

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the Final Rules section of this **Federal Register**.

Dated: March 14, 1995.

**Valdas V. Adamkus,**  
*Regional Administrator.*

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#### 40 CFR Parts 52 and 81

[OH78-1-6969; FRL-5202-9]

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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Ohio U.S. Environmental Protection Agency (USEPA) has requested the redesignation of the Cincinnati area (Hamilton, Clermont, Butler, and Warren Counties) from moderate nonattainment to attainment for ozone; and Clinton County from transitional nonattainment to attainment. The requests were received on November 15, 1994. Before the Cincinnati request can be approved through final rulemaking, several State Implementation Plan (SIP) revisions must be approved. The USEPA is separately rulemaking on Ohio SIP revisions involving volatile organic compounds (VOC) Reasonable Available Control Technology (RACT) rules, the 1990 Base-year Inventory, the section 182(f) nitrogen oxides (NO<sub>x</sub>) RACT waiver request, the 182(b)(1) reasonable further progress plan, and the 182(b)(4) inspection and maintenance plan. Upon final approval of these plans, the Cincinnati nonattainment area will have met all of the requirements for redesignation specified under section 107(d)(3)(E). The approval of the Clinton County request is not contingent upon separate rulemaking action by USEPA. The USEPA is proposing approval of the redesignation request and maintenance plan for Butler, Hamilton, Warren, Clermont, and Clinton Counties in Ohio.

**DATES:** Comments on this redesignation and on the proposed USEPA action must be received by June 5, 1995.

**ADDRESSES:** Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: 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:** Randy Robinson, Air Enforcement Branch, Regulation Development Section (AE-17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353-6713.

#### SUPPLEMENTARY INFORMATION:

##### I. Summary of State Submittal

The Ohio Environmental Protection Agency (OEPA) has requested the redesignation of the Ohio portion of the Cincinnati Area (including the counties of Hamilton, Clermont, Butler, and Warren) from nonattainment to attainment for ozone. The Cincinnati moderate nonattainment area also includes the Kentucky counties of Boone, Campbell, and Kenton. These counties are being addressed in separate rulemaking. The OEPA is also requesting the redesignation of Clinton county from transitional nonattainment to attainment. The USEPA received both requests for redesignation to attainment on November 15, 1994. Public hearing and response to comment information was received on February 24, 1995.

Under Section 107(d) of the 1977 amended Clean Air Act, the USEPA promulgated the ozone attainment status for each geographic area of the country. All counties in the Cincinnati area were designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. Pursuant to Section 107(d)(4)(A), Butler, Clermont, Hamilton, and Warren Counties were designated as moderate nonattainment areas, as a result of monitored violations of the ozone National Ambient Air Quality Standards (NAAQS) during the summer of 1988 (56 FR 56694, November 6, 1991). Clinton County did not experience a violation during the three year period from January 1, 1987 through December 31, 1989, and therefore, pursuant to section 185(A) of the CAAA, was designated as a transitional nonattainment area. A review of the Cincinnati area redesignation request is presented below, followed by a review of the Clinton County request.

##### II. Redesignation Review Criteria

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

The USEPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992). Three key memoranda provide further guidance with respect to section 107(d)(3)(E) of the amended Act. The first, dated September 4, 1992, was issued by John Calcagni, Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum). The second, dated September 17, 1993, was issued by Michael Shapiro, Acting Assistant Administrator for Air and Radiation, Subject: State Implementation Plan (SIP) Requirements for Area Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992 (Shapiro Memorandum). The third, dated October 14, 1994, was issued by Mary Nichols, Assistant Administrator for Air and Radiation, Subject: Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment (Nichols Memorandum).

##### *Analysis of Cincinnati Area Redesignation Request*

A. The Area Must Have Attained the Ozone National Ambient Air Quality Standard (NAAQS)

For ozone, an area may be considered attaining the NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9, based on three

complete, consecutive calendar years of quality assured monitoring data. The data that are used should be the product of ambient monitoring that is representative of the area believed to have the highest concentration. A violation of the NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 at any site under consideration. A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 parts per million (ppm). The data should be collected and quality-assured in accordance with 40 CFR § 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

The OEPA submitted ozone monitoring data for the April through October ozone season from 1976 to 1994. The majority of recent exceedances occurred during 1988. To demonstrate monitored attainment with the standard, the OEPA submitted ozone air quality data for the years 1992 through 1994. This data has been quality assured and is recorded in AIRS. No violations were recorded during this time three-year time period.

The Cincinnati nonattainment area, including the Kentucky counties of Boone, Campbell, and Kenton, contains eleven monitors measuring ambient concentrations of ozone. The monitors and the number of exceedances for 1992 through 1994 are detailed in the technical support document. The site with the greatest number of expected exceedances is in Warren County with 0.67 annual average expected exceedance. The area is currently attaining the standard.

