ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05–OAR–2005–OH–0004; FRL–7925–3]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes in Ohio; Redesignation of Cincinnati to Attainment of the 1–Hour Ozone Standard and Approval of Ozone Maintenance Plan; Approval of Volatile Organic Compound Emissions Control Regulations; and Approval of Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request from the State of Ohio, submitted in draft on March 10, 2005 and in final on May 20, 2005, to redesignate the Cincinnati area (Butler, Clermont, Hamilton, and Warren Counties) from nonattainment to attainment for the 1–hour ozone National Ambient Air Quality Standard (NAAQS). In conjunction with this approval, EPA is approving the State's plan for maintaining the 1–hour ozone NAAQS in the Cincinnati area through 2015 as a revision to the Ohio State Implementation Plan (SIP). EPA is approving Volatile Organic Compound (VOC) emission control regulations for various source categories, thus completing Ohio's obligation to adopt Reasonably Available Control Technology (RACT) regulations for the Cincinnati area. EPA is approving periodic VOC and Oxides of Nitrogen (NO_x) emission inventories for the Cincinnati area. EPA finds as adequate and is approving the 2015 VOC and NO_x Motor Vehicle Emission Budgets (MVEBs) for the Cincinnati area as contained in the Cincinnati area ozone maintenance plan.

EPA is not, at this time, taking action on Ohio's demonstrations that termination of the vehicle Inspection and Maintenance (I/M) programs in the Cincinnati and Dayton areas will not interfere with the attainment and maintenance of the 1–hour ozone NAAQS in these areas, and is not taking action on the State's requests for conversion of the vehicle I/M programs in these areas to contingency measures in the 1–hour ozone maintenance plans. The State did not submit a demonstration of non-interference with the 8–hour ozone or fine particulate ($PM_{2.5}$) standards, or with any other applicable requirements of the Clean Air Act (CAA). Such actions, however, may be considered in subsequent rulemakings.

DATES: This rule is effective on June 14, 2005, except 40 CFR 52.1870 which is effective on July 21, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R05–OAR–2005–OH–0004. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/*, once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Edward Doty, Environmental Scientist, at (312) 886–6057 before visiting the Region 5 office. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *doty.edward@epa.gov.*

SUPPLEMENTARY INFORMATION: In the following, whenever ''we,'' ''us,'' or ''our'' are used, we mean the United States Environmental Protection Agency.

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I. What Is The Background for This Rule?

In accordance with section 107(d) of the Clean Air Act (CAA) as amended in 1977, EPA designated all counties in the Cincinnati-Hamilton area (the Ohio portion of this area includes Butler, Clermont, Hamilton, and Warren Counties, and the Kentucky portion of this area includes Boone, Campbell, and Kenton Counties) as an ozone nonattainment area for the 1-hour ozone NAAQS in March 1978 (43 FR 8962). On November 6, 1991 (56 FR 56694), pursuant to section 107(d)(4)(A) of the CAA as amended in 1990, EPA designated the Cincinnati-Hamilton area as a moderate ozone nonattainment area based on monitored violations of the 1-hour ozone NAAQS recorded during the 1987–1989 period.

From 1996 through 1998, air quality monitors in Ohio and Kentucky in the vicinity of the Cincinnati-Hamilton area recorded three years of complete, quality-assured ambient ozone data that did not violate the 1-hour ozone NAAQS.[1] Thus, the area met the air quality requirement [2] for redesignation to attainment of the 1-hour ozone NAAQS. This area has continued to

[1] The 1-hour ozone NAAQS is violated when the annual average expected number of daily peak 1-hour ozone concentrations equaling or exceeding 0.125 parts per million (ppm) (125 parts per billion (ppb)) is 1.05 or greater over a three-year period at any monitoring site in the area of interest.

[2] Section 107(d)(3)(E) of the CAA specifies five criteria for redesignation to attainment of the NAAQS, of which acceptable air quality is only one of the criteria. See 70 FR 19898 for a complete listing of all five criteria.

monitor attainment of the 1-hour ozone NAAQS from 1996 through the present.

In 1999, the Ohio Environmental Protection Agency (Ohio EPA) and the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) submitted separate requests for the redesignation of the State-specific portions of the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS. On January 24, 2000 (65 FR 3630), EPA proposed approval of the Ohio and Kentucky ozone redesignation requests. EPA issued a final rulemaking (65 FR 37879) on June 19, 2000, effective July 5, 2000, determining that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS and approving the Ohio and Kentucky ozone redesignation requests, the States' plans for maintaining the 1-hour ozone NAAQS, and their NO_X emission control exemption requests (NO_X control waiver requests).

On August 17, 2000, two Ohio residents and the Ohio chapter of the Sierra Club petitioned the United States Court of Appeals for the 6th Circuit (Court) for review of EPA's final rule on the States' ozone redesignation requests for the Cincinnati-Hamilton area. The petitioners urged the Court to find that the EPA had erred in a number of respects in approving the redesignation requests. In its September 11, 2001 decision, the Court upheld EPA's actions with respect to all requirements for redesignation that related to Kentucky. The Court also rejected the majority of the petitioners' challenges with respect to EPA's approval of the Ohio redesignation request, with the sole exception of EPA's finding that it could approve Ohio's redesignation request before Ohio had fully adopted all of the VOC emission control rules needed to comply with the RACT requirements of part D, subpart 2 of the CAA. The Court concluded that EPA exceeded its discretion by determining that Ohio did not need to fully adopt all of the VOC RACT rules required by the CAA as a prerequisite for EPA's approval of Ohio's ozone redesignation request for the Cincinnati area. The Court thus vacated EPA's action in redesignating the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS and ''remanded for further proceedings consistent with this opinion.'' See *Wall* v. *EPA* (265 F.3d 436, 6th Circuit 2001).

On February 12, 2002 (67 FR 6411), in a direct final rule, the EPA took action to reinstate a designation of attainment of the 1-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area. A submittal of a negative comment, however, resulted in the withdrawal of this rule on April 8, 2002 (67 FR 16646). The reinstatement of the attainment designation for the Kentucky portion of the Cincinnati-Hamilton area was subsequently completed through promulgation of a final rule responding to comments on July 31, 2002 (67 FR 49600).

On March 12, 2002 (67 FR 11041), through a technical amendment to its June 19, 2000 final rule, the EPA revised the ozone designation of the Ohio portion of the Cincinnati-Hamilton area to nonattainment of the 1-hour ozone NAAQS with a classification of moderate nonattainment. This technical amendment became effective on April 11, 2002.

On April 30, 2004 (69 FR 23858), the Cincinnati area was designated as nonattainment for the 8-hour ozone NAAQS and classified as a subpart 1 (subpart 1 of the CAA) or ''Basic'' area. This designation became effective on June 15, 2004. Please note, however, that today's final action primarily deals with the designation of this area for the 1-hour ozone NAAQS and not for the 8-hour ozone NAAQS.

On March 10, 2005, the Ohio EPA submitted a new ozone redesignation request and ozone maintenance plan, in draft, for the Cincinnati area. This submittal also included draft VOC emission control rules that Ohio was preparing to adopt to comply with the RACT requirements of the CAA. The submittal requested the EPA to parallel process [3] the ozone redesignation request, ozone maintenance plan, and VOC emission control rules, and noted that the State had scheduled a public hearing to address the submittal items.

On April 4, 2005, the Ohio EPA submitted additional information, including a negative declaration to avoid RACT for plastic parts coating, and demonstrations showing that terminating the vehicle inspection and maintenance (vehicle I/M) programs in the Cincinnati and Dayton areas will not interfere with the attainment and maintenance of the 1-hour ozone NAAQS in these areas. Consequently, the Ohio EPA proposed to revise the SIP and the ozone maintenance plans for these areas to move the vehicle I/M programs from the active portion of the SIP to the contingency measure portions of the area-specific maintenance plans. This submittal revised the ozone maintenance demonstrations for these areas and revised mobile source emission budgets to reflect the changes in mobile source VOC and NO_X emissions that will result when the I/M programs are terminated. Finally, this submittal included a committal from the State to complete and submit analyses in compliance with section 110(l) of the CAA to demonstrate that terminating the vehicle I/M programs will not interfere with the attainment of any NAAQS and with compliance with requirements of the CAA.

On April 15, 2005, EPA published a proposed rule (70 FR 19895), proposing to: (1) Find that the Cincinnati-Hamilton area has continued to attain the 1-hour ozone NAAQS and to approve Ohio's request for the redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS; (2) approve Ohio's ozone maintenance plan for the Cincinnati area; (3) approve certain VOC emission control regulations as meeting the RACT requirements of the CAA; (4) approve periodic emission inventories for the Cincinnati area; and (5) notify the public that the mobile source VOC and NO_X emission estimates projected through 2015 in the Cincinnati area maintenance plan are approvable and adequate for conformity purposes. In addition, we proposed to find that Ohio has demonstrated that termination of the vehicle I/M programs in the Cincinnati and Dayton areas will not interfere with the attainment and maintenance of the 1-hour ozone NAAQS in these areas. This proposed rule established a 30-day public comment period.

This rule is EPA's final action on the April 15, 2005 proposed rule as it relates to attainment and maintenance of the 1-hour ozone NAAQS in the Cincinnati area. Since the final, State-adopted SIP revision request is substantially the same as that submitted for parallel processing by the EPA and contains only significant revisions as requested by the EPA and noted in our April 15, 2005 proposed rule, we will not publish an additional proposed rule on this State submittal. EPA is, however, not taking final action on certain portions of the April 15, 2005 proposed rule as noted below.

