region to attainment.

4. Tracking Maintenance

The OEPA and Regional Air Pollution Control Agency (RAPCA) will regularly monitor ozone air quality. In the redesignation request, RAPCA committed to continue operating and maintaining the five existing ozone monitors consistent with the requirements of Federal and State monitoring guidelines. Backup monitoring equipment will also be maintained.

The OEPA and RAPCA will develop comprehensive mobile, point, and area emissions inventories every 3 years beginning with the year 1993. Updates will be provided for intervening years.

The point source inventory will be updated annually with facility and permit data. The area source inventory will be updated using new data and estimation procedures. The mobile source inventory will be updated to incorporate new VMT estimates and revised USEPA mobile emissions models. OEPA will submit annual progress reports to USEPA which summarize available VOC emissions data.

5. Emission Budgets

The mobile source emissions budgets for purposes of determining the conformity status of transportation plans and transportation improvement plans in the Dayton-Springfield maintenance area are 31.7 tons VOC/day and 39.4 tons NO_X/day. Ohio obtained this emissions budget by calculating emissions for each county. The emissions budget for Clark County is 7.8 tons NO_X/day and 4.31 tons VOC/day.

6. Contingency Plan

If a violation is monitored, Ohio has committed to adopt and implement new Control Technology Guideline (CTG) VOC RACT rules and NO_X RACT rules according to schedules shown in Table 2. If the sum of point, area, and mobile source VOC emissions exceed the 1990 attainment inventory level, Ohio has committed to adopt and implement new CTG VOC RACT rules according to the schedule shown in Table 2. The new VOC RACT rules that will serve as a contingency measure include rules for the following 11 Control Technology Guideline (CTG) categories found in section 183(a) of the amended CAA: Synthetic Organic Chemicals Manufacturing Industry (SOCMI) distillation, SOCMI reactors, wood furniture, plastic parts coating (business machines), plastic parts coating (other), offset lithography, industrial wastewater, autobody refinishing, SOCMI batch processing, VOL storage tanks, and clean up solvents.

The maintenance plan for Montgomery, Greene, Clark and Miami Counties contains all the necessary elements and is acceptable.

TABLE 2.—CONTINGENCY MEASURE IMPLEMENTATION SCHEDULE

Control measure	Triggering Event	Action	Completion date (from trigger)
New CTG VOC RACT rules.	violation of ozone NAAQS or exceedance of 1990 attainment inventory.	Identify and verify ambient violation or exceedance of attainment inventory.	1 month.
		Survey potential VOC categories or specific sources.	3 months.
		Propose revised rules for the Dayton-Springfield area.	6 months.
		Adopt rule revisions for the Dayton-Springfield area.	9 months.
		Source demonstration of compliance or submittal of schedule to achieve.	12 months.
		Achieve compliance with revised requirements of OAC 3745–21.	24 months.
NO_x RACT rules	Violation of ozone NAAQS	Identify and verify ambient violation and issue Director's Orders.	1 month.
		Adoption of NO_x RACT rules	9 months.
		Achieve compliance with requirements of OAC 2745–14–03 or request extension.	18 months.

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

1. Section 110 Requirements

General SIP elements are delineated in section 110(a)(2) of Title I, Part A. These requirements include but are not limited to 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 (PSD) and D (NSR) permit programs, criteria for stationary source emission control measures, monitoring, and reporting, provisions for modeling, and provisions for public and local agency participation. For purposes of redesignation, the Ohio SIP was reviewed to ensure that all requirements under the amended Act were satisfied. Section 110 was amended in 1990, and the Dayton area SIP meets the requirements of the amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, USEPA believes that the pre-1990 amendment SIP meets those requirements. Many of the requirements that were amended in 1990 are duplicative of other requirements in the Act, and USEPA has determined that the Dayton SIP is consistent with the requirements of section 110 of the amended Act.