**B. The Area Must Have a Fully approved State Implementation Plan (SIP) Under Section 110(k)**

The counties of the Cincinnati moderate nonattainment area were designated nonattainment for ozone in March 1978, based on monitored violations. Additional monitored violations in 1983 caused USEPA to propose to disapprove the nonattainment SIP submitted in 1982 by OEPA and to require a revised SIP and attainment demonstration by 1987. Monitored violations occurred again in the Cincinnati area during the summer of 1988.

The CAAA provided that any area designated nonattainment as of November 15, 1990, would remain nonattainment and would be classified in one of five categories, based on the

severity of the monitored design concentration value. The Cincinnati area, including the counties of Butler, Hamilton, Clermont, and Warren, was classified as a moderate nonattainment area and as a result must submit a revised SIP which meets the requirements of the Clean Air Act Amendments and demonstrates attainment with the ozone standards.

The Shapiro memorandum, cited above, provides guidance on programs that must be in the SIP before the redesignation request can be approved. The memorandum states that for redesignation, the States must adopt and provide for implementation of all the programs that were due by the date of the redesignation request. Consequently, a modeled attainment demonstration is not required in the Cincinnati area because the redesignation request was submitted before the attainment demonstration due date.

Section E of this notice discusses the requirements under section 110 and Part D of Title 1 of the CAAA. As discussed in that section, USEPA is currently rulemaking on the Volatile Organic Compounds (VOC) RACT rules and the 15 Percent (%) Rate of Progress Plan. Approval of those submittals, along with the emissions inventory, NO<sub>x</sub> RACT waiver, and the I/M plan, will provide the area with a fully approved SIP at the time of final rulemaking on this redesignation request. All of the above program submittal deadlines preceded the Cincinnati redesignation request.

**C. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions Resulting From the SIP, Federal Measures and Other Permanent and Enforceable Reductions**

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, the State should estimate the percent reduction from the year that was used to determine the design value for designation and classification achieved from Federal measures and control measures that have been adopted and implemented by the State. Emission rates, production capacities and other information should be used in the estimation. Sources should be assumed to operate at permitted or historic peak levels unless evidence is presented that such an assumption is unrealistic.

The OEPA submittal documents reductions in emission from 1990 to 1993. The year 1988 was the year which determined the design value and should

have been the year from which reductions were calculated. This comment was made to OEPA in a January 6, 1995, letter from William L. MacDowell, Section Chief, Regulation Development Section, Region 5, to Mary Cavin, Hearing Clerk, OEPA. The OEPA responded that the result of using 1988 instead of 1990 as the base year would be that a greater reduction of emissions would have been calculated. The USEPA agrees that the use of 1988 data would not have affected the conclusion that the reductions in emissions from permanent and enforceable programs have resulted in improved air quality in the area and therefore accepts the reductions as calculated.

The OEPA submittal states that the 1993 emissions inventory is reflective of attainment conditions. The OEPA states that the reductions in emissions from the base year are achieved from the implementation of two federal programs; lower fuel volatility and the Federal Motor Vehicle Control Program (FMVCP). These programs are permanent and federally enforceable. The motor fuel volatility Phase I standards became effective nationwide in the summer of 1989, and established a volatility limit in the Cincinnati area of 10.5 pounds per square inch Reid Vapor Pressure (RVP). The RVP was further lowered in 1992 to 9.0 pounds per square inch. The total reduction in mobile source VOC emissions in the four Ohio Counties of the Cincinnati area, from 1990 to 1993 was 40 tons per day. These reductions were quantified using the MOBILE5A model.

From the years 1990 to 1993, area source and point source VOC emissions increased slightly, by 0.7 tons per day (tpd) and 1.9 tpd, respectively. Area sources were assumed to grow, based on historical population growth as interpolated by Bureau of Economic Analysis (BEA) data for the years 1988 to 1995 and on industrial employment data. Point source emissions for 1990 were developed from reports submitted to the Cincinnati Department of Environmental Services by facilities with actual combined VOC emissions of 10 tons per year or more. The following table shows combined Butler, Warren, Hamilton, and Clermont County VOC emissions for area, point, and mobile sources from 1990 to 1993.

