

of this rule for 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) of the Act, 42 U.S.C. 7607 (b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA 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, EPA 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 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 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) and 7410(k)(3).

Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA 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 this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain duties. To the extent that the rules being approved by this action will impose 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 any mandate upon the private sector. EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 3, 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 II—North Carolina

2. Section 52.1770, is amended by adding paragraph (c)(88) to read as follows:

§ 52.1770 Identification of plan.

* * * * *
(c) * * *

(88) The VOC RACT regulations, NSR regulations, and other miscellaneous revisions to the North Carolina State Implementation Plan which were submitted on August 15, 1994. The Stage II regulations and other miscellaneous revisions to the North Carolina State Implementation Plan which were submitted on May 24, 1995.

(i) Incorporation by reference.
(A) Regulations 15A NCAC 2D .0531, .0909, .0928, .0932, .0933, and .0953 effective on July 1, 1994.

(B) Regulations 15A NCAC 2D .0902, .0907, .0910, .0911, .0952, and .0954 effective on May 1, 1995.

(ii) Other material. None.

* * * * *

[FR Doc. 96-1939 Filed 1-31-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 52 and 81

[OH60-1-6377a; FRL-5410-1]

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

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving the ozone State Implementation Plan (SIP) revision and redesignation requests submitted by the State of Ohio for the purpose of redesignating Franklin, Delaware, and Licking Counties (Columbus area) from marginal nonattainment to attainment for ozone; and revising Ohio's SIP to include a 1990 base-year ozone precursor emissions inventory for the Columbus ozone nonattainment area. Ground-level ozone, commonly known as smog, is an air pollutant which forms on hot summer days which harmfully affects lung tissue and breathing passages. The redesignation to attainment of the health-based ozone air quality standard is based on a request from the State of Ohio to redesignate this area and approve its maintenance plan, and on the supporting data the State submitted in support of the requests. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change, and a maintenance plan is put in place which is designed to ensure the area maintains the ozone air quality standard for the next ten years. The emissions inventory was submitted to satisfy a Federal requirement that States containing ozone nonattainment areas submit

inventories of actual ozone precursor emissions for the year 1990. Data from emission inventories aide States in developing plans to meet and/or maintain the ozone air quality standard.

DATES: The "direct final" is effective on April 1, 1996, unless USEPA receives adverse or critical comments by March 4, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revision request and USEPA's analysis (Technical Support Document) are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone William Jones at (312) 886-6058 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William Jones at (312) 886-6058.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (CAA). Pub. L. 101-549, codified at 42 U.S.C. 7401-7671q. Pursuant to Section 107(d)(4)(A) of the CAA, Franklin, Delaware, and Licking Counties (Columbus area) were designated as nonattainment for ozone, see 56 FR 56694 (November 6, 1991). At the same time, the Columbus area was classified as a marginal ozone nonattainment area.

I. Emissions Inventories

Section 182(a)(1) of the Clean Air Act Amendments of 1990 (Act) requires States with ozone nonattainment areas to submit a comprehensive, accurate and current inventory of actual ozone precursor emissions [which include volatile organic compounds (VOC), nitrogen oxides (NO_x), and carbon monoxide (CO)] for each ozone nonattainment area by November 15, 1992. This inventory must include anthropogenic base-year (1990) emissions from stationary point, area, non-road mobile, and on-road mobile sources, as well as biogenic (naturally occurring) emissions in all ozone nonattainment areas. The emissions inventory must be based on conditions that exist during the peak ozone season (generally the period when peak hourly ozone concentrations occur in excess of the primary ozone National Ambient Air Quality Standard—NAAQS). Ohio's

annual ozone season is from April 1 to October 31.

A. Criteria for Evaluating Ozone Emissions Inventories

Guidance for preparing and reviewing the emission inventories is provided in the following USEPA guidance documents or memoranda: "State Implementation Plans; General Preamble for the Implementation of Title I of the Act," (Preamble) published in the April 16, 1992 Federal Register (57 FR 13498); "Emission Inventory Requirements for Ozone State Implementation Plans," (EPA-450/4-91-010) dated March 1991; a memorandum from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards, entitled "Public Hearing Requirements for the 1990 Base-Year Emissions Inventories for Ozone and Carbon Monoxide Nonattainment Areas," dated September 29, 1992; "Procedures for the Preparation of Emissions Inventories for Carbon Monoxide and Precursors of Ozone, Volumes I and II," (EPA-450/4-91-016 and EPA-450/4-91-014) dated May 1991; "Procedures for Emissions Inventories Preparation, Volume IV: Mobile Sources," (EPA-450/4-81-026d) dated 1992; and "Supplement C to Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources," (AP-42) dated September 1990.