II. What Actions Are We Taking and When Are They Effective?

After consideration of the comments received in response to the April 15, 2005 proposed rule, as described in section V below, and the State's final,

[3] A state request for parallel processing is used when the state has not completed adoption of a SIP revision request, but anticipates doing so prior to EPA's completion of final rulemaking for the requested SIP revision. Parallel processing of a state's draft SIP revision request can only lead to a final EPA rulemaking (without additional proposed rulemaking by the EPA) if the state's final, adopted SIP revision request is essentially the same as the initial drafted SIP revision request or is modified in a manner requested by the EPA and noted in EPA's parallel processing proposed rule.

adopted SIP revisions and supporting material (reviewed in draft form in the April 15, 2005 proposed rule), we are taking the following actions:

A. Finding of Continued Attainment for Cincinnati

In its June 19, 2000 rulemaking, EPA issued a final rule determining that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS (65 FR 37879). While the Court, in *Wall* v. *EPA*, vacated EPA's action redesignating the area to attainment, it did not vacate EPA's determination of attainment for the area. Therefore, the determination of attainment remains intact and in effect. 67 FR 49600 (July 31, 2002). As a result of this determination of attainment, EPA also determined that certain attainment demonstration requirements, along with certain other related requirements of part D of title I of the CAA are not applicable to the area. In its April 15, 2005 proposal, EPA proposed to find that the Cincinnati-Hamilton area has continued to attain the 1-hour NAAQS. 70 FR 19899, 19901. In this notice we are finalizing this finding. In addition, since the Cincinnati-Hamilton area continues to attain the 1-hour ozone NAAQS, we note that a NO_X emission control waiver pursuant to section 182(f) of the CAA, approved on July 13, 1995 (60 FR 36060) and extended on June 19, 2000 (65 FR 37879), continues in the Cincinnati area.

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

EPA has reviewed the ambient air monitoring data for ozone for the Cincinnati-Hamilton area from the 2002 to 2004 ozone seasons (for the Cincinnati-Hamilton area, the ozone season is April 1 through October 31 of each year, when the highest 1-hour ozone concentrations are typically recorded). On the basis of this review, EPA has determined that the area has continued to attain the 1-hour ozone NAAQS during the 2002–2004 period. Therefore, the State of Ohio is not required to submit an ozone attainment demonstration, Reasonably Available Control Measures (RACM) regulations, a Reasonable Further Progress (RFP) plan, and a section 172(c)(9) contingency measure plan, nor does it need any other measures (other measures mandated by the CAA) to attain the 1-hour ozone NAAQS in the Cincinnati-Hamilton area.

B. Redesignation of the Cincinnati Area to Attainment of the 1-Hour Ozone NAAQS

As just explained, EPA has determined that the entire Cincinnati-Hamilton area has attained the 1-hour ozone standard. In this final rule, EPA is taking action on Ohio's request to redesignate the Ohio portion (the Cincinnati area) of the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS. As noted above, on February 12, 2002 (67 FR 6411), EPA reinstated its approval of a redesignation to attainment of the 1-hour NAAQS for the Kentucky portion of the Cincinnati-Hamilton area. Also as noted above, on remand from the Court, *Wall* v. *EPA*, 265 F.3d 436 (6th Cir. 2001), on March 12, 2002 (67 FR 11041), EPA reinstated a designation of nonattainment of the 1-hour ozone NAAQS for the Ohio portion of the Cincinnati-Hamilton area. Thus, only the Ohio portion of the Cincinnati-Hamilton area was left with a designation of nonattainment for the 1-hour ozone NAAQS in this area. Thus, this final rule only affects the Ohio portion of the Cincinnati-Hamilton area.

EPA is approving the request from the State of Ohio to redesignate the Cincinnati area to attainment of the 1-hour ozone NAAQS. With our approval of Ohio's VOC RACT rules, as discussed below, the Cincinnati area has complied with all CAA criteria for redesignation to attainment of the NAAQS, as set forth in section III below.

C. Approval of Ohio's Ozone Maintenance Plan for the Cincinnati Area

EPA is approving Ohio's plan for maintaining the 1-hour ozone NAAQS in the Cincinnati area through 2015 as a revision to the Ohio SIP. The adopted maintenance plan contains triggering mechanisms and contingency measures designed to promptly correct a violation of the 1-hour ozone NAAQS that occurs after redesignation of the Cincinnati area to attainment of the NAAQS. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation.

The VOC contingency measures listed in the adopted maintenance plan are the following: [4]

1. Lower Reid Vapor Pressure (RVP) gasoline; [5]
2. Reformulated gasoline;
3. Broader geographic coverage of existing regulations;
4. Application of RACT to smaller existing sources;
5. Implementation of one or more transportation control measures sufficient to achieve at least a 0.5 percent reduction in area wide VOC emissions;
6. Alternative fuel programs for fleet vehicle operations;
7. Controls on consumer products consistent with those adopted elsewhere in the United States;
8. VOC offsets for new or modified major sources;
9. VOC offsets for new or modified minor sources;
10. Increased ratio of VOC offsets required for new sources; and
11. Requirements of VOC controls on new minor sources.

Ohio also requested that the vehicle I/M program, known as E-Check in Ohio, be converted to a contingency measure in the maintenance plan. However, Ohio offered EPA the option of first approving a maintenance plan in which E-Check remains an active measure and later approving a revision to the maintenance plan to convert E-Check to a contingency measure. For reasons described below, EPA is approving a maintenance plan in which the projected emission estimates take no credit for the operation of E-Check, even though E-Check would remain an active measure in the SIP.

Consideration and selection of one or more of the contingency measures will take place in the event that it is verified that the 1-hour ozone NAAQS is violated after the redesignation of the Cincinnati area to attainment of the NAAQS. The selected contingency measure(s) will be implemented within 12 months, after verification of a NAAQS violation. If the NAAQS continues to be violated after the implementation of the VOC contingency control measure, NO_X RACT will be adopted and implemented. As noted above, the list of contingency measures is made up entirely of VOC emission control measures. Ohio's first preference for the selection of an emissions control measure as a contingency measure is to pursue a VOC emissions reduction

[4] Note that the contingency plan adopted by the State also includes VOC RACT for sources covered by new control technology guidelines issued in response to the 1990 CAA amendments. This contingency measure has become moot because the State has adopted such RACT rules and is in the process implementing these regulations.

[5] Prior to implementing lower RVP gasoline requirements, the State of Ohio would have to be granted a waiver to address preemption requirements under section 211(c)(4)(C) of the CAA.

measure. The State wants to pursue NO_X RACT as an additional, contingency emissions control measure only if the implementation of the VOC emissions control measure fails to prevent additional violations of the 1-hour ozone NAAQS.

The maintenance plan estimates emissions 10 years into the future from the anticipated year of the redesignation as required by section 175A of the CAA. These emission estimates are for point, area, and mobile sources in the Ohio portion of the Cincinnati-Hamilton area. The emissions estimates demonstrate continued maintenance of the 1-hour ozone standard through 2015. The latest information was used to project these emissions. The mobile source emissions estimates were developed using the MOBILE6 model. As noted above, the mobile source emission estimates do not include the emission reductions resulting from the continued implementation of the E-Check program. The maintenance plan demonstrates that the 1-hour standard can be maintained without taking credit for the E-Check program. The State continues to implement the E-Check program in the Cincinnati area in compliance with the current SIP, but anticipates it will submit a request for its future termination and retention as a contingency measure. In this request, the State will demonstrate that termination of the E-Check program will not interfere with the attainment of any NAAQS and with compliance with any requirement of the CAA. In addition, the State will demonstrate compliance with 40 CFR 51.372(c).

Despite the fact that Ohio is continuing with the implementation of the E-Check program, we believe we can approve the ozone maintenance plan even though Ohio has not taken credit for the emissions reductions resulting from the E-Check program in the maintenance demonstration. Ohio's approach provides a conservative demonstration that shows that maintenance of the 1-hour ozone standard will occur in the Cincinnati area even if the E-Check program is terminated.

D. Approval and Finding of Adequacy of VOC and NO_X Motor Vehicle Emission Budgets for the Cincinnati Area

EPA finds as adequate and approves the 2015 Motor Vehicle Emission Budgets (MVEBs) of 26.2 tons per day for VOC and 39.5 tons per day for NO_X for the Ohio portion of the Cincinnati-Hamilton area in the State-adopted maintenance plan. These MVEBs are subarea budgets for the Ohio portion of the Cincinnati-Hamilton area and will be used for future transportation conformity determinations.

Although these budgets do not include emissions reductions from the E-Check program, the emissions estimates continue to decline from current estimates (from 1996 and 2005 levels, see Tables 4 and 5 in our April 15, 2005 proposed rule, 70 FR 19911) and demonstrate that the 1-hour ozone standard will be maintained. These MVEBs have been through the appropriate public involvement and comment period requirements without receiving adverse comment. The budgets meet the adequacy criteria, 40 CFR 93.118(e)(4), and are approvable as part of the 1-hour ozone maintenance plan. These budgets set a tighter limit (the budgets are lower) than the current 2010 Cincinnati area emissions budgets, which are currently being used for transportation conformity purposes. The current 2010 budgets are: 37.9 tons per day of VOC and 62.3 tons per day of NO_X. The approved 2015 budgets will replace the current 2010 budgets, as detailed in our April 15, 2005 proposed rule, upon the effective date of this rule so that the maintenance plan, as approved, will extend 10 years past the redesignation date as required by section 175A of the CAA. The newer budgets, which are being approved as part of the 1-hour maintenance plan, are consistent with the goals of section 110(l) of the CAA because they set a tighter cap on mobile source VOC and NO_X emissions for transportation conformity purposes, thereby limiting growth in mobile source emissions allowed in the transportation plan.

Subsequent to the effective date of this rule, the State of Ohio and local planning agencies in the Cincinnati area will have to use the 2015 emissions budgets in all transportation conformity analyses and demonstrations.