	1990	1993
Area(TPD) .....	69.0	69.8
Point .....	70.9	72.8
Mobile .....	125.8	85.3
Total .....	265.7	227.9

The State has shown that actual total VOC emissions were reduced by about 38 tons per day from 1990 to 1993; due exclusively to mobile source reductions. Although the State did not calculate reductions based on a design year (i.e., 1988) emissions inventory, the demonstration that was submitted is adequate to show that actual reductions of VOC emissions have occurred in the area. The reduction in emissions shown in the submittal has been reasonably attributed to two programs: lower fuel volatility and the Federal Motor Vehicle Control Program. Both of the programs result in permanent and enforceable reductions in VOC emissions, and, therefore, the requirement of section 107(d)(3)(E)(iii) is satisfied.

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

Section 175A of the CAA defines requirements for maintenance plans. 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. There are five core provisions which the maintenance plan should address: the attainment inventory, maintenance demonstration, monitoring network,

verification of continued attainment, and a contingency plan. The attainment inventory should identify the level of emissions in the area which is sufficient to attain the ozone NAAQS and should include the emissions during the time period associated with the monitoring data showing attainment. Maintenance is demonstrated by showing that future emissions will not exceed the level of the attainment inventory. Modeling may also be used to show that the future combination of sources and emission rates will not cause a violation of the NAAQS. The maintenance plan must also provide for continued operation of an appropriate air quality monitoring network to verify attainment status of the area. The plan must indicate how the State will track the progress of the maintenance plan. Finally, the maintenance plan must include contingency measures to promptly correct any violation of the ozone NAAQS that occurs after redesignation of the area to attainment.

**Attainment Inventory**

The Cincinnati area submittal contained inventories of 1990 actual VOC emissions from stationary, area, and mobile sources. The year 1990 was selected as the base year and used to

project emissions to future years. The 1993 emissions inventory is considered as the attainment year inventory because no ozone violations have occurred since 1991, and the 1993 projections were performed per USEPA guidance. The approvability of the emission inventories will be addressed in a separate rulemaking. However, Federal approval of the Cincinnati nonattainment region emission inventories is needed before the redesignation request can be approved.

**Maintenance Demonstration**

The Cincinnati area submittal shows projected VOC, NO<sub>x</sub>, and CO emissions from the 1990 base year for the years 1993, 1996, 1999, 2002 and 2005. The projections show that the level of emissions established for the attainment year inventory will not be exceeded. Base year and projected emission inventories were presented for the seven counties that comprise the interstate Cincinnati moderate nonattainment area. The following tables list the VOC, NO<sub>x</sub>, and CO emissions for the base year, final year and interim years for only the Ohio portion of the inventory. Summary of VOC Emissions (tons/day)

	1990 Base	1993 Attain	1996 Proj.	1999 Proj.	2002 Proj.	2005 Proj.
Point .....	70.9	72.8	74.9	77.0	79.2	81.4
Area .....	69.0	69.8	70.7	71.4	72.3	73.1
Mobile .....	125.8	85.3	67.1	49.6	41.6	36.8
Totals .....	265.7	227.9	212.7	198.0	193.1	191.3

**Summary of CO Emissions (tons/day)**

Point .....	88.6	88.5	88.3	88.2	88.1	87.9
Area .....	319.4	323.8	328.6	333.4	338.6	343.8
Mobile .....	793.2	629.5	529.0	325.7	263.9	226.0
Totals .....	1201.2	1041.8	945.9	747.3	690.6	657.7

**Summary of NO<sub>x</sub> Emissions (tons/day)**

Point .....	280.0	279.4	279.0	278.6	278.3	277.6
Area .....	29.8	30.3	30.9	31.4	32.1	32.2
Mobile .....	130.7	115.6	101.3	84.4	72.0	65.5
Totals .....	440.5	425.3	411.2	394.4	382.4	375.3

The OEPA is revising the base year emission inventory numbers in response to comments made by USEPA. Although the revisions will change the base year and projected year emission totals, the changes are not expected to affect the results of the maintenance demonstration. The revised base year, attainment year, and projected

emissions will be presented in the final rule.

**Emission Projections**

Projections of stationary source emissions through year 2005 were developed based on data provided by the Bureau of Economic Analysis (BEA), United States Department of Commerce, showing manufacturing earnings by industry. An annual growth factor was

derived from this data and that growth factor was used to determine future year inventories. The base year inventory was developed through reports submitted by facilities with actual combined VOC emissions of 10 tons per year or more. The 1990 base year inventory reflects tons per typical summer day emissions as well as an 80 percent rule effectiveness assumption.

The area source emissions inventory includes sources too small to be handled individually in the point source inventory. The emissions in the area source inventory were reported in tons per typical summer day. Projections of area source emissions for most source categories was based on population data supplied by the Ohio Data Users Center: Ohio Department of Development. Some source categories (such as degreasing operations, construction and industrial equipment, and auto painting/traffic lines) used industrial employment, from BEA data, as the growth indicator. State gasoline consumption was used as a growth indicator to project emissions from gasoline distribution.