As a primary tool for the review of the quality of emission inventories, the USEPA has also developed three levels (I, II, and III) of emission inventories checklists. The Level I and II checklists are used to determine that all required components of the base-year emission inventory and associated documentation are present. These reviews also evaluate the level of quality of the associated documentation and the data provided by the State and assess whether the emission estimates were developed according to the USEPA guidance. The Level III review evaluates crucial aspects and the overall acceptability of the emission inventory submittal. Failure to meet one of the ten crucial aspects would lead to disapproval of the emissions inventory submittal.

Detailed Level I and II review procedures can be found in the USEPA guidance document entitled "Quality Review Guidelines for 1990 Base Year Emissions Inventories," (Quality Review) (EPA-454/R-92-007) dated August 1992. Level III criteria were attached to a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Emission Inventory Issue," dated June

24, 1993. The Level I, II, and III checklists used in reviewing this emissions inventory submittal are attached to a USEPA technical support document (TSD) dated October 3, 1995.

B. State Submittal

On March 15, 1994, the Ohio Environmental Protection Agency (OEPA) submitted a revision to the ozone portion of Ohio's SIP which consisted of the 1990 base-year ozone emissions inventory for the following ozone nonattainment areas in Ohio: Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo and Youngstown. The emissions inventory for the Columbus area was deemed complete on September 13, 1994. The USEPA has completed its review of the emissions inventory submitted for the Columbus ozone nonattainment area. The 1990 base-year emissions inventories submitted for all other areas are addressed in separate rulemakings.

Inventory Preparation Plan/Quality Assurance Plan

All States were required to submit an Inventory Preparation Plan (IPP) to USEPA for review and approval by October 1, 1991. The IPP documents the procedures utilized in the development of an emissions inventory and contains the quality assurance and quality control plan (QA/QC). On March 19, 1992, the State of Ohio submitted a final ozone emissions IPP. On April 15, 1992, USEPA informed the State that the IPP was not approvable at the time. The USEPA has worked with the State since that time in order to correct deficiencies in the IPP. With the March 1994 SIP revision request, the State submitted documentation as to how the emissions inventory was prepared, as well as a quality assurance report for the point, area, and mobile source portions of the emissions inventory. The USEPA finds that this documentation and quality assurance reports are acceptable to meet the requirements of an IPP.

Point Source Emissions Inventory

The State submitted a point source emissions inventory of all facilities that emit at least 10 tons per year (tpy) of VOC, or 100 tpy NO_x or CO in the nonattainment area. The State also included sources that emit 100 tpy of VOC, CO, or NO_x located in a 25-mile boundary surrounding the nonattainment area. The point source emissions inventory contains general facility information, number of sources, production schedules and related emissions for each source, emissions limitation, control efficiency and rule

effectiveness (RE), as applicable, and total emissions on an annual and daily ozone season basis. (Rule effectiveness is a factor designed to take into account the assumption that control equipment does not operate at 100 percent all of the time of source operation, due to maintenance, malfunction, etc.)

The following methods were employed by the State to identify sources to be included in the 1990 base-year emissions inventory: the 1989 records for plants in the Emissions Inventory System (EIS) were checked and plants meeting the VOC, CO or NO_x criteria were updated with 1990 emissions data; the air permit records were reviewed for plants that may be candidates for inclusion in the point source inventory; and current industrial directories and the Toxic Release Information System (TRIS) database were checked for additional sources. For facilities in the point source inventory, the State acquired the emissions data by means of the following: mail surveys; plant inspections; telephone calls; and air permit files.

The USEPA reviewed the point source emissions data by cross referencing the point source inventory to the following sources: (1) USEPA's guidance document entitled "Major CO, NO₂, and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume I: Classified Ozone Nonattainment Areas," (EPA-450/4-92-005a) February 1992; a 1990 TRIS Retrieval; and a 1990 Aerometric Inventory Retrieval System (AIRS) Facility Subsystem (AFS) AFS—Emission to Compliance Comparison Report. The State was notified of any potentially missing sources or discrepancies in their reported emissions and provided any corrections necessary.