E. Approval of VOC Emission Control Regulations for Various Sources in the Cincinnati Area and Approval of Negative Declarations for Some VOC Source Categories

As noted below, EPA is approving VOC emission control regulations that the State has adopted for the following source categories: (1) Bakeries; (2) batch chemical operations; (3) industrial wastewater; (4) synthetic organic chemical manufacturing industry reactor and distillation units; and (5) wood furniture manufacturing as meeting the VOC RACT requirements of the CAA. EPA is also approving negative declarations (determinations that there are no applicable sources in the Cincinnati area requiring the implementation of RACT emission control measures) for the following source categories: (1) Industrial cleaning solvents; (2) shipbuilding and ship repair industry; (3) automobile refinishing; (4) aerospace manufacturing and rework facilities; (5) volatile organic liquid storage tanks; (6) lithographic printing; and (7) plastic parts coating. These adopted VOC RACT rules and negative declarations complete Ohio's obligations to meet the VOC RACT requirements of the CAA.

F. Approval of Periodic Emission Inventories for the Cincinnati Area

EPA approves Ohio's emission inventories for 1996, 1999, and 2002 documented in Ohio's July 2, 1999, December 22, 1999, March 8, 2005, and April 4, 2005 submittals, as meeting the requirements for such periodic emission inventories contained in section 182(a)(3)(A) of the CAA.

G. Termination of the Vehicle Inspection and Maintenance Programs in the Cincinnati and Dayton Areas

As noted above, EPA is approving Ohio's maintenance plan for the Cincinnati area as demonstrating that the area will maintain the 1-hour ozone standard even without taking credit for emissions reductions due to the E-Check program. This, however, does not mean that EPA is approving the termination of the E-Check program in this area. As explained in detail below, in response to public comments on our April 15, 2005 proposed rule, EPA is not taking action on the conversion of E-Check to contingency measures in the Cincinnati and Dayton areas until the State has submitted, and EPA has approved certain demonstrations and other information in compliance with 40 CFR 51.372(c) and section 110(l) of the CAA.

In our April 15, 2005 proposed rule at 70 FR 19912, we requested the State of Ohio to project VOC and NO_X emissions for the Dayton area through 2015 to demonstrate that attainment of the 1-hour NAAQS could be maintained without the emissions reductions resulting from the E-Check program. In response to our request, the Ohio EPA has provided projected emissions data demonstrating that the 1-hour ozone NAAQS can be maintained through 2015 even if the E-Check program is terminated in the Dayton area. As noted here, however, we are not taking action on the conversion of the E-Check program to a contingency measure in the Dayton 1-hour ozone maintenance plan at this time. Further, we are not discussing the details of Ohio's projected VOC and NO_X emissions in this final action. We are deferring this

discussion until we review Ohio's section 110(l) demonstrations of non-interference with attainment of other NAAQS and with compliance with the requirements of the CAA for this area. Through that future rulemaking, the public will be given an opportunity to review and comment on Ohio's new emission projections for 2010 and 2015.

H. Effective Date of These Actions

EPA finds that there is good cause for this redesignation to attainment and approval of the ozone maintenance plan, motor vehicle emission budgets for the Cincinnati area, and periodic emissions inventories as revisions to the SIP to become effective on June 14, 2005 after signature and transmittal of a rule report, including a copy of the rule, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States in accordance with the Congressional Review Act, 5 U.S.C. 801 *et seq.* This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which confirms monitored attainment of the NAAQS over a number of years and relieves the area from certain CAA requirements that otherwise would apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that a rulemaking action may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' With respect to its approval of the VOC emissions control regulations for various source categories, these rules are effective 30 days after publication in the **Federal Register**.

III. Why Are We Taking These Actions?

EPA has determined that the Cincinnati-Hamilton area has continued to attain the 1-hour ozone standard. EPA has determined that the State of Ohio has adopted all VOC RACT rules required by the CAA, for all source categories covered by Control Techniques Guidelines (CTGs), with the exception of source categories lacking applicable sources in the Cincinnati area and addressed through negative declarations, and for all major non-CTG sources for the Cincinnati area. Finally, EPA has determined that the State of Ohio has demonstrated that all other criteria for the redesignation of the Cincinnati area from nonattainment to attainment of the 1-hour ozone NAAQS have been met. EPA is fully approving a maintenance plan meeting the requirements of sections 175A and 107(d) of the CAA.

In the April 15, 2005 proposed rule at 70 FR 19898, EPA described the applicable criteria for redesignation to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable state implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and, (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA has determined that the Cincinnati-Hamilton area has continued to attain the applicable NAAQS. EPA is fully approving the applicable implementation plan for the Cincinnati area under section 110(k) of the CAA. EPA has determined that the improvement in air quality in the Cincinnati-Hamilton area is due to permanent and enforceable emission reductions resulting from implementation of the applicable implementation plan and applicable Federal air pollution control regulations. EPA is fully approving a maintenance plan for the Cincinnati area as meeting the requirements of section 175A of the CAA. EPA is approving VOC RACT rules completing Ohio's VOC RACT rule adoption requirements under the CAA. EPA is approving periodic emission inventories for the Cincinnati area, meeting the CAA requirements for such emission inventory updates. Finally, EPA concludes that Ohio has met all requirements applicable to the Cincinnati area for purposes of redesignation to attainment of the 1-hour ozone NAAQS under section 110 and part D of the CAA.

By finding that the maintenance plan provides for maintenance of the 1-hour ozone NAAQS through 2015, EPA is hereby finding adequate and approving the 2015 VOC and NO_X MVEBs contained within the maintenance plan. The MVEB for VOC in the Cincinnati area is 26.2 tons per day. The MVEB for NO_X in the Cincinnati area is 39.5 tons per day.

The rationale for these findings and actions are as stated in this rulemaking and in the April 15, 2005 proposed rule, found at 70 FR 19895.

In our April 15, 2005 proposed rule, we proposed to approve the redesignation of the Cincinnati area and to approve Ohio's new VOC emission control regulations through parallel processing. Our proposed rulemaking was completed during the same period that Ohio itself was completing its adoption of the maintenance plan for the Cincinnati area and of needed VOC emission control regulations. This parallel processing was done at Ohio's request to expedite rulemaking on Ohio's redesignation and SIP revision requests. Such parallel rulemaking can only be completed through final rulemaking without additional proposed rulemaking if Ohio makes a final submittal of adopted plans and VOC emission control regulations that do not significantly differ from the versions described and reviewed by the EPA in its proposed rulemaking (including, where applicable, prospective revisions described and requested by EPA in the proposed rulemaking). The State has in fact here provided a final submittal that matches the draft submittal described and reviewed in the notice of proposed rulemaking, except that the final submittal includes the revisions to RACT rules that EPA described as necessary in its notice of proposed rulemaking. Therefore, we believe that the public has had suitable opportunity to comment on the substance of our April 15, 2005 proposed rule and today's final rule, and that EPA may properly proceed with final action on the State's submittal.

IV. What Are the Effects of These Actions?

EPA concludes that the Cincinnati area has continued to attain the 1-hour ozone NAAQS, and, thus, the ozone attainment demonstration, RFP plan, and certain other related requirements of part D of title I of the CAA, including the section 172(c)(9) contingency measure requirements (measures needed to mitigate a state's failure to achieve reasonable further progress toward, and attainment of a NAAQS), the section 182 attainment demonstration and rate of progress requirements, and the section 182(j) multi-state attainment demonstration requirements continue to be inapplicable to the Cincinnati area.

Approval of the Ohio redesignation request changes the official designation

for the 1-hour ozone NAAQS found at 40 CFR part 81 for the Ohio portion of the Cincinnati-Hamilton area from nonattainment to attainment. It also incorporates into the Ohio SIP a plan for maintaining the 1-hour ozone NAAQS through 2015. The maintenance plan includes contingency measures to remedy any future violations of the 1-hour ozone NAAQS, and includes VOC and NO_X MVEBs for 2015 for the Cincinnati area.

As noted above, Ohio has submitted projected VOC and NO_X emissions for 2015 to revise the Dayton area 1-hour ozone maintenance plan. We are not taking action on these projected emissions in this final rule, but will address them in a future rulemaking when we address Ohio's section 110(l) demonstrations showing that terminating the E-Check program in the Dayton area will not interfere with the attainment of any NAAQS and with compliance with the requirements of the CAA. This future rulemaking will establish revised MVEBs for the Dayton area, and will provide for public comment on the new MVEBs.

EPA's final Phase 1 rule to implement the 8-hour ozone NAAQS (69 FR 23951, April 30, 2004) provided that the 1-hour ozone standard would be revoked for an area one year after the effective date of the area's designation for the 8-hour ozone NAAQS (June 15, 2004). 40 CFR 50.9(b). The Phase 1 rule also provided that an area's attainment status for the 1-hour ozone standard, as of the area's date of designation for the 8-hour ozone standard, establishes the 1-hour emissions control obligations that must remain in place for purposes of preventing anti-backsliding. 40 CFR 51.905. For purposes of the anti-backsliding provisions of the Phase 1 rule, the Cincinnati area remains a 1-hour nonattainment/8-hour nonattainment area subject to the requirements of 40 CFR 51.905(a)(1).

Today's action to approve VOC RACT rules incorporates these rules into the Ohio SIP and makes the rules federally enforceable.

Today's action does not affect the status of the E-Check program in either the Cincinnati or Dayton areas. This program remains an active measure in the Ohio SIP for these areas, and Ohio is continuing to implement this program. As discussed below, before Ohio can convert E-Check to a contingency measure for either area, Ohio has to modify its legislation to assure that the State has provided for legislative authority to restart E-Check on a contingency basis in compliance with 40 CFR 51.372(c). As noted in the proposed rulemaking, EPA also expects Ohio to provide replacement measures or otherwise demonstrate non-interference to assure that a discontinuation of E-Check would not interfere with attainment of any NAAQS, including the 8-hour ozone and $PM_{2.5}$ standards, or interfere with meeting other requirements of the CAA, as mandated under section 110(l) of the CAA. EPA must complete rulemaking finding that 40 CFR 51.372(c) and section 110(l) of the CAA have been satisfied before Ohio discontinues the E-Check program and converts E-Check to contingency measures in the ozone maintenance plans for the Cincinnati and Dayton areas.