Mobile source emissions inventories were generated by applying the emissions factors from USEPA's Mobile5A emissions model to the projected Vehicle Miles Travelled (VMT) in the Cincinnati area counties. The VMTs for the 1990 base year were based on the TRANPLAN model, which utilizes actual traffic counting. Forecasts of VMTs to the year 2005 relied on the development of future highway networks, future forecasts of socio-economic data, and travel patterns in the Cincinnati area. VMTs are projected to increase 17 percent by the year 2005 from the 1990 base year. The VOC and NO<sub>x</sub> emissions projected for the year 2005 in the table presented earlier are for purposes of transportation conformity.

Runs of Mobile5A for the years 1990, 1993, 1996, 2000, and 2005 were conducted using the following input file categories: hourly temperature data, hourly hot/cold start percentage by roadway type, hourly vehicle mix by roadway type, hourly directional splits by roadway type, summer factors by roadway type, and speed by roadway type. Several programs account for the significant reductions in mobile emissions predicted through the year 2005. These programs, which are Federally approved or in the process of being approved, include the enhanced inspection and maintenance, State II vapor recover, on-board vapor recovery, FMVCP, and lower fuel volatility. Incorporation of enhanced inspection and maintenance into the Mobile5A modeling is initiated in 1996. The Stage II vapor recovery system (VRS) is fully implemented in 1995, while the on-board vapor recovery system begins in 1998. The on-board vapor recovery system applies to the four possible vehicle types; light duty gas, light duty truck 1 and 2, and heavy duty gas.

*Monitoring Network*

There are currently eleven monitors measuring ozone in the Cincinnati area, as described above. Three are operated by the State of Kentucky. Seven of the eight monitors located in the Cincinnati area are operated by the Cincinnati Department of Environmental Services. The remaining monitor is operated by the Southwest District Office of the OEPA. The Cincinnati Department of Environmental Services has committed to continue operating and maintaining its ozone monitoring network consistent with the Federal and State monitoring guidelines in order to continue to verify the attainment status of the area.

*Contingency Plan*

The contingency plan for the Cincinnati 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 Ohio/Kentucky Cincinnati region, and a mechanism with which to trigger the implementation of the contingency measures.

Two methods of attainment tracking will be utilized: (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 VMT estimates and any new USEPA mobile emission models. Annual progress reports will summarize available VOC emissions data.

The contingency measures to be considered for implementation are listed below.

1. Lower Reid Vapor Pressure for gasoline
2. Reformulated gasoline program
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 Act 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 areawide 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, areawide 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. Requirement 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 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 control measures, NO<sub>x</sub> RACT will be activated. Contingency measures will be implemented according to the following schedule:

Activity	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.
	Completion time second triggering event/post VOC control plan
Verify a violation has occurred.	1 month.
Submit schedule for implementation of NO <sub>x</sub> RACT.	3 months.
Implement NO <sub>x</sub> 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 USEPA 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 Ohio submittal adequately addresses 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, satisfies the maintenance plan requirement in section 107(d)(3)(E)(iv).

#### E. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

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

#### Section 110: General Requirements for Implementation Plans

Section 110(a)(2) of Title I of the CAAA lists the elements to be included in each SIP after adoption by the State and reasonable notice and public hearing. The elements include, but are not limited to, provisions for establishment and operation of appropriate devices, 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 Cincinnati area SIP was reviewed to ensure that all requirements under the amended Act were satisfied. USEPA has determined that the Cincinnati area SIP is consistent with the requirements of section 110 of the amended Act.

#### Part D: General Provisions for Nonattainment Areas

Before the Cincinnati 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 area was classified as moderate. 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

The State redesignation request for Cincinnati has satisfied all of the relevant submittal requirements under section 172(c) necessary for the area to be redesignated to attainment. Some components have not yet completed regulatory review. Approval of all required SIP revisions is necessary before the redesignation request can be approved. The reasonable further progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant because the Cincinnati area has already demonstrated monitored attainment of the ozone NAAQS.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The State has submitted such an inventory under section 182(a)(1). It is currently being reviewed for approvability.

Section 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The USEPA has determined that areas being redesignated need not comply with the requirement that a New Source Review (NSR) program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment". The State of Ohio has demonstrated that the Cincinnati 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 Cincinnati. The State's Prevention of Significant Deterioration (PSD) program will become effective in the Cincinnati area upon redesignation to attainment.