2. Part D Requirements

Before the Dayton 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 Dayton area was classified as moderate (56 FR 56694). Therefore, in order to be redesignated, the State must

meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, as well as the applicable requirements of subpart 2 of part D.

a. Section 172(c) Requirements

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

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

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

As for the section 172(c)(5) NSR requirement, USEPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this view is described fully and 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'' and is based on the Agency's authority to establish *de minimis* exceptions to statutory requirements. *See Alabama Power Co. v. Costle,* 636 F. 2d 323, 360–61 (D.C. Cir. 1979). As discussed below, the State of Ohio has demonstrated that the Dayton area will be able to maintain the standard without part D NSR in effect and, therefore, the State need not have a fully-approved part D NSR program prior to approval of the redesignation request for Dayton. Ohio's part C PSD program will become effective in the Dayton area upon redesignation to attainment.

Finally, for purposes of redesignation, the Dayton SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, were satisfied. As noted above, USEPA believes the SIP satisfies all of those requirements.

b. Section 176 Conformity Plan Provisions

Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that, before they are taken, Federal actions conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (transportation conformity), as well as to all other Federal actions (general conformity).

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). Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of Ohio is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994, and November 30, 1994, respectively. Because the deadlines for these submittals did not come due prior to the date the Dayton redesignation request was submitted, however, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

3. Subpart 2 Requirements

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

(i) 1990 Base Year Emission Inventory

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

(ii) Emission Statements

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

(iii) VOC RACT Requirements

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

On June 9, 1988, August 24, 1990, and June 7, 1993, Ohio submitted VOC RACT rules to USEPA for approval. In a final rulemaking action, the USEPA partially approved, partially disapproved, and granted partial limited approval/limited disapproval to portions of Ohio's VOC RACT rules on May 9, 1994 (see 58 FR 49458). Ohio submitted negative declarations for source categories which must be subject to RACT but for which there are no sources in the Dayton-Springfield area. The USEPA has reviewed revised VOC RACT rules which addressed identified deficiencies. Ohio's VOC RACT rules submittals have now been approved in a direct final notice published on March 23, 1995 (60 FR 15235). Thus, the State has now satisfied all of the VOC RACT requirements applicable to the Dayton area. (The approval of this redesignation is contingent upon the approval of the VOC RACT rules and the 1990 Base-

Year Emissions Inventory. Thus, this redesignation will not become effective until the approval of the VOC RACT rules and the 1990 Base-Year Emissions Inventory become effective. Consequently, should the direct final notice approving the VOC RACT rules or 1990 Base-Year Inventory be withdrawn as a consequence of adverse comment, this direct final notice approving the redesignation will also be withdrawn and final action will be taken on the redesignation at a later date.)

(iv) Stage II Vapor Recovery (Stage II)

Section 182(b)(3) required States to submit Stage II rules to USEPA for moderate ozone nonattainment areas by November 15, 1992. Ohio submitted Stage II regulations as a SIP revision on June 7, 1993. However, as the USEPA promulgated onboard rules on April 6, 1994 (59 FR 16262), Stage II is no longer required for moderate ozone nonattainment areas (see section 202(a)(b). Thus, a Stage II program is not an applicable requirement for purposes of determining if the area has met all the section 110 and part D requirements. However, Ohio is implementing Stage II as a maintenance measure.

(v) Vehicle Inspection and Maintenance (I/M)

The USEPA's final I/M regulations in 40 CFR Part 85 require the State to submit to the USEPA a fully adopted I/M program by November 15, 1992. Ohio submitted the I/M rules on May 26, 1994. This submittal was approved on April 4, 1995, at 60 FR 16989. (The approval of this redesignation is contingent upon the approval of the I/M SIP revision. Consequently, should the direct final notice approving the I/M SIP Revision be withdrawn as a consequence of adverse comment, this direct final notice approving the redesignation will also be withdrawn and final action will be taken on the redesignation at a later date.)

(vi) 1.15:1 VOC and NO_X Offsets Requirement for NSR

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

(vii) NO_X Requirement

Section 182(f) establishes NO_X requirements for ozone nonattainment areas. However, such requirement does not apply to an area such as Dayton if the Administrator determines that NO_X reductions would not contribute to attainment. The Administrator has made such a determination based upon three years of clean air quality data and has approved the State of Ohio's request to exempt the Dayton area from the section 182(f) NO_X requirements (60 FR 3760). Thus, the State of Ohio need not comply with the NO_X requirements of section 182(f) for Dayton to be redesignated. If a violation is monitored in the Dayton-Springfield area, Ohio has committed to adopt and implement NO_X RACT rules as a contingency measure.