Where a source was governed by a regulation or a control device, the emissions limit was stated. A RE factor was then applied in the determination of emissions. In accordance with USEPA guidance, a standard RE factor of 80 percent was utilized unless otherwise justified.

Area Source Emissions Inventory

Area source emissions were calculated using State-specific data as well as USEPA guidance documents and technical memoranda developed for various categories. The State utilized emission factors from "Procedures for the Preparation of Emission Inventories of Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources, and IV: Mobile Sources," and AP-42 and provided necessary documentation. The following

area source categories were included in the emissions inventory: Gasoline loading and distribution, dry cleaning, degreasing, architectural surface coatings, traffic markings, automobile refinishing, graphic arts, cutback asphalt, pesticide application, commercial/consumer solvents, bakeries, waste management practices (landfills), leaking underground storage tanks, incineration of solid waste, stationary fossil fuel combustion, and fires (structural, open burn, etc.). Vehicle refueling emissions were included as part of the mobile source emissions inventory.

The area source inventory was reviewed utilizing USEPA's guidance documents, and the Level I and II checklists, to ensure that all source categories and their related emissions (and emission factors) were included in the area source emissions inventory. Seasonal adjustments, rule effectiveness, and rule penetration factors were applied as indicated in the State submittal.

On-Road Mobile Source Emissions Inventory

In the development of the mobile source emissions inventory, the State of Ohio utilized USEPA's mobile source emissions model, Mobile 5a, for the determination of the emission factors for all eight vehicle types. Hard-copy documentation of the input and output files were provided in the submittal. Where available, State-specific inputs were utilized in the development of the input files for Mobile 5a.

The 1990 vehicle miles travelled (VMT) for each of the twelve roadway types were developed by the Ohio Department of Transportation (ODOT). ODOT maintains data on each section of highway in the State of Ohio. VMT values were developed by ODOT and entered in the State Road Inventory System (SRIS). The data from the SRIS was reported to the Federal Highway Administration (FHWA) by utilizing the Highway Performance Monitoring System (HPMS).

The daily VMT (dVMT) for each roadway section was computed as the annual average daily traffic (AADT) count for that section multiplied by the length of the section. The total county DVMT is the sum of the dVMTs for each of the twelve highway classifications in the county. The total county DVMTs are then summed to determine the statewide total DVMTs.

In order to determine consistency between the SRIS and the HPMS, the statewide total DVMTs are then compared by functional class to the HPMS submittal. For those

classifications where traffic counts are available for all or nearly all their sections, the totals between the two systems were essentially the same. For those with more off-systems roads, the resulting SRIS totals were larger than the HPMS's submittal value (as expected). Correction factors were computed from the two sets of totals and applied to the individual cells.

ODOT used permanent and portable vehicle classification equipment to develop the vehicle mix by functional classification of highway. Trafficomp III vehicle classification equipment are used to support the HPMS data collection effort. A software program called OHIO CONVERT formats vehicle classification data into the FHWA Vehicle Classification categories.

Off-Road Mobile Source Emissions Inventory

The State developed emissions estimates for the following off-road categories according to USEPA guidance: aircraft, railroad locomotives, recreational boating, off-road motorcycles, agricultural equipment, construction equipment, industrial equipment, and lawn and garden equipment. Documentation was provided as to the sources of emissions factors utilized and were submitted in the area source emissions inventory portion of the submittal.

The off-road mobile source inventory was reviewed utilizing the Level I and II checklists and USEPA's guidance documents to ensure that all source categories and their related emissions factors were included in the off-road mobile source emissions inventory.

Biogenic Emissions Inventory

The State of Ohio determined the biogenic emissions for the Columbus area according to a USEPA's guidance document entitled "User's Guide to the Personal Computer Version of the Biogenic Emissions Inventory System (PC-BEIS)," (EPA-450/4-91-017) dated July, 1991. Meteorological data utilized in PC-BEIS was collected in accordance with USEPA guidance. Data from the ten warmest days from the period between 1988 to 1990 with the highest hourly peak ozone concentrations in each ozone nonattainment area was collected and reviewed. As required by USEPA guidance, the fourth highest daily maximum ozone concentration for each nonattainment area was selected and utilized in the model. The State provided hard copy documentation as to the meteorological inputs utilized and PC-BEIS output files for the biogenic emissions inventory for the Columbus nonattainment areas.