#### Subpart 2 Section 182 Requirements

The Cincinnati area is classified moderate nonattainment; therefore, part D, subpart 2, section 182(b) requirements apply. In accordance with guidance presented in the Shapiro memorandum, the requirements which came due prior to the submission of the request to redesignate the Cincinnati area must be fully approved into the SIP before the request to redesignate the area to attainment can be approved. Those requirements are discussed below:

##### (a) 1990 Base Year Inventory

The 1990 base year emission inventory was due on November 15, 1992. It was submitted to USEPA on March 14, 1994. USEPA is currently reviewing the base year inventory.

##### (b) Emission Statements

The emission statements SIP was due on November 15, 1992. It was submitted to the USEPA on March 18, 1994. The USEPA approved this SIP revision through a direct final rulemaking action published on October 13, 1994 (59 FR 51863). This approval became effective on December 12, 1994.

##### (c) 15% Plan

The 15% Rate of Progress plan for VOC reductions was required to be submitted by November 15, 1993, and, therefore, is applicable to the Cincinnati Moderate Nonattainment area. The 15% plan was submitted to USEPA on March 14, 1994, and is currently under review. This plan must be approved before a redesignation to attainment can be finalized.

##### (d) RACT Requirements

SIP revisions requiring RACT for three classes of VOC sources are required under section 182(b)(2). The categories are:

(i) All sources covered by a CTG document issued between November 15, 1990 and the date of attainment. The USEPA has issued a CTG document in which it lists 11 CTG's that are planned to be issued in accordance with section 183. The USEPA has also promulgated a CTG document entitled "Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation

Operations Processes in the Synthetic Organic Chemical Manufacturing Industry", August 1993. However, the Cincinnati redesignation request was submitted before the November 15, 1994 (57 FR 18070), due date for RACT rule submission for the 11 CTG's and the March 23, 1995 (59 FR 13717), due date for the more recent CTG. Therefore, this requirement is not applicable.

(ii) All sources covered by a Control Technology Guideline (CTG) issued prior to November 15, 1990. The State has stated that it has adopted rules requiring RACT for sources for which a CTG has been issued.

(iii) All other major non-CTG stationary sources. The non-CTG rules were due by November 15, 1992, and apply to the Ohio submittal. The USEPA is currently reviewing non-CTG rules submitted by Ohio.

(e) 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. On October 20, 1994, the USEPA partially approved and partially disapproved Ohio's SIP revision for implementation of Stage II (58 FR 52911). As stated in that rulemaking action, with the exception of paragraph 3745-21-09 (DDD)(5), USEPA considers Ohio's Stage II program to fully satisfy the criteria set forth in the USEPA guidance document for such programs entitled "Enforcement Guidance for Stage II Vehicle Refueling Control Programs." Only those Stage II provisions previously approved by USEPA are part of the Cincinnati area maintenance plan.

The Shapiro Memorandum states that once onboard regulations (FMVCP) are promulgated, the Stage II regulations are no longer applicable for moderate ozone nonattainment areas. The USEPA promulgated onboard rules in February 1994; therefore, pursuant to section 202(a)(6) of the CAAA, Stage II is no longer required. However, the State has opted to include reductions in VOCs from the Stage II program as part of the maintenance plan and the 15% Rate of Progress plan.

(f) 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, 1993. Ohio submitted the I/M rules on May 26, 1994. USEPA published a direct final approval of the rules on April 4, 1995. If the notice is not withdrawn due to

adverse comments, the rules will become effective on June 3, 1995.

The legislation authorizing the State to establish an I/M program also allows the option of implementation of an enhanced I/M program into an area's maintenance plan. The State is including enhanced I/M as a part of the maintenance plan and 15% plan for the counties of Butler, Clermont, Hamilton, and Warren. Consequently, approval of the Cincinnati area redesignation request is contingent upon USEPA final approval of the I/M regulation. A withdrawal of the direct final rulemaking for I/M would affect the approval of the Cincinnati redesignation.

(g) 1.15 to 1.0 Offset

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 Mary Nichols memorandum states, under certain circumstances, that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation. As the State has demonstrated that maintenance can be maintained without NSR offsets in effect, the State need not have a fully approved NSR program for the Cincinnati area to be redesignated. Upon redesignation to attainment, the sources will become subject to PSD requirements and offsets will no longer apply. Emissions will continue to be tracked on an annual basis.

(h) NO<sub>x</sub> Requirement

Section 182(f) establishes NO<sub>x</sub> requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO<sub>x</sub> reductions would not contribute to attainment. The Administrator has proposed such a determination for the Cincinnati nonattainment area as requested by the State of Ohio (60 FR 3361). If the NO<sub>x</sub> waiver is approved as a final rule, the State of Ohio need not impose the NO<sub>x</sub> control measures in section 182(f) for the Cincinnati area to be redesignated. However, if the NO<sub>x</sub> waiver is not approved, the NO<sub>x</sub> requirements must be met for the area to be redesignated from nonattainment to attainment. If a violation is monitored in the Cincinnati area (including the counties of Butler, Hamilton, Warren, Clermont, and Clinton in Ohio and Boone, Campbell, and Kenton in Kentucky), Ohio has committed to adopt and implement NO<sub>x</sub> 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.