E. Section 107(d)(3)(E)(ii). The Administrator has fully approved the applicable implementation plan for the area under Section 110(k). USEPA has reviewed the SIP to ensure that it contains all measures that were due under the amended 1990 Act. Based on the approval of submittals under the pre-amended CAA, and USEPA's approval of SIP revisions under the amended CAA, USEPA has determined that the Dayton-Springfield area has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed below. (45 FR 72122, 60 FR 3760, 60 FR 15035, 60 FR 15235, and 60 FR 16989.

III. Transport of Ozone Precursors to Downwind Areas

Preliminary modeling results utilizing USEPA's regional oxidant model (ROM) indicate that ozone precursor emissions from various States west of the ozone transport region (OTR) in the northeastern United States contribute to increases in ozone concentrations in the OTR. The State of Ohio has provided documentation that VOC and NO_X emissions in the Dayton-Springfield area will remain below attainment levels for the next eleven years. Should emissions exceed attainment levels, the contingency plan will be triggered. In addition, Ohio is required to submit a revision to the maintenance plan eight years after redesignation to attainment which demonstrates that the NAAQS will be maintained until the year 2015. The USEPA is currently developing policy which will address long range impacts of ozone transport. The USEPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. The USEPA intends to address the transport issue through Section 110 based on a domain-wide modeling analysis.

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

IV. Final Rulemaking Action

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

The USEPA is publishing this action without prior proposal because USEPA considers this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on July 5, 1995, unless USEPA receives adverse or critical comments on this redesignation by June 5, 1995, or by April 21, 1995, regarding the 1990 Base-Year Emissions inventory published at 60 FR 15053, or by April 24, 1995, regarding the VOC RACT notice published at 60 FR 15235, or by May 4, 1995, regarding Ohio's I/M SIP revision published at 60 FR 16989. If USEPA receives comments adverse to or critical of any of these approvals, USEPA will withdraw this redesignation approval before its effective date by publishing a subsequent **Federal Register** notice which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking notice(s).

Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this redesignation will be effective on July 5, 1995.

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 or allowing or

establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

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

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Motor vehicle pollution, Ozone, Volatile organic compounds, Reporting and recordkeeping requirements.

40 CFR Part 81

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

Dated: March 14, 1995.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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 removing paragraph (a)(5) and revising paragraph (b) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

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

(1) Preble County.

(2) Columbiana County.

(3) Jefferson County.

(4) Montgomery, Greene, Miami, and Clark Counties. This plan includes implementation of Stage II vapor recovery and an enhanced vehicle inspection and maintenance program.

(5) Lucas and Wood Counties.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES

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

Authority: 42 U.S.C. 7401–7671q.

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

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* *	*	*	*	*
Dayton-Springfield Area:				
Clark County	July 5, 1995	Attainment.		
Greene County	July 5, 1995	Attainment.		
Miami County	July 5, 1995	Attainment.		
Montgomery	July 5, 1995	Attainment.		
* *	*	*	*	*

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

[FR Doc. 95–10972 Filed 5–4–95; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 2

Substance Abuse and Mental Health Services Administration; Confidentiality of Alcohol and Drug Abuse Patient Records

RIN: 0905–AD97

AGENCY: Substance Abuse and Mental Health Services Administration, PHS, HHS.

ACTION: Final rule.

SUMMARY: The Department published a notice of proposed rulemaking in the **Federal Register** at 59 FR 42561 (August 18, 1994) with corresponding corrections at 59 FR 45063 (August 31, 1994), which proposed a clarification to the ''Confidentiality of Alcohol and Drug Abuse Patient Records'' regulations codified at 42 CFR part 2. Specifically, the Department proposed to clarify that, as to general medical care facilities, these regulations cover only specialized individuals or units in such facilities that hold themselves out as providing and provide alcohol or drug abuse diagnosis, treatment or referral for treatment and which are federally assisted, directly or indirectly. The Secretary has considered the comments received during the comment period, and is amending the regulations.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Martone, SAMHSA, Room 12C15, 5600 Fishers Lane, Rockville, Maryland 20857, tel. (301) 443–4640.