C. Summary of Ozone Emissions Inventory

A summary has been prepared of the emissions inventory for an average ozone summer weekday for the Columbus ozone nonattainment area as follows. The emissions are stated in tons per ozone season weekday:

TABLE 1.—COLUMBUS OZONE NON-ATTAINMENT AREA, 1990 BASE-YEAR EMISSIONS INVENTORY
[tons per day]

Source type	VOC	CO	NO _x
Point Sources	16.44	8.52	13.79
Area Sources	53.56	9.09	7.37
On-Road Mobile Sources	94.73	580.75	78.65
Off-Road Mobile Sources	47.62	438.21	89.31
Biogenic Sources	105.92		
Totals .	318.27	1,036.57	189.12

II. Ozone Redesignation Request

The OEPA requested that the area be redesignated in a letter dated January 7, 1994, and received by USEPA on January 14, 1994. The public hearing information portion was transmitted to USEPA in a letter from Robert Hodanbosi, Chief of the Division of Air Pollution Control, OEPA, dated April 11, 1994, and received by USEPA on April 14, 1994.

The State provided monitoring, and emissions data to support its redesignation request. The review criteria and a review of the request are provided below.

A. Redesignation Review Criteria

Under the CAA, designations can be changed if sufficient data are available to warrant such change. The CAA 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 175A; and (v) The State containing such area has met all requirements applicable to the area under Section 110 and Part D.

The USEPA has provided guidance on processing redesignation requests in documents including the following:

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

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

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

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

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

6. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

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

B. Review of the Redesignation Request

1. The Area Must Have Attained the Ozone NAAQS

For ozone, an area may be considered attaining the NAAQS if there are no violations, as determined in accordance with the regulation codified at 40 CFR

§ 50.9, based on three (3) consecutive calendar years of quality assured monitoring data. A violation occurs when the ozone air quality monitoring data show greater than one (1) average expected exceedance per year at any site in the area at issue. An exceedance occurs when the maximum hourly ozone concentration exceeds 0.124 parts per million (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.

The redesignation request for the Columbus area relies on ozone monitoring data for the years 1990 through 1992, to show that they are meeting the NAAQS for ozone. Ozone monitoring data for 1993 and 1994 continue to show that the area has reached attainment. The Columbus area is currently meeting the requirement of attaining the ozone NAAQS.

The ozone monitoring network consists of three monitors. Two of the monitors are located in Franklin County and one is located in Licking County. No monitors are currently located in Delaware County; however, the other monitors in Franklin and Licking Counties adequately represent the entire Columbus area. Two exceedances of the ozone standard have been monitored since 1990, both of these occurred at the Maple Canyon monitor in Franklin County. At this site, the first exceedance of 0.128 ppm occurred in 1990, and the second exceedance of 0.131 ppm occurred in 1991. Data stored in AIRS was used to determine the annual average expected exceedances for the years 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 is less than 1.0, the Columbus-Springfield area is considered to have attained the standard.

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

Before the Columbus area may be redesignated to attainment for ozone, it must have fulfilled the applicable requirements of section 110 and part D. USEPA interprets section 107(d)(3)(E)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that became applicable to the subject area prior to or at the time of the submission of the redesignation

request. As the Columbus redesignation request was submitted to USEPA in January, 1994, requirements that came due prior to that time must be met for the request to be approved. Section 110 and Part D requirements of the CAA that come due subsequent to the submission of the redesignation request continue to be applicable to the area (see section 175A(c)) and, if the redesignation is disapproved, the State remains obligated to fulfill those requirements.

Section 110 Requirements

General SIP elements are delineated in section 110(a)(2) of Title I, Part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the State after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for Part C, Prevention of Significant Deterioration (PSD), and D, New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling, and provisions for public and local agency participation. For purposes of redesignation, the Ohio SIP was reviewed to ensure that all requirements under the amended Act were satisfied. On October 31, 1980, the USEPA conditionally approved Ohio's SIP under Part D of Title I (as amended in 1977) (45 FR 27122). The Ohio VOC Reasonably Available Control Technology (RACT) requirements, or requirements for certain stationary sources to use technically and economically feasible technology to reduce emissions of VOC, are being addressed in a separate TSD and Federal Register actions, (59 FR 23796 and 60 FR 15235), except for a few outstanding requirements in the Cleveland and Cincinnati areas. There are no outstanding VOC RACT requirements for the Columbus area, as explained under "Part D Requirements" below.