*Review of Clinton County Redesignation Request*

Clinton County, located to the northeast of the City of Cincinnati, is classified as a transitional area because it was designated nonattainment prior to enactment and did not have a monitored ozone violation between the period starting January 1, 1987 and ending December 31, 1989. The OEPA must demonstrate that the Clinton County portion of the submittal meets the five redesignation requirements specifically identified in Section 107(d)(3)(E). The requirements are listed below.

A. The Area Must Have Attained the Ozone NAAQS

Monitoring data was submitted for Clinton County for the years 1977 through 1994. The monitor recorded 5 exceedances of the ozone NAAQS in 1983 and single exceedances in the years 1988, 1989, and 1993. The data is available in AIRS and adequately demonstrates that Clinton County is attaining the NAAQS.

B. The Area Must Have a Fully Approved State Implementation Plan (SIP) Under Section 110(k)

Clinton County is a transitional area and therefore is only required to submit an emissions inventory as a SIP revision. This rulemaking is proposing approval of the emissions inventory as part of the maintenance plan and redesignation request for Clinton County. The Calcagni memorandum allows approval action on the SIP elements and the redesignation request to occur simultaneously. Therefore, the area has satisfied this requirement.

C. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions Resulting From the SIP, Federal Measures and Other Permanent and Enforceable Reductions

The State has shown that in Clinton County, actual total VOC emissions were reduced by about 2 tons per day from 1990 to 1993; due exclusively to mobile source emission reductions. The mobile emission reductions were the result of the lower fuel volatility program and the FMVCP. Both of these programs are Federally enforceable and permanent.

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

The OEPA has met the applicable requirements by submitting a

maintenance plan consisting of emission inventories for area, point, and mobile sources of VOC, NO<sub>x</sub>, and CO. The maintenance plan also consists of a contingency plan with specific contingency measures to be implemented in accordance with a specified schedule.

The contingency measures and schedule presented in Section II.D. above also apply to Clinton County. Additionally, a monitored violation in Clinton County would trigger contingency measures in the counties comprising the Cincinnati moderate nonattainment area.

**E. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D**

The USEPA has interpreted section 107(d)(3)(E)(ii) to mean that the applicable requirements that an area must satisfy before it can be redesignated are the requirements under section 110 (regarding general provisions in a SIP) and under Part D (regarding the requirements for nonattainment area plans) that were due before the request was submitted. The General Preamble details the requirements for transitional areas.

Those requirements and their applicability to Clinton County are presented below.

**(1) RACT/Reasonably Available Control Measure (RACM)**

In order to satisfy this requirement, transitional areas must show that any RACT deficiencies regarding enforceability of an existing rule are corrected. Clinton County was not included in the post 1987 SIP call letters issued by USEPA to OEPA (dated May 26, 1988, and November 8, 1989) and therefore was never cited as having RACT deficiencies. Thus, Clinton County has satisfied this requirement.

**(2) Attainment Demonstration**

Section 182(a)(4) specifically exempts marginal areas from any attainment demonstration requirement. In accordance with the General Preamble, this exemption is also reasonably applied to transitional areas since such areas are not violating the standard. Therefore, Clinton County is not subject to this requirement.

**(3) RFP**

Clinton County is already in attainment. This requirement is not applicable.

**(4) Emissions Inventory**

An emissions inventory is required under section 172(c)(3). Clinton County submitted an emissions inventory for VOC's, NO<sub>x</sub>, and CO. The inventory was used to develop a maintenance plan under section 175(A).

Emission inventories are supplied for Clinton County for the years 1990 to 2005. The attainment year is considered to be 1993. The mobile source emissions were determined using the MOBILE5A model. The emission factors calculated by the model were multiplied by the area VMT's. Area source emissions were estimated using growth indicators as recommended by USEPA. These indicators included population growth, industrial activity, and gasoline consumption. There are no major point sources of VOC, NO<sub>x</sub>, or CO in Clinton County. The reduction in mobile source emissions from the 1990 base year to the 1993 attainment year are attributed to the implementation of two federal programs: Lower fuel volatility and the FMVCP. The following table shows the Clinton County inventory figures.