V. What Comments Did We Receive and What Are Our Responses?

We received four letters commenting on the April 15, 2005 proposed rule. All four of the letters contained comments critical of various portions of our proposed rule. The first letter was sent by the American Lung Association (ALA) on April 6, 2005. ALA, in conjunction with the Natural Resources Defense Council, sent additional comments on April 25, 2005. ALA, in conjunction with the American Lung Association of Ohio, the Ohio Environmental Council, Earthjustice, and the Natural Resources Defense Council, sent more extensive comments on May 16, 2005. Earthjustice also sent comments on May 16, 2005. A summary of the comments and EPA's responses to them are provided below.

A. Comments Related to Ohio's VOC RACT Regulations

Earthjustice is critical of EPA's approval of Ohio's negative declarations for certain VOC source types for RACT purposes and EPA's conclusion that Ohio has met all of the VOC RACT requirements of the CAA for the Cincinnati area.

Comment 1: The plain language of 182(b)(2)(A) mandates that each moderate area SIP shall require implementation of RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990 and the date of attainment. The State's duty to adopt these RACT provisions is not waived merely because no individual sources are big enough to trigger the RACT control requirements.

Response 1: Ohio EPA submitted negative declarations for seven source categories. Of these seven categories, Shipbuilding and Ship Repair Operations and Aerospace Manufacturing and Rework facilities are covered by a post-1990 CTG (subject to CAA section 182(b)(2)(A)) and each CTG contains specific applicability cutoffs. The remaining 5 categories of sources are considered ''non-CTG'' source categories subject to section 182(b)(2)(C) of the CAA, and a RACT rule would be required for any of these source categories if any source within the source category has greater than 100 tons VOC per year of potential non-CTG emissions (either by itself or combined with other non-CTG sources at a facility) and is not subject to federally enforceable operating and/or production restrictions limiting the facility to less than 100 tons per year of non-CTG VOC emissions. Non-CTG emissions include emissions from source categories for which there is not a CTG document, and also include unregulated emissions from source categories covered by a CTG category. Potential emissions or potential to emit (PTE) represents the emissions from a source if it were at maximum production and operating 8,760 hours per year (*i.e.*, 24 hours/day, 7 days/week), essentially a physical emissions ceiling.

We disagree with the commenter that section 182(b)(2)(A) requires the State to adopt RACT rules where there are no sources in the area that have the potential to emit VOC above the cut-off levels specified in the relevant CTGs. Section 182(b)(2)(A) requires the State to adopt RACT rules for ''[e]ach category of VOC sources in the area covered by a CTG document issued by the Administrator between the date of enactment of the Clean Air Act Amendments of 1990 and the date of attainment.'' Thus, a State must adopt RACT rules for categories of sources ''covered by a CTG document.'' Each CTG document establishes a source cut-off for applicability of RACT. Sources with emissions at or above the cut-off are ''covered by the CTG document,'' and sources that are below the cut-off are not ''covered by the CTG document.'' Thus, where a state can demonstrate that there are no sources in an area that meet the requirements for RACT as set forth in a specific CTG, then the State is not required under section 182(b)(2)(A) to adopt a RACT rule for that category of sources. [6] This

[6] Although the commenter does not specifically reference sections 182(b)(2)(B) and (C), these provisions are subject to the same interpretation. Subsection (B) uses the same phrasing as subsection (A)—requiring RACT for sources ''covered by any [pre-1990] CTG.'' Subsection (C), when read in conjunction with the opening paragraph of section 182(b)(2), requires RACT rules for major stationary sources in the area that are not covered by a CTG. Thus, RACT rules are not needed for sources that do not meet the definition of a ''major stationary source,'' which is 100 tpy for the Cincinnati area, which is a 1-hour moderate ozone nonattainment area.

interpretation of the Act by EPA is long-standing and was in fact set forth in the April 16, 1992, General Preamble for the implementation of title I of the CAA of 1990. In that notice, we stated: ''All States should submit negative declarations for those source categories for which they are not adopting CTG-based regulations (because they have no sources above the CTG recommended threshold)* * *'' (57 FR 13512, April 16, 1992).

For the reasons provided elsewhere in this notice, we believe that Ohio EPA has thoroughly documented that there are, in fact, no sources in the Cincinnati ozone nonattainment area that are above the applicability cutoff and thus the State was not required to submit RACT rules for those two CTG categories.

Comment 2: Neither the State nor EPA have documented that all sources within each of the seven categories do in fact have potential to emit at levels below the relevant thresholds (aside from those sources that are subject to enforceable emission caps). Aside from those sources that are subject to enforceable emission caps that keep them below the threshold, the State has not explained how it calculated or estimated potential to emit at all of the relevant sources. For example, for Industrial Cleaning Solvents, the State's negative declaration consists of a letter with a table showing emission figures for each company but does not explain how the emission figures were derived. An entry of 184.65 tons of VOC emissions for coatings was difficult to reconcile with the state's assertion that no facilities with Industrial Cleaning Solvent operations have combined non-CTG PTE of 100 Tons per year or more.

Response 2: The State has fully documented that there are no sources in each of the seven source categories with potential emissions above the applicable cut-off levels. In the negative declaration for each source-category, the State first explained how it searched the area for any sources that potentially could be subject to the relevant CTG or to non-CTG RACT. Once the State developed the list of sources potentially subject to RACT, it then evaluated the individual sources to determine whether the sources had potential emissions above the applicable cut-off. If a source had a federally-enforceable permit limiting emissions below the cut-off (*i.e.*, an ''emissions cap''), the State did not need to analyze the source further. For the remaining sources, the State analyzed whether the potential emissions of the sources were above the cut-off level. There were two methods for performing this analysis. First, the State could use the results of test methods—where the emissions of a specific source are derived based on a test of actual emissions from the facility. Where the State used this method of analysis, the test methods in OAC rule 3745–21–10, which have been approved by EPA, were used. Second, where test data are unavailable, EPA has established emission calculation procedures based upon the source characteristics. For source categories involving evaporative emissions, such as cleaning solvents, potential emissions are based on determining the weight of volatile organic material that would be used with the source operating at maximum capacity. This is the most direct way of estimating emissions.

During the State hearing process, the State made available for public comment the detailed information about (1) how it determined whether there were sources potentially subject to RACT in each category; (2) which of those sources had federally enforceable permit limits ''capping'' their emissions below the applicable cut-off; (3) the potential emissions for sources that do not have their emissions capped; and (4) the source-specific calculations for each source (the Hamilton County Department of Environmental Services (HAMCO—a local air agency) maintains files which document the emissions of the sources listed in the tables attached to the negative declaration letters). The State submitted items (1), (2) and (3) as part of the SIP revision, and that information was available during the comment period on this rule. In addition, in response to questions from EPA, the State submitted: (1) In a May 2, 2003 email by HAMCO, additional information regarding how the State calculated industrial cleaning solvent emissions and examples of those calculations; and, (2) in a January 9, 2003, letter from HAMCO, the State provided example calculations for a storage tank at the Valvoline Oil Company terminal.

The following summarizes the more detailed information that was available to the public for each of the seven categories for which negative declarations were documented by the Ohio EPA:

(1) The applicability cutoff for industrial cleaning solvents is a PTE of 100 tons VOC per year, and Ohio EPA has documented that all of the industrial cleaning solvent sources have less than 50 tons VOC per year of potential emissions;

(2) Ohio EPA has adequately documented that there are no ship building and repair facilities;

(3) The applicability cutoff for auto refinishing is 100 tons VOC per year, and Ohio EPA has documented that all of the auto refinishing facilities have potential emissions of less than 25 tons VOC per year or have a federally-enforceable Permit to Install (PTIs) limiting emissions to less than 25 tons VOC per year;

(4) The applicability cutoff for aerospace manufacturing and rework facilities is a PTE of 25 tons VOC per year, and Ohio EPA has documented that all such sources have potential emissions below this cutoff or have a federally-enforceable PTI restricting emissions to less than 25 TPY;

(5) The applicability cutoff for VOL storage tanks is 100 tons VOC per year, and Ohio EPA has documented that all VOL storage tanks (a) are already subject to an existing RACT rule or are below RACT control requirement cutoffs; (b) have a federally-enforceable PTI limiting actual VOC emissions to below 100 tons per year; or, (c) have a potential to emit less than this cut-off;

(6) The applicability cut-off for offset lithographic printing is 100 tons VOC per year. Ohio EPA has documented all such sources have potential emissions below this cut-off or have a federally-enforceable PTI restricting emissions to less than 100 TPY; and,

(7) The applicability cut-off for automotive plastic parts coating is 100 tons VOC per year. Ohio EPA has documented all such sources have potential emissions below this cut-off or have a federally-enforceable PTI restricting emissions to less than 100 TPY.

The commenter raises a specific concern with respect to a table in the negative declaration for the Industrial Cleaning Solvents source category. The commenter claims that because the source cut-off for RACT is 100 tpy, the commenter does not understand why the 184.65 tons of VOC emissions for coatings does not subject the source to RACT. As stated on the referenced table, the 184.65 tpy emission is for coatings. These emissions are not part of the cleanup solvent emissions,[7] and, because these emissions are already subject to RACT under the EPA-approved State coating rule in OAC rule 3745–21–09, they are not non-CTG emissions. Thus, for purposes of whether the source is a major source for the industrial cleaning solvents category, those emissions are not considered.

Comment 3: The negative declarations are substantially out of date, *e.g.* July

[7] Coatings are materials, such as paint, that are used to coat another surface. Solvents are frequently used at coating facilities to clean the coating material from the instruments and other surfaces that were not intended to be coated.