Part D Requirements

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 I, specific requirements of subpart 2 may override

subpart 1's general provisions [57 FR at 13501 (April 16, 1992)]. The Columbus area was classified as marginal. Therefore, in order to be redesignated to attainment, 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 that apply to marginal areas such as Columbus.

(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 CAA. Furthermore, as noted above, some of these section 172(c) requirements are superseded by more specific requirements in subpart 2 of part D. In the case of Columbus, the State has satisfied all of the section 172(c) requirements necessary for Columbus to be redesignated upon the basis of the redesignation request submitted on January 7, 1994, and April 14, 1994.

The Columbus area was designated marginal nonattainment on November 6, 1991 (56 FR at 56694), effective January 6, 1992). In the case of marginal ozone nonattainment areas, the section 172(c)(1) Reasonably Available Control Measures requirement was superseded by the section 182(a)(2) RACT requirements, which did not require nonattainment areas designated marginal after enactment of 1990 CAA amendments to submit RACT corrections. See General Preamble for the Implementation of Title I, 57 FR at 13503, and the VOC RACT Fix-up rulemaking published at 58 FR 49458. Thus, no additional RACT submissions were required for the Columbus area to be redesignated. Also, by virtue of provisions of section 182(a), which provides that any area designated as marginal does not have to submit an attainment demonstration.

With respect to the section 172(c)(2) Reasonable Further Progress (RFP) requirement, as Columbus has attained the ozone NAAQS no RFP requirements apply. See General Preamble for the Implementation of Title I, 57 FR at 13564.

The section 172(c)(3) emissions inventory requirement has been met by the submission and approval (in this action) 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. 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," fully describes the rationale for this view, 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 Columbus 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 Columbus. Once the area is redesignated to attainment, the PSD program (applicable to attainment areas), which has been delegated to Ohio, will become effective immediately. The PSD program was delegated to Ohio on May 1, 1980, and amended November 7, 1988. See 40 C.F.R. 52.21(u).

The section 172(c)(9) contingency measure requirements also do not apply to marginal ozone nonattainment areas. See section 182(a) and 57 FR at 13571.

Finally, for purposes of redesignation, the Columbus 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 Requirements

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 redesignation request was submitted before these SIP revisions came due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

(c) Subpart 2 Requirements

Marginal ozone nonattainment areas are subject to the requirements of section 182(a) of subpart 2. Ohio has met all of the applicable requirements of that subsection with respect to the Columbus area. The emissions inventory required by section 182(a)(1) is being approved in this action. The emission statement SIP required by section 182(a)(3)(B) was approved on October 13, 1994. See 59 FR 51863. As noted above, RACT corrections are not required under section 182(a)(2) for areas such as Columbus that were not designated nonattainment until after the 1990 CAA Amendments. Similarly, section 182(a)(2) does not require the submission of inspection and maintenance SIP revisions for Columbus since the area was not required to have an I/M program before the enactment of the 1990 CAA Amendments. Finally, the State need not comply with the requirements of section 182(a) concerning revisions to the part D NSR program in order for the Columbus area to be redesignated for the reasons explained above in connection with the discussion of the section 172(c)(5) NSR requirement.

3. 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 submittal demonstrates that the improvement in air quality is due to emissions reductions due to the Federal Motor Vehicle Emissions Control Program (FMVECP). This program is codified in 40 CFR Part 86. Between 1988 and 1990 the area's volatile organic compound emissions were reduced by 2.7 percent, due to FMVECP. This trend is expected to continue in the area with a ten (10) percent reduction in overall emissions by 1996 due to the FMVECP program and Federal restrictions on gasoline volatility. Based on this reduction, the State has shown that the improvement in air quality is based on permanent and enforceable reductions in emissions.

As was already discussed, this area is not required to adopt new enforceable regulations in order to meet the CAA requirements of section 110 and Part D. Therefore, USEPA believes that it is reasonable to attribute the improvement in air quality to be due just to Federal measures and it is not necessary in this case to link emission reduction to enforceable regulations in the SIP.

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

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. A September 4, 1992, USEPA memorandum from the Director of the Air Quality Management Division, Office of Air Quality Planning and Standards, to Directors of Regional Air

Divisions regarding redesignation 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.