**SUMMARY OF VOC EMISSIONS (TONS/DAY)**

	1990 Base	1993 Attain	1996 Proj.	1999 Proj.	2002 Proj.	2005 Proj.
Point .....	0.0	0.0	0.0	0.0	0.0	0.0
Area .....	11.3	11.33	11.36	11.39	11.42	11.45
Mobile .....	5.04	3.27	2.82	2.80	2.31	2.04
<b>Totals .....</b>	<b>16.34</b>	<b>14.60</b>	<b>14.18</b>	<b>14.19</b>	<b>13.73</b>	<b>13.49</b>

**Summary of CO Emissions (tons/day)**

Point .....	0.0	0.0	0.0	0.0	0.0	0.0
Area .....	24.2	24.3	24.4	24.5	24.7	24.8
Mobile .....	29.2	20.1	17.3	16.9	14.4	13.3
<b>Totals .....</b>	<b>53.4</b>	<b>44.4</b>	<b>41.7</b>	<b>41.4</b>	<b>39.1</b>	<b>38.1</b>

**Summary of NO<sub>x</sub> Emissions (tons/day)**

Point .....	0.0	0.0	0.0	0.0	0.0	0.0
Area .....	1.62	1.63	1.64	1.64	1.65	1.66
Mobile .....	4.80	4.19	3.69	3.65	3.13	2.73
<b>Totals .....</b>	<b>6.42</b>	<b>5.82</b>	<b>5.33</b>	<b>5.29</b>	<b>4.78</b>	<b>4.39</b>

**(5) New Source Review**

Section 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The USEPA has determined that areas being redesignated need not comply with the requirement that a New Source Review (NSR) program be approved

prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review Requirements for Areas Requesting

Redesignation to Attainment". The State of Ohio has demonstrated that Clinton County 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 Cincinnati. The State's Prevention of Significant Deterioration

(PSD) program will become effective in Clinton County upon redesignation to attainment.

(6) Monitoring

Nonattainment areas must meet the applicable monitoring requirements of section 110(a)(2). Clinton County has met the monitoring requirement by conducting ambient air monitoring to verify the attainment status of the area and by making the data available in AIRS.

(7) Contingency Measures

The contingency measures presented in Section II.D. above also apply to Clinton County. Additionally, a monitored violation in Clinton County would trigger contingency measures in the counties comprising the Cincinnati moderate nonattainment area.

The Clinton County portion of the OEPA submittal demonstrates that: (i) The area has attained the NAAQS; (ii) the SIP has been fully approved under section 110(k); (iii) the improvement in air quality is due to permanent and enforceable measures; (iv) the maintenance plan meets the requirements of section 175(A); and (v) the area has met all applicable requirements under section 110 and Part D. Therefore, the OEPA has demonstrated that Clinton County satisfies the CAAA requirements for redesignating a nonattainment area to attainment.

*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<sub>x</sub> emissions in the Cincinnati nonattainment area are predicted to remain below attainment levels for the next ten years. Should emissions exceed attainment levels, the contingency plan will be triggered. In addition, eight years after redesignation to attainment, Ohio is required to submit a revision to the maintenance plan 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.

**III. Proposed Rulemaking Action and Solicitation of Public Comment**

The State of Ohio has met the submission requirements of the CAAA for revising the Ohio ozone SIP. The USEPA is proposing approval of the redesignation of the Cincinnati moderate nonattainment area, consisting of the counties of Butler, Warren, Clermont, and Hamilton, to attainment for ozone. In addition, USEPA is proposing approval of the redesignation to attainment for Clinton County. The USEPA is also proposing approval of the maintenance plan for each area into the ozone SIP. As noted earlier, final approval of the Cincinnati area request is contingent upon full approval of the required VOC RACT rules, Ohio's I/M SIP revision, the 15% Rate of Progress Plan, Cincinnati's base-year emissions inventory, and the NO<sub>x</sub> waiver for Cincinnati.

Public comments are solicited on USEPA's proposed rulemaking action. Public comments received by June 5, 1995 will be considered in the development of USEPA's final rulemaking action.

Nothing in this action should be construed as permitting, 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 has exempted this regulatory action from Executive Order 12866 review.

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

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but

simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

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

**List of Subjects**

*40 CFR Part 52*

Air pollution control, Nitrogen dioxide, Ozone, Reporting and



recordkeeping requirements, Volatile organic compounds.

#### 40 CFR Part 81

Air pollution control.

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

Dated: April 21, 1995.

**Valdas V. Adamkus,**  
Regional Administrator.

[FR Doc. 95-11035 Filed 5-4-95; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 950410098-5098-01; I.D. 030395A]

RIN 0648-AH19

#### Taking and Importing of Marine Mammals; Deterrence Regulations and Guidelines

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Marine Mammal Protection Act (MMPA) Amendments of 1994 (the Amendments) provided new authority to citizens of the United States to deter marine mammals from: Damaging fishing gear and catch; damaging private property; endangering public safety; or damaging public property. The Amendments require NMFS to publish a list of guidelines for use in safely deterring marine mammals and to prohibit deterrence measures that have a significant adverse impact on marine mammals. This proposed rule sets forth preliminary versions of the guidelines and prohibitions, and seeks public comment upon which to refine them.