2003 for lithographic printing and October 2003 for aerospace.

Response 3: The negative declarations are not substantially out of date. States must first develop SIP revisions, which are then submitted and which EPA must process through rulemaking. Section 110 of the CAA provides for up to 18 months for EPA to process a SIP revision. Thus, it is not unusual for EPA to be acting on a SIP that has components that were adopted and submitted by the State one or two years before EPA takes final action on the submission. Furthermore, the rate of industrial growth during the past two years is not expected to have added any sources above the applicability cutoff for any of the seven negative declaration categories.

As explained by HAMCO, any permit application for the construction or modification of a source subsequent to its applicable negative declaration letter would have been reviewed by HAMCO and identified if its potential to emit or allowable emissions exceeded the RACT applicability cutoff for that category. No such permit applications were identified by HAMCO since the negative declaration letters were submitted by Ohio EPA.

Furthermore, the commenter did not identify any specific facilities in any of the seven negative declaration categories that, subsequent to the State's negative declaration letter, have VOC emissions above the RACT applicability cutoff.

Comment 4: Even if the State's estimates of current potential to emit were credible, they would not support waiver of RACT requirements where the State does not and cannot claim that PTE will be capped at current levels. Except for sources with PTE restrictions, sources below the RACT applicability cutoffs could increase their emissions above the threshold in the future.

Response 4: As provided in Response 1, above, we believe that section 182(b)(2) of the CAA requires that the State adopt RACT rules for source categories where there are sources that currently meet the applicability threshold for imposition of RACT. In addition, we note, as further explained below, that the State has assured EPA that it would require RACT-level controls through its permitting process for any new source that would have the potential to emit above the applicability cut-off or for any existing source that was modified such that potential emissions exceeded the applicability cutoff.

As discussed previously, certain sources in the seven negative declaration categories are subject to a source-specific federally enforceable permit to install, that limits emissions to below the appropriate RACT applicability cutoff for its source category. Any change in a permit to install resulting in an increase in emissions would be subject to EPA and public review and would require RACT level controls if the revised limit exceeds the RACT applicability cutoff.

Other sources in the seven negative declaration categories have permits with allowable emissions below each source's applicability cutoff. As stated by HAMCO, if a facility increases its emissions above its present allowable emissions level, the definition of modification in OAC rule 3745–31–01(PPP) would be triggered. By triggering the modification definition, the facility would have to apply for a permit to install which requires implementation of best available technology. In order to satisfy the requirement of best available technology, Ohio EPA would require any facility in one of the seven negative declaration categories to meet RACT.

The remaining sources are exempted by the *de minimis* levels in OAC 3745–15–05 and/or exempted from the requirement to obtain a permit to install and regulatory requirements in OAC 3745–31–03. The *de minimis* levels are below the RACT applicability cutoffs for all source categories. Similarly, any source that increased its emissions above the *de minimis* level would need a permit that would be reviewed by HAMCO to determine whether it exceeded a RACT applicability cutoff and, if so, the source would be required to comply with best available technology by complying with RACT limits.

Comment 5: EPA's proposed waiver of RACT requirements for Cincinnati conflicts with the Agency's anti-backsliding rules for implementing the 8-hour ozone standard. The anti-backsliding rules expressly list RACT among the applicable requirements that cannot be relaxed in 8-hour nonattainment areas, where the same area was obligated (due to its 1-hour nonattainment status) to adopt and implement RACT at the time of 8-hour designation. The Cincinnati area is plainly covered by these provisions with respect to RACT. EPA's redesignation proposal would allow the State to waive RACT requirements that plainly applied to the area as of its 8-hour designation. Existing sources could increase their potential to emit in the future above the applicability cutoff, in which case the Act and EPA's anti-backsliding rules expect that the source be subject to the CTG control requirements.

Response 5: Section 51.905(a)(1)(i) merely states that the area remains subject to the obligation to adopt and implement the applicable requirements in section 51.900(f), including RACT, after revocation of the 1-hour NAAQS. Therefore, this anti-backsliding provision does not add any new control requirements. Under the anti-backsliding provisions, if a negative declaration is adequate to meet an area's obligation for the 1-hour NAAQS, then the anti-backsliding provisions are satisfied. For the reasons provided elsewhere in this notice, we have concluded that the State has met the RACT obligation that applied for purposes of its 1-hour nonattainment designation and moderate classification.

B. Comments Related to The Termination of the Vehicle Inspection and Maintenance Programs in the Cincinnati and Dayton Areas

ALA, *et al.,* submitted extensive comments on our proposal to approve the conversion of the vehicle I/M program in the Cincinnati area from an active element of the 1-hour ozone SIP to a contingency measure in the 1-hour ozone maintenance plan for this area. The comment letters also included comments dealing with the termination of the I/M programs in the Cincinnati and Dayton areas and the section 110(l) demonstrations needed to support these program terminations. Although we are not at this time approving termination of the vehicle I/M program in either Cincinnati or Dayton for the reasons explained further below, these comments are addressed here.

The summary of comments and responses below also includes comments made by the ALA on April 6, 2005, and by the ALA and the Natural Resources Defense Council on April 25, 2005. In general, these comments are subsumed in the more extensive comments of ALA, *et al.,* dated May 16, 2005.

Comment 6: Ohio has not met the criteria that would allow the Cincinnati area to be redesignated to attainment of the 1-hour ozone standard because, among other things:

(a) Ohio does not have legal authority to implement an I/M program after December 2005; and

(b) Ohio has not made the required demonstration that removal of the I/M program in Cincinnati will not interfere with attainment of the 8-hour ozone and fine particulates ($PM_{2.5}$) standards. Ohio has made no attempt to make the necessary showing, promising only that

it will do so, without specifics of any sort.

Response 6: EPA believes that Ohio has met the necessary criteria to allow the Cincinnati area to be redesignated to attainment of the 1-hour ozone NAAQS. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable state implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and, (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA. As discussed above, and in more detail in our April 15, 2004 proposed rule (70 FR 19900), we believe that Ohio has met all of these requirements.

EPA does not believe that Ohio's lack of legal authority to implement a vehicle I/M program after 2005 or the lack of a non-interference demonstration with the attainment of the 8-hour ozone and $PM_{2.5}$ NAAQS has any impact on EPA's ability to approve Cincinnati's redesignation request. An implemented vehicle I/M program is currently required by the approved SIP and, should Ohio terminate the vehicle I/M program without the submittal and EPA approval of a SIP revision, it would be in violation of the SIP. Furthermore, the actions EPA is taking today are not dependent on Ohio demonstrating that removal of the vehicle I/M program in Cincinnati will not interfere with the attainment of the 8-hour ozone and fine particulate standard.

EPA has determined that Ohio's current vehicle I/M authority does not satisfy the requirements set forth in 40 CFR 51.372(c) authorizing the conversion of Ohio's E-Check program in the Cincinnati and Dayton areas to a contingency measure.

EPA believes that a basic I/M area which is designated nonattainment for the 8-hour ozone NAAQS, and which is not required to have a vehicle I/M program based on its 8-hour ozone designation, and which has been redesignated to attainment for the 1-hour ozone NAAQS continues to have the option to move its vehicle I/M program to a contingency measure under 40 CFR 51.372(c) as long as the 8-hour nonattainment area can demonstrate that doing so will not interfere with its ability to comply with any affected NAAQS or any other applicable CAA requirement pursuant to section 110(l) of the Act. This issue is discussed in more detail in subsequent responses.

In order to satisfy the requirements outlined in 40 CFR 51.372(c), the State's submittal must contain the legal authority to implement a basic vehicle I/M program (or enhanced if the State chooses to opt-up) that allows the adoption of implementing regulations without requiring further legislation. This authority must continue for the full term of the maintenance plan.

Based on EPA's determination regarding legal authority, EPA is not approving conversion of Ohio's E-Check program in the Cincinnati and Dayton areas to contingency measures in the maintenance plans for these areas in today's final action. EPA also reiterates, as noted in the proposal, that satisfactory compliance with section 110(l) relating to non-interference must be completed before the E-Check program can be terminated. Until Ohio makes the required demonstrations with respect to legal authority under 40 CFR 51.372(c) and non-interference under section 110(l) and EPA approves the conversion of the vehicle I/M program to contingency measures in the Cincinnati and Dayton 1-hour ozone maintenance plans, an implemented vehicle I/M program will remain as an applicable requirement in the SIP for these two areas. EPA fully approved Ohio's vehicle I/M program as a revision to the ozone SIP on April 4, 1995 (60 FR 16989).

Today's action does not approve the discontinuation of the vehicle I/M program in either the Cincinnati or Dayton area. The State has not fully met its demonstration obligations under section 110(l) of the CAA, and Ohio must continue to operate the vehicle I/M program in the Cincinnati and Dayton areas until all obligations are addressed. However, the fact that such a demonstration has not been submitted is not germane to today's action regarding satisfaction of requirements relative to redesignation under the 1-hour ozone standard.

EPA believes that Ohio has met the necessary criteria to allow the Cincinnati area to be redesignated to attainment of the 1-hour ozone NAAQS. In addition, EPA believes that Ohio has made a successful demonstration showing continued maintenance of the 1-hour NAAQS. EPA is proceeding with final approval of the redesignation of the Ohio portion of the Cincinnati-Hamilton area and the area's maintenance plan with projected emissions not taking credit for the vehicle I/M program even though the SIP provides for continued implementation of the vehicle I/M program in the Cincinnati area.

Comment 7: The need for expeditious attainment of a NAAQS is the central principle of title I of the CAA. Cincinnati and Dayton continue to have serious air quality problems, as evidenced by their nonattainment status for the 8-hour ozone and $PM_{2.5}$ standards. EPA promulgated the 8-hour ozone standard because the 1-hour ozone standard was insufficient to protect public health. The EPA committed through its anti-backsliding policy that the transition between the 1-hour ozone standard and the 8-hour ozone standard would not lead to compromises in air quality. That is, however, what EPA's proposal would do.