The State has included a copy of the base year 1990 emissions inventory as the attainment inventory. The Columbus maintenance plan provides emissions estimates from 1990 to 2005 for volatile organic compounds (VOCs), and from 1990 to 2005 for oxides of nitrogen (NO_x) for the Columbus area. These emissions estimates have been revised based on comments that Ohio received from USEPA, and the tables reflect the revised emissions estimates. These estimates are consistent with the base year 1990 emissions inventory for the area. The emissions in the Columbus area are projected to decrease. The results of this analysis show that the area is expected to maintain the air quality standard for at least ten (10) years into the future.

The emissions summary for VOCs and NO_x are provided below for the Columbus area:

TABLE 2.—VOC EMISSIONS IN TONS PER SUMMER DAY

Year	Point Sources	Area Sources	Mobile Sources	Totals
1990	16.44	101.18	94.73	212.35
1996	17.52	107.47	63.36	188.35
2005	19.33	117.30	61.38	198.01

TABLE 3. NO_x EMISSIONS IN TONS PER SUMMER DAY

Year	Point Sources	Area Sources	Mobile Sources	Totals
1990	13.79	96.68	78.65	189.12
1996	14.35	102.62	68.85	185.82
2005	15.27	111.82	61.24	188.33

The State also commits to continuing the operation of the monitors in the area. It will also track the maintenance of the area by regularly updating the emissions inventory for the area. The emission projections for 2005 are the budgets for transportation conformity.

The State commits to Automobile Inspection and Maintenance (I/M) as the first contingency measure. This first measure would be triggered by a violation of the NAAQS. The second contingency measure is Stage II vapor recovery. If both measures are

implemented, the area will choose additional measures. The State also provided the following schedule in Table 4 for implementing the I/M measure. Based on these measures, the maintenance requirement has been met.

TABLE 4.—SCHEDULE FOR IMPLEMENTING I/M

Date	Action/Event
Contingency Triggered	Initiate contingency I/M plan measures. New legislative authority will not be necessary for implementation.
Month 1/Day 1	Begin revisions to Request for Proposals (RFP). Coordinate with appropriate agencies. Begin drafting rules for I/M program, procedures and guidelines.
Month 2/Day 1	Release RFP for centralized contractor.
Month 3/Day 1	File draft rule rev. with Legislative Serv. Commission.
Month 4/Day 15	Public hearing on program rule revisions.
Month 4/Day 30	Rules approved by Joint Committee on Agency Rule Review. RFP responses for centralized contract due.
Month 5/Day 1	Begin evaluation of RFP responses.
Month 6/Day 15	Award centralized contract. Seek Controlling Board approval of contract(s) by end of month 7.
Month 6/Day 30	Program rule revisions become effective.
Month 7/Day 1	Draft RFPs for Ohio EPA (BAR 90) approved analyzer certification, if necessary, and inspector certification training in the Columbus metropolitan area.
Month 8/Day 1	Release RFPs for inspector certification training and analyzer certification services.
Month 9/Day 15	Proposals for analyzer certification services (ACS) and inspector certification training (ICT) due.
Month 9/Day 16	Begin evaluation of proposals for ACS and ICT.
Month 10/Day 1	Award contracts for ACS and ICT.
Month 11/Day 1	Begin licensing process for reinspection stations.
Month 12/Day 1	New Analyzer spec. issued. Begin certifying four-gas analyzers.
Month 14/Day 1	Inspector certification begins
Month 15/Day 1	Begin final licensing of reinspection stations.
Month 16/Day 1	Initiate Public Relations program including media blitz.
Month 16/D 15	Initiate motorist notification mailings.
Month 17/Day 1	Begin limited voluntary inspections at centralized test stations. Reinspection stations begin to perform retests.
Month 18/Day 1	Begin mandatory testing at centralized test stations.

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 Columbus area will remain below attainment levels for the next ten years. If the monitored air quality levels exceed the NAAQS, then 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.

Rulemaking Action

The USEPA is approving the 1990 base-year ozone precursor emissions inventories for the Columbus nonattainment area as meeting the requirements of section 182(a)(1) of the CAA based upon the evidence presented by the State and the State's compliance with the requirements outlines in the applicable USEPA guidance. In addition, the USEPA is also approving the redesignation of the Columbus ozone nonattainment area to attainment for ozone since Ohio's request meets the conditions of the CAA in section 107(d)(3)(E) for redesignation.