SUPPLEMENTARY INFORMATION: The ''Confidentiality of Alcohol and Drug Abuse Patient Records'' regulations, 42 CFR part 2, implement section 543 of the Public Health Service Act, 42 U.S.C. § 290dd–2, as amended by section 131 of the ADAMHA Reorganization Act, Pub. L. 102–321 (July 10, 1992). The regulations were promulgated as a final rule on July 1, 1975 (40 FR 27802) and amended on June 9,1987 (52 FR 21798). After considering the comments, the Department is revising the regulations to clarify the definition of ''program.''

Background of the Interim Final Rule and Summary of and Responses to Public Comments

A. Notice of Proposed Rulemaking

The notice of proposed rulemaking published at 59 FR 42561 (August 18, 19940 proposed to revise 42 CFR part 2 to clarify the ambiguity in the regulations regarding the definition of ''program.'' This ambiguity was identified in the case *United States v. Eide*, 875 F. 2d 1429, 1438 (9th Cir. 1989), where the court held that the Veterans Administration Medical Center's (VAMC) general emergency room is a ''program'' as defined by the regulations. In reaching this conclusion, the court relied on the clause that ''[p]rogram means a person which in whole or in part holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment, or referral for treatment.'' *Id.* The court ruled that the VAMC was a ''person'' which is defined at section 2.12 to mean ''an individual, * * * Federal, State or local government or any other legal entity,'' and concluded that ''[a] hospital emergency room, while obviously also performing functions unrelated to drug abuse, serves as a vital first link in drug abuse diagnosis, treatment and referral.'' *Id.*

As indicated in the NPRM, the Department believed this interpretation too broadly defined the term ''program'' in the regulations. *See* 59 FR 42561, 42562. Accordingly, the Department proposed to clarify the definition of ''program'' in the regulations to ensure that it encompasses only (1) an individual or entity (other than a general medical facility) who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or (2) an identified unit within a general medical facility which holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or 93) medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers.

B. Public Comments

Two commenters believed that the revised definition of ''program'' was too narrow. One of these commenters believed that the definition of ''program'' should include all physicians and other hospital and emergency room personnel who treat substance abusers. The other commenter believed that emergency room personnel should be covered by the regulations because they serve as an important source of referrals for substance abuse treatment. Both commenters believed that relief from the confidentiality rules could discourage persons who abuse substances from seeking services for other medical problems.

It should be noted that the clarification which was proposed was the intent of the revisions made to the regulations in 1987. *See* 52 FR 21796, 21797 (June 9, 1987). As indicated in the NPRM, prior to the 1987 amendments, the regulations applied to any record relating to substance abuse whether the information was obtained from an emergency room, a general medical unit or a general practitioner so long as there was a Federal nexus. In 1987, however, it was the intent of the Department to limit the applicability of the regulations to specialized programs and personnel so as to simplify administration of the regulations. It was the Department's position that this limitation would not significantly affect the incentive to seek treatment provided by the confidentiality protection. *See* 52 FR at 21797. Furthermore, the Department questioned whether applicability of the regulations to general medical care facilities addressed the intent of Congress to enhance treatment incentives for alcohol and drug abuse, since many substance abuse patients are treated in a general medical care facility not because they have made a decision to seek substance abuse treatment, but because they have suffered a trauma or have an acute condition with a primary diagnosis of something other than substance abuse. *Id.*

The Department is not aware of any evidence that the narrowing of the applicability of the regulations in 1987 (at least for jurisdictions other than the Ninth Circuit) has adversely affected substance abusers from seeking treatment whether for substance abuse or other medical problems. The Department is also not persuaded that encompassing all health care facilities and providers who provide alcohol and drug abuse treatment only as an incident to the provision of general medical care is warranted in light of the economic impact such a regulation would have on a substantial number of facilities which do not specialize in substance abuse treatment, referral or diagnosis.

One Federal agency believed that the proposed definition of ''program'' does not provide sufficient guidance to law enforcement, particularly the phrase ''holds itself out as * * *.'' That agency believed that the definition presents an opportunity for a practitioner who does not engage in substance treatment or referral for treatment, to designate himself or herself as a ''program,'' thereby avoiding regulatory or investigative scrutiny.