The anti-backsliding provisions applicable to the transition from the 1-hour ozone standard to the 8-hour ozone standard prohibit removal of the vehicle I/M programs for the Cincinnati and Dayton areas. The provisions provide that the requirements that apply to an 8-hour ozone nonattainment area are the requirements that applied under the 1-hour ozone standard at the time the areas were designated to nonattainment of the 8-hour ozone standard. Both Cincinnati and Dayton were designated to nonattainment of the 8-hour ozone standard on April 15, 2004, when vehicle I/M was still required for both areas. Vehicle I/M must continue to be implemented in these areas until these areas come into attainment with the 8-hour ozone standard.

Response 7: Although this comment is not specific about which action proposed by the EPA in the April 15, 2005 proposed rule is of concern, it is assumed here that the commenter is referring to EPA's discussion concerning the termination of the vehicle I/M (E-Check) programs in the Cincinnati and Dayton areas. See 70 FR 19910.

On April 30, 2004 (69 FR 23996), the EPA promulgated revisions to 40 CFR part 51 subpart X to establish provisions for implementation of the 8-hour ozone NAAQS. Included in these provisions were sections 51.900(f), the definition of ''Applicable requirements,'' and 51.905, which establishes provisions for the transition between the 1-hour ozone NAAQS and the 8-hour ozone NAAQS, including specifying which requirements that applied to an area for

the 1-hour ozone NAAQS remain in place after EPA revokes the 1-hour standard (expected to occur for the Cincinnati and Dayton areas on June 15, 2005). The latter section is subdivided depending on the attainment status of an area for both ozone NAAQS (1-hour and 8-hour) on the date when the 8-hour ozone designations became effective (June 15, 2004). Since the Cincinnati area was designated as a nonattainment area for the 1-hour ozone NAAQS when the 8-hour ozone nonattainment designation became effective, subsection (a)(1) of section 51.905 applies to the Cincinnati area. Since the Dayton area was a maintenance area for the 1-hour ozone NAAQS on June 15, 2004 and is an 8-hour ozone nonattainment area, the transition requirements for this area are covered by subsection 51.905(a)(2). Both of these rule subsections require these areas to continue to implement all of the applicable requirements specified in 51.900(f) that applied to the areas based on their 1-hour ozone status as of June 15, 2004. Vehicle I/M is one of the listed applicable requirements and both the Cincinnati area and the Dayton area were subject to this requirement on June 15, 2004.

The preamble to the anti-backsliding rule made it clear that any applicable requirement that was retained would apply in the same manner as it applied for purposes of the 1-hour standard. We specifically noted the example of an enhanced vehicle I/M program and stated that, while an area classified as serious nonattainment for the 1-hour standard would need to retain an enhanced I/M program, it could modify such a program consistent with our enhanced I/M regulations. 69 FR 23972.

On May 12, 2004, the EPA issued a policy memorandum (''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs,'' from Tom Helms, Group Leader, Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards, and Leila H. Cook, Group Leader, State Measures and Conformity Group, Office of Transportation and Air Quality, to Air Program Managers) (hereafter referred to as the Helms-Cook memorandum) clarifying how our basic I/M regulations applied for purposes of an area that was being or had been redesignated to attainment of the 1-hour ozone NAAQS. This memorandum notes that, for 1-hour ozone maintenance areas, special provisions regarding vehicle I/M that were published by the EPA on January 5, 1995 (60 FR 1735) continue to define the applicable vehicle I/M program. For a 1-hour ozone maintenance area subject only to basic vehicle I/M, 40 CFR 51.372(c) provides a mechanism for a State to convert a basic vehicle I/M program to a contingency measure in the area's maintenance plan. For areas designated as nonattainment for the 8-hour ozone NAAQS, application of this provision is limited to areas with 8-hour ozone classifications that do not trigger the I/M requirement, and this provision only applies to areas that were required to adopt basic I/M programs (to areas that were classified as moderate or marginal nonattainment under the 1-hour ozone NAAQS) and not thus required to have an enhanced vehicle I/M program. However, a marginal nonattainment area that opted to implement an enhanced vehicle I/M programs can also convert the vehicle I/M programs to contingency measures in the 1-hour ozone maintenance plans provided they continue to show maintenance of the 1-hour ozone standard. Finally, the Helms-Cook memorandum notes that, to convert a vehicle I/M program to a contingency measure under the 1-hour maintenance plan, the State must also demonstrate that such conversion will not interfere with the area's ability to comply with any affected NAAQS or any other applicable CAA requirement in order to comply with section 110(l) of the CAA.

Under section 110(l) of the CAA, Ohio must demonstrate that conversion of the vehicle I/M programs in the Cincinnati and Dayton areas to contingency measures in the 1-hour ozone maintenance plans in these areas will not interfere with attainment of any NAAQS or with compliance with any other CAA requirements, most notably with attainment of the 8-hour ozone NAAQS and $PM_{2.5}$ NAAQS. Until Ohio makes the required demonstrations and EPA approves the conversion of the vehicle I/M programs to contingency measures in the Cincinnati and Dayton 1-hour ozone maintenance plans, the SIP will still require implementation of the vehicle I/M program in these areas. As such, at this time, no adverse air quality impacts are expected to occur in these areas through this process. Thus, the commenters' concerns about adverse impacts on air quality relating to the new standards will be addressed in future rulemakings should Ohio provide the necessary demonstrations.

Comment 8: Besides ozone reduction benefits, I/M benefits air quality for other pollutants, for example, benzene, formaldehyde, 1,3-butadiene, and fine particulates, $PM_{2.5}$. It would be short-sighted to eliminate the I/M programs.

Response 8: As noted above, we agree that vehicle I/M remains an applicable requirement, but we believe that it is consistent with our anti-backsliding rule and the vehicle I/M rule to allow a maintenance area to move a basic I/M program to the contingency portion of the SIP if certain conditions are met. Before we can approve the conversion of the vehicle I/M programs to 1-hour ozone contingency measures in the Cincinnati and Dayton maintenance plans, Ohio must demonstrate that the conversion will not interfere with compliance with all of the requirements of the CAA. This demonstration must include a demonstration of non-interference with the CAA requirements related to air toxics as well as to attainment of all of the NAAQS.

As noted elsewhere in this final rulemaking, Ohio has not made the requisite section 110(l) demonstration. Therefore, we are not approving a conversion of the vehicle I/M programs to contingency measures nor termination of such programs for the Cincinnati and Dayton areas in this final rulemaking.

Comment 9: In its haste to redesignate the Cincinnati area to attainment of the 1-hour ozone standard, the EPA has seemed to have missed the essential points: That the ozone redesignation, however speedy, does not pave the way for ending the vehicle I/M programs; and, that its proposal stands to set Cincinnati and Dayton back on efforts to improve air quality.

Response 9: EPA agrees with the commenter that the redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS, by itself, does not meet the requirements for approving the conversion of the vehicle I/M program in the Cincinnati area to a contingency measure in the maintenance plan for this area. As noted elsewhere in this final rulemaking, Ohio must meet other requirements before EPA can approve such a conversion. It is noted, however, that the redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS does allow Ohio to meet one of the crucial requirements for such a conversion as detailed here.

Redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS makes the Cincinnati area an area for which the approach in 40 CFR 51.372(c) is available. However, 40 CFR 51.372(c) provides that additional elements must first be met, including:

(1) Legal authority to implement a basic vehicle I/M program (enhanced if the State chooses to opt-up) without requiring further legislation;

(2) A request to place the vehicle I/M program/plan into the contingency measures portion of the maintenance plan upon redesignation; and

(3) A contingency measure consisting of a commitment by the Governor or the Governor's designee to adopt or

consider adopting regulations to implement a vehicle I/M program to correct a violation of the ozone standard (or carbon monoxide standard [not applicable for the Cincinnati area]) or other air quality problem in accordance with the provisions of the maintenance plan. Although 40 CFR 51.372(c) refers to redesignation requests and maintenance plans for areas that are currently designated as nonattainment areas for ozone (in nonattainment of the 1-hour ozone NAAQS), we believe that 40 CFR 51.372(c) also applies to 1-hour ozone maintenance areas, where the State chooses to revise the ozone maintenance plan to include vehicle I/M as a contingency measure.

As noted in the Helms-Cook memorandum, the anti-backsliding provisions of 40 CFR 51.905 do not modify the basic vehicle I/M program. Thus, the requirements and application of 40 CFR 51.372(c) remain in place and available to areas that meet the criteria of that rule and also meet the requirements of section 110(l) of the CAA, demonstrating that converting the vehicle I/M program to a contingency measure will not interfere with the attainment of all affected NAAQS and requirements of the CAA.

The State of Ohio has not complied with the requirements of 40 CFR 51.372(c) in that the State has not demonstrated that it has the legal authority to restart a vehicle I/M program in the Cincinnati area (and in the Dayton area) without additional legislation. In addition, the State has not made a demonstration under section 110(l) of the CAA that the conversion of the vehicle I/M program in the Cincinnati area (and in the Dayton area) to a contingency measure will not interfere with attainment of the affected NAAQS or with compliance with other requirements of the CAA. Therefore, we cannot approve, at this time, the State's request to make vehicle I/M a contingency measure in the Cincinnati area 1-hour ozone maintenance plan. In addition, we cannot approve the State's request to make vehicle I/M a contingency measure in the Dayton area 1-hour ozone maintenance plan for the same reason.