VI. Comment and Approval Procedure

The USEPA is publishing this action without prior proposal because USEPA views 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 of the Columbus area emissions inventory shall be effective on April 1, 1996, unless USEPA receives adverse or critical comments by March 4, 1996. If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw that approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. It should be noted, however, that an adverse or critical comment on the approval of the Columbus area redesignation request or maintenance plan will not result in a withdrawal of the approval of the Columbus emission inventory, unless USEPA receives adverse or critical comments on the emission inventory approval, as well. All public comments received will be addressed in a subsequent rulemaking document. 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 action will be effective on April 1, 1996.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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

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

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

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this

rule, the USEPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements.

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

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

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations,

Hydrocarbons, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 30, 1995.

Valdas V. Adamkus,
Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart KK—Ohio

2. Section 52.1885 is amended by adding new paragraph (u) to read as follows: § 52.1885 Control Strategy: Ozone.

* * * * *

(u) Approval—The 1990 base-year ozone emissions inventory requirement of Section 182(a)(1) of the Clean Air Act has been satisfied for the Columbus ozone nonattainment area (which includes the Counties of Delaware, Franklin, and Licking).

3. Section 52.1885 is amended by adding paragraph (b)(6) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(b) * * *

(6) Franklin, Delaware, and Licking Counties.

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

1. The authority citation of Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q, unless otherwise noted.

2. In § 81.336 ozone table is amended by revising entries for the Franklin, Delaware, and Licking Counties to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

Designated Area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
	*	*	*	*
Columbus Area				
Delaware County	April 1, 1996	Attainment.		
Franklin County	April 1, 1996	Attainment.		
Licking County	April 1, 1996	Attainment.		
	*	*	*	*

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

[FR Doc. 96-1933 Filed 1-31-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 281

[FRL-5406-6]

Montana; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on State of Montana application for final approval.

SUMMARY: The State of Montana has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Montana application and has reached a final determination that Montana's underground storage tank (UST) program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State to operate its program in lieu of the Federal program.

EFFECTIVE DATE: Final approval for Montana shall be effective at 1:00 pm Eastern Time on March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Kris Knutson, U.S. EPA, Region 8, Montana Office, DWR 10096, 301 South Park, Helena, Montana 59626-0096, phone: (406) 441-1130, extension 225.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval is granted by EPA if the Agency finds that the State program: (1) is "no less stringent" than the Federal program in all seven

elements, and includes notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a)(8); and (2) provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)).

On February 22, 1995, Montana submitted an application for "complete" program approval which includes regulation of both petroleum and hazardous substance tanks. The State of Montana established authority through an amendment to the 1981 Montana Hazardous Waste Act to implement an underground storage tank program. The State changed the title of the Act to the Montana Hazardous Waste and Underground Storage Tank Act in April 1985, and further amended the Act in 1989 to expand rulemaking authority. Another amendment in 1993 provided the State with rulemaking authority to assess civil penalties.

On September 22, 1995, EPA published a tentative decision announcing its intent to grant Montana final approval. Further background on the tentative decision to grant approval appears at 60 FR 49239, September 22, 1995. Along with the tentative determination, EPA announced the availability of the application for public comment and provided notice that a public hearing would be provided if significant public interest was shown. EPA received only one comment on the application and no request for a public hearing. Therefore, a hearing was not held.

B. Decision

I conclude that Montana's application for final approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Montana is granted final approval to operate its underground storage tank program in lieu of the Federal program. Montana now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program except with

regard to "Indian Country," as defined in 18 U.S.C. 1151, where EPA will retain and otherwise exercise regulatory authority. "Indian Country" includes the following Indian reservations in the State of Montana:

1. Blackfeet;
2. Crow;
3. Flathead;
4. Fort Belknap;
5. Fort Peck;
6. Northern Cheyenne; and
7. Rocky Boys.

The Environmental Protection Agency retains all underground storage tank authority under RCRA which applies to "Indian Country" in Montana.

Before EPA would be able to approve the State of Montana UST program for any portion of "Indian Country," the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. In order for a state to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority pursuant to applicable principles of Federal Indian Law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval. EPA has reason to believe that disagreement exists with regard to the State's jurisdiction over "Indian Country," and EPA is not satisfied that Montana has, at this time, made the requisite showing of its authority with respect to such lands.

In withholding program approval for these areas, EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Should the State of Montana choose to submit analysis with regard to its jurisdiction over all or part of "Indian Country" in the State, it may do so without prejudice.

EPA's future evaluation of whether to approve the Montana program for "Indian Country," to include Indian reservation lands, will be governed by EPA's judgement as to whether the State has demonstrated adequate authority to