**DATES:** Comments must be received no later than July 5, 1995.

**ADDRESSES:** Written comments on the proposed rule should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. A copy of the Environmental Assessment (EA) and list of experts may be obtained by writing to this address or by telephoning one of the contacts listed below.

**FOR FURTHER INFORMATION CONTACT:** Tom Eagle or Ken Hollingshead Office of

Protected Resources at (301) 713-2322; Doug Beach, Northeast Regional Office at (508) 281-9254; Jeff Brown, Southeast Regional Office at (813) 893-3366; Irma Lagomarsino, Southwest Regional Office at (310) 980-4020; Joe Scordino, Northwest Regional Office at (206) 526-6143; or Steve Zimmerman, Alaska Regional Office at (907) 586-7510.

#### SUPPLEMENTARY INFORMATION:

##### Background

The 1994 Amendments to the MMPA amended section 101(a)(4) to authorize fishers to deter marine mammals from damaging fishing gear or catch, property owners to deter marine mammals from damaging property, government officials to deter marine mammals from damaging public property, and anyone to deter marine mammals from endangering personal safety, so long as such acts of deterrence do not result in the serious injury or mortality of a marine mammal. Section 101(a)(4) of the MMPA directs the NMFS to develop and publish guidelines for use in safely deterring marine mammals and to prohibit deterrence measures determined to have a significant adverse effect on the animals. Section 101(a)(4)(B) directs NMFS to recommend specific measures which may be used to nonlethally deter marine mammals listed as endangered or threatened under the Endangered Species Act of 1973 (ESA). Such measures must be consistent with the provisions of the ESA. Actions to deter marine mammals consistent with such guidelines or specific measures would not be a violation of the MMPA.

The guidelines and prohibitions of this proposed rule would apply only with respect to marine mammal species which are not listed under the ESA. Specific recommended measures of nonlethal deterrence for ESA-listed species will be the subject of a separate rule. In the meantime, the use of deterrence measures upon marine mammal species listed under the ESA would remain prohibited.

Under the MMPA's section 114 Interim Exemption Program, commercial fishers were authorized, in certain situations, to deter marine mammals, to take them by harassment, and to intentionally kill them to protect fishing gear and catch. The 1994 Amendments to the MMPA changed this by prohibiting intentional killing and authorizing only acts of deterrence that do not cause serious injury or mortality to marine mammals. Furthermore, intentional lethal taking is now explicitly prohibited, except in the defense of human life, by new sections 101(c) and 118(a)(5) (see 60 FR 6036,

February 1, 1995). Taken together, these new provisions effect a marked change in how some fisheries legally interact with marine mammals. The deterrence guidelines and prohibitions of this proposed rule would facilitate that change, allowing the use of effective deterrence measures while limiting injurious force.

New section 101(a)(4) of the MMPA authorizes the intentional interaction of private citizens with marine mammals. Recreational fishers may now deter marine mammals from damaging fishing gear or catch; property owners or their agents may now deter marine mammals from damaging their property; and the general public may now deter marine mammals from endangering personal safety, provided such deterrence does not cause a marine mammal's death or serious injury. The proposed guidelines and prohibited measures set forth activities that are not likely to cause a marine mammal death or serious injury and specifically prohibit activities determined, using the best scientific information available, to have a significant adverse effect on marine mammals. Actions by the public to deter non-ESA listed marine mammals consistent with such guidelines would not be a violation of the MMPA.

Because Federal, state, and local government officials had the authority to take marine mammals prior to the 1994 MMPA Amendments if doing so was for the protection or welfare of the animals or for the protection of the public health and welfare, and, because regulations governing such takings, which take into account the special training and experience levels of such officials, are already in place at 50 CFR 216.22, the proposed guidelines and prohibitions would not apply to acts of deterrence by government officials.

##### Guidelines

The proposed guidelines for use in safely deterring marine mammals would provide information on acceptable types of deterrence actions. The proposed guidelines incorporate caution and restraint in their deterrence methods and should minimize marine mammal injuries, if followed. The broad application of these proposed guidelines to a wide range of marine mammal species, interaction situations, and highly variable marine mammal behavioral reactions requires that the guidelines be general. They would give direction to ensure that deterrence actions do not result in the serious injury or death of a marine mammal.

"Passive" deterrence measures, those that prevent a marine mammal from gaining access to property, people, or