Comment 10: The State of Ohio does not have legal authority to implement a vehicle I/M program after December 2005. 40 CFR 51.372(c), with respect to redesignation requests, provides:

> Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment shall receive full approval of a State Implementation Plan (SIP) submittal under Sections 182(a)(2)(B) or 182(b)(4) if the submittal contains the following elements:
>
> (1) Legal authority to implement a basic I/M program * * * as required by this subpart. The legislative authority for an I/M program shall allow the adoption of implementing regulations without requiring further legislation.

Ohio legislation, in ORC Ann. (Ohio Revised Code Annotated) section 3704.143(C) provides that:

> Notwithstanding * * * [sections of the Revised Code] that require[s] emissions inspections to be conducted * * * upon the expiration or termination of all contracts that are in existence on September 5, 2001, the director of environmental protection shall terminate all motor vehicle inspection and maintenance programs in this state and shall not implement a new motor vehicle inspection and maintenance program unless this section is repealed and such a program is authorized by the general assembly.

The State has noted, through a press release, that the vehicle I/M programs in the Cincinnati and Dayton areas will expire on December 31, 2005. In addition, in a letter to the EPA, dated April 4, 2005, the Ohio EPA acknowledges that:

> Under 3704–14(b), Ohio EPA retains the legislative authority to conduct an automobile inspection maintenance program in moderate nonattainment areas as part of the attainment or maintenance demonstration as well as the contingency portion of the maintenance plan. It must be understood, though, the specifics of restarting the program should a contingency arise, would involve negotiating a new operator contract and obtaining approval from the legislature to execute that contract.

This indicates that the Ohio EPA acknowledges that the State would need new legislative authority to restart the I/m program.

Response 10: As discussed above, EPA has determined that Ohio's current vehicle I/M authority does not satisfy the requirements set forth in 40 CFR 51.372(c) with respect to redesignation requests.

Based in part on EPA's determination regarding legal authority, EPA is not taking action on the conversion of Ohio's E-Check program in the Cincinnati and Dayton areas to contingency measures in this final rule.

In order to satisfy the requirements outlined in 40 CFR 51.372(c), the State will, in part, need to demonstrate that the State has sufficient legal authority to implement a vehicle I/M program that allows the adoption of implementing regulations without requiring further legislation. Until Ohio makes the required demonstrations and EPA approves the conversion of the vehicle I/M program to contingency measures in the Cincinnati and Dayton 1-hour ozone maintenance plans, vehicle I/M will remain as an applicable requirement in the SIP for these two areas.

Comment 11: The State has not made the required demonstration that removal of the I/M program in Cincinnati will not interfere with attainment of the 8-hour ozone and $PM_{2.5}$ standards. EPA acknowledges this in the April 15, 2005 proposed rule. The non-interference demonstration is also required for the purposes of the redesignation of the Cincinnati area to attainment.

Section 107(d)(3)(E) of the CAA provides:

> The Administrator may not promulgate a redesignation of a nonattainment area * * * to attainment unless * * *
>
> (ii) The Administrator has fully approved the applicable implementation [plan] for the area under section 7410(k) [*i.e.*, section 110(k)] of this title * * * and
>
> (v) The State containing such area has met all requirements applicable to the area under section 7410 [*i.e.*, section 110] of this title * * *.

The State has met neither of these requirements. EPA has not approved a revised SIP, nor could it without a showing of legal authority for an I/M program, which the State cannot make following the termination of the program. And, as EPA's proposal concedes, the State has not met all applicable requirements under section 110, which includes the demonstration required under section 110(l) that removing the I/M programs for Cincinnati and Dayton will not interfere with the 8-hour ozone and $PM_{2.5}$ standards.

It is difficult to see how the EPA can argue that either of the section 107(d(3)(E) requirements have been met in light of the fact that the SIP revision does not qualify for approval on a conditional basis. EPA acknowledges that the State has done no more than promise to complete the required demonstration without specifics of any sort. The Court of Appeals for the District of Columbia Circuit has admonished EPA at least twice for conditionally approving SIP revisions that contain nothing more than a mere promise to take appropriate but unidentified measures in the future. *Sierra Club* v. *EPA,* 356 F.3d 296, 303 (DC Cir. 2004), slip opinion at 10, citing *NRDC* v. *EPA,* 22 F.3d 1125 (DC Cir. 1994).

Response 11: As we have discussed elsewhere in this final rule, we agree with the commenter that Ohio has not made the demonstration that conversion of the vehicle I/M programs in the Cincinnati and Dayton areas to contingency measures in the maintenance plans will not interfere with the attainment of the 8-hour ozone,

$PM_{2.5}$, or any other applicable NAAQS in these areas. Therefore, we are not approving these conversions in this final rule.

We disagree with the commenter that this fact leads to the conclusion that Ohio has not met the necessary requirements for redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS. As we noted in our April 15, 2004 proposed rule, at 70 FR 19900, Ohio has a fully approved SIP under section 110(k) of the CAA, and Ohio has met all applicable requirements under section 110 and part D of the CAA, including a fully approved vehicle I/M SIP (60 FR 16989, April 4, 1995). Our discussion in the proposed rulemaking thoroughly documents how Ohio has complied with these requirements. Therefore, we are approving the ozone redesignation request for the Cincinnati area in this final rule. EPA is not conditionally approving this redesignation nor the maintenance plan. We are fully approving these SIP revisions, with vehicle I/M remaining as an implemented requirement of the approved SIP.

With regard to the vehicle I/M program in the Cincinnati area, this remains an applicable requirement for this area under Ohio's SIP. We will not approve conversion of the vehicle I/M program to a contingency measure until Ohio has made all required demonstrations discussed in this final rule and we have approved the State's demonstrations of non-interference in subsequent rulemaking. Should Ohio fail to make these demonstrations, vehicle I/M will remain a fully enforceable requirement of the SIP.

Comment 12: The anti-backsliding provisions applicable to the transition from the 1-hour to the 8-hour ozone standard prohibit removal of vehicle I/M programs for the Cincinnati and Dayton areas. EPA proposes to terminate the vehicle I/M programs for the Cincinnati and Dayton areas and to retain I/M only as contingency measures in the maintenance plans for these areas. This is not acceptable for the following reasons even if the Cincinnati area is redesignated as an attainment area for the 1-hour ozone standard:

(1) The anti-backsliding provisions, 40 CFR 51.900(f) and 51.905, are absolutely unambiguous, and provide that the requirements that apply to an 8-hour nonattainment area are the requirements that applied under the 1-hour standard at the time of designation for the 8-hour ozone standard. At the time the Cincinnati and Dayton areas were designated as nonattainment for the 8-hour ozone standard, these areas were under the requirement to continue implementation of vehicle I/M programs;

(2) EPA argues that 40 CFR 51.372(c) creates an exception to the anti-backsliding provisions for I/M purposes. All that 40 CFR 51.372(c) does is to allow a nonattainment area to become eligible for redesignation if the area's SIP contains certain provisions (including legal authority) for I/M. This provision has no bearing on the anti-backsliding issue in question. Redesignation of the Cincinnati area to attainment now has no bearing on the issue because the only date that counts for anti-backsliding purposes is the date of designation for the 8-hour ozone standard; and

(3) Even if there were some legal justification for removing the vehicle I/M programs for the Cincinnati and Dayton areas, Ohio would be required to have the legal authority to trigger the programs should the need arrive. The State does not have such legal authority.

Response 12: Since we are not approving the conversion of vehicle I/M to a contingency measure, these issues are not relevant here. However, for the reasons we have discussed above, we believe that our anti-backsliding rule does not modify the basic I/M regulations nor the availability of the approach under 40 CFR 51.372(c).

Comment 13: The anti-backsliding provisions applicable to the transition from the 1–hour ozone standard to the 8–hour ozone standard are absolutely clear that it would be illegal to remove the I/M programs for the Cincinnati and Dayton areas. The anti-backsliding provisions applicable to the transition from the 1–hour ozone standard to the 8–hour ozone standard are 40 CFR 51.900(f) and 51.905.

Section 51.900(f) provides that 12 separately enumerated requirements are ''applicable requirements'' for an area if they applied to the area under the 1–hour standard at the time of the area's designation for the 8–hour ozone standard. Vehicle I/M is one of the 12 enumerated applicable requirements. When the Cincinnati area was designated as an 8–hour ozone nonattainment area, vehicle I/M was an applicable requirement for this area.

40 CFR 51.905 provides:

> (a)(1) 8-Hour NAAQS Nonattainment/1-Hour Nonattainment. The following requirements apply to an area designated nonattainment for the 8–hour NAAQS and designated nonattainment for the 1–hour NAAQS at the time of designation for the 8–hour NAAQS for that area.
>
> (i) The area remains subject to the obligation to adopt and implement the applicable requirements as defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of this section, and except as provided in paragraph (b) this section.

Paragraph (a)(1)(iii) is not relevant to this issue. Paragraph (b) provides:

> A State remains subject to the obligations under paragraphs (a)(1)(i) and (a)(2) of this section until the area attains the 8–hour NAAQS. After the area attains the 8–hour NAAQS, the State may request such obligations be shifted to contingency measures * * *.

Therefore, Cincinnati is required to retain its I/M program until it comes into attainment with the 8–hour ozone standard, when the State can request that I/M become a contingency measure.

Unlike Cincinnati, Dayton was a maintenance area for the 1–hour ozone standard when this area was designated as an 8–hour ozone nonattainment area. At that time, Ohio's SIP required Dayton to maintain a basic I/M program.

40 CFR 51.905 further provides:

> (a)(2) An area designated nonattainment for the 8–hour NAAQS that is a maintenance area for the 1–hour NAAQS at the time of designation for the 8–hour NAAQS for that area remains subject to the obligation to implement the applicable requirements as defined in section 51.900(f) to the extent such obligations are required by the approved SIP, except as provided in paragraph (b) of this section. Applicable measures in the SIP must continue to be implemented; however, if these measures were shifted to contingency measures prior to designation for the 8–hour NAAQS for the area, they may remain as contingency measures * * *.

Therefore, the conclusion for Dayton is almost the same as for Cincinnati. The Dayton area is also required to retain its I/M program until it comes into attainment with the 8–hour ozone standard.

Response 13: Our anti-backsliding rule retains the obligations that applied to the area under the CAA, not as the commenter implies, the obligations contained in the SIP. The preamble to the final anti-backsliding rule specifically noted that a state may modify its SIP consistent withy the existing relevant regulations. See 69 FR 23972. 40 CFR 372(c) is part of our existing basic vehicle I/M rule, and it remains in place. We interpret this provision to mean that Ohio may revise the Cincinnati and Dayton ozone maintenance plans to convert the vehicle I/M programs in these areas to contingency measures in the ozone maintenance plans provided that Ohio meets the requirements of 40 CFR 51.372(c) and section 110(l) of the CAA. We are, however, at this time not approving the conversion of the vehicle I/M programs to contingency measures in the Cincinnati and Dayton areas

because the State has not made the requisite demonstrations in compliance with section 110(l) of the CAA and with 40 CFR 51.372(c).

Comment 14: Allowing Ohio to drop I/M while the Cincinnati and Dayton areas remain in nonattainment with the 8–hour ozone standard conflicts with section 172(e) of the CAA, which requires that EPA rules ''provide for controls which are not less stringent than the controls applicable to areas designated nonattainment'' for ozone before adoption of the 8–hour standard. Allowing states to drop I/M while areas remain in 8–hour nonattainment further conflicts with the stated rationale and intent underlying EPA's anti-backsliding rule.

Response 14: Section 172(e) of the CAA does not apply where EPA has promulgated a more stringent NAAQS, as EPA did when it promulgated the 8–hour ozone NAAQS. As discussed above, since EPA is not approving a conversion of the vehicle I/M program to a contingency measure, this comment is not relevant for this final action. Additionally, for the reasons provided above, EPA believes 40 CFR 51.372(c) remains available under the anti-backsliding rules in 40 CFR 51.905. Furthermore, EPA did look to section 172(e) when establishing the anti-backsliding regulations. These regulations require that areas remain subject to their 1–hour ozone nonattainment control obligations once that standard no longer applies and thus retain controls at the same level of stringency that they applied for purposes of the 1–hour NAAQS. In this case that level of control includes the provisions of 40 CFR 51.372(c).

Comment 15: The EPA understands the preamble to the anti-backsliding provisions as reflecting the view that, if a SIP could have been modified to remove a measure for the purposes of the 1–hour ozone NAAQS, it may be removed for 8–hour nonattainment purposes. This understanding of the preamble cannot contradict the language of the anti-backsliding provisions for at least three reasons:

(1) The language of the anti-backsliding regulations is unambiguous, leaving no room for a directly conflicting interpretation in the preamble;

(2) The language of the preamble itself is ambiguous; and,

(3) Portions of the preamble are, in fact, entirely consistent with the language of the anti-backsliding regulations; in other words, while the regulations themselves are unambiguous, the preamble is internally consistent.

Response 15: Since we are not approving the conversion of vehicle I/M to a contingency measure, these issues are not relevant here. However, we disagree with the commenter. The preamble to the Phase 1 implementation rule was our contemporaneous interpretation of the Phase 1 regulations. It clearly states that areas remain subject to the 1–hour obligations in the same manner it was subject to that obligation for the 1–hour standard. See 69 FR 23972. As an example, the preamble specifically noted that an area subject to an enhanced I/M program could modify its SIP consistent with our enhanced I/M regulations. Similarly, as here, an area subject to basic I/M can modify its SIP consistent with our basic I/M regulations, which include 40 CFR 51.372(c).

The Helms-Cook memorandum explains how 40 CFR 51.372(c) continues to apply in light of the anti-backsliding rules and would allow Ohio to demonstrate that I/M in the Cincinnati and Dayton areas may be converted to contingency measures in the Cincinnati and Dayton ozone maintenance plans. As noted elsewhere in this final rule, Ohio must make a number of demonstrations in compliance with 40 CFR 51.372(c) and section 110(1) of the CAA to successfully support these conversions and receive EPA approval.

Comment 16: 40 CFR 51.372(c) does not create an exception to the anti-backsliding provisions for vehicle I/M. EPA has concluded that 40 CFR 51.372(c), adopted nine years before the adoption of the anti-backsliding provisions, creates an exception to the anti-backsliding provisions for I/M. There is nothing in 40 CFR 51.372(c) to suggest this interpretation. 40 CFR 51.372(c) provides:

> Redesignation requests. Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment shall receive full approval of a State Implementation Plan (SIP) submittal under Sections 182(a)(2)(B) or 182(b)(4) if the submittal contains the following elements * * *.

The ''following elements'' refer to a variety of provisions for an I/M program, including the necessity of legal authority.

EPA can redesignate a nonattainment area to an attainment area if the SIP makes certain provisions for I/M. This is irrelevant to the anti-backsliding issue at hand. What counts for anti-backsliding purposes in the context of the transition from the 1-hour ozone standard to the 8-hour ozone standard is the area's I/M obligations at the time of the 8-hour ozone nonattainment designation. The Cincinnati and Dayton areas were obligated to continue the implementation of vehicle I/M when these areas were designated to nonattainment for the 8-hour ozone standard. Therefore, these areas remain obligated to implement vehicle I/M programs, even if the Cincinnati area is redesignated to attainment of the 1-hour ozone standard.

Response 16: Since we are not approving the conversion of vehicle I/M to a contingency measure, these issues are not relevant here. However, although we agree with the commenter that 40 CFR 51.372(c) does not create an ''exception'' to the anti-backsliding rules, we disagree that the anti-backsliding provisions do not allow Cincinnati and Dayton to take advantage of this provision. As provided in previous responses, our anti-backsliding rules kept in place our current regulations for I/M (and the other ''applicable requirements'' under 40 CFR 51.900(f)) and that includes 40 CFR 51.372(c). Under the anti-backsliding rules both Cincinnati and Dayton remain subject to the basic I/M requirement and can meet that requirement in any way acceptable under our basic I/M regulations.

Comment 17: Ohio does not have the necessary legal authority to maintain vehicle I/M as a contingency measure in Ohio's maintenance plan for the Cincinnati and Dayton areas. Ohio needs such legal authority to trigger the implementation of I/M if needed as a contingency measure in these areas. Such legal authority is a prerequisite to the redesignation of the Cincinnati area. It is also a requirement for anti-backsliding purposes, for both the Cincinnati and Dayton areas. Section 175 of the CAA provides as well:

> Such [contingency] provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.

Ohio does not have the necessary legal authority to maintain I/M as a contingency measure for the Cincinnati and Dayton areas.

Response 17: As discussed above, EPA agrees with the comment that Ohio does not have sufficient legal authority to implement a vehicle I/M program in the Cincinnati and Dayton areas after December 2005 without further legislative action. EPA has determined that Ohio's current vehicle I/M authority does not satisfy the requirements set forth in 40 CFR

51.372(c) with respect to redesignation requests. Based on EPA's determination regarding legal authority, EPA is not taking action on conversion of Ohio's E-Check program in the Cincinnati and Dayton areas to contingency measures in this final rule.

For the reasons provided in earlier responses to comments, we believe that Ohio meets the anti-backsliding requirements for Cincinnati and Dayton so long as its SIP meets our basic I/M regulations. Because we are not approving I/M as a contingency measure, the language quoted from section 175A(d) regarding contingency measures is not relevant here.

Comment 18: EPA may not approve a SIP revision eliminating the I/M programs in Cincinnati and Dayton until Ohio demonstrates that the revision would not interfere with 8-hour ozone and $PM_{2.5}$ attainment. Ohio has failed to make the required showing that removing the I/M programs from the SIP will not interfere with attainment of the 8-hour ozone and $PM_{2.5}$ standards. Both the Cincinnati and Dayton areas have been designated as nonattainment for both standards.

Response 18: As we have discussed elsewhere in this final rule, we agree with the commenter that Ohio has not made the demonstration that conversion of the vehicle I/M programs in the Cincinnati and Dayton areas to contingency measures in the maintenance plans will not interfere with the attainment of the 8-hour ozone and $PM_{2.5}$ NAAQS in these areas. Therefore, we are not taking action on these conversions in this final rule.

With regard to the vehicle I/M program in the Cincinnati area, the State of Ohio remains obligated to implement the vehicle I/M program for this area as required in the approved SIP. We will not approve conversion of the I/M program to a contingency measure until Ohio has made all applicable demonstrations discussed in this final rule. If the State makes such a submission, we will undertake subsequent notice and comment rulemaking.

Comment 19: EPA has re-written the law as it applies to non-interference and, in so doing, has used the transition from the 1-hour ozone standard to the 8-hour ozone standard as a basis for weakening air quality standards. In the proposed rule, 70 FR 19911, EPA says in its proposal for Cincinnati and Dayton:

> In accordance with the Act and EPA redesignation guidance * * * states are free to adjust control strategies in the maintenance plan as long as they can demonstrate that overall emissions remain below the attainment level of emissions.

In its proposed rule entitled ''Approval and Promulgation of Implementation Plans for Kentucky: Inspection and Maintenance Program Removal for Jefferson County, KY; Source Specific Nitrogen Oxides Emission Rate for Kosmos Cement Kiln,'' 70 FR 53, January 3, 2005, the EPA explains:

> [A] strict interpretation of the requirement in section 110(l) of the Act would allow EPA to approve a SIP revision removing a SIP requirement only after determining based on a completed attainment demonstration that it would not interfere with applicable requirements concerning attainment and reasonable further progress.

EPA continues with the observation that the strict interpretation would prevent changes to SIP control measures before areas are required to submit attainment demonstrations for the new NAAQS, at a time when it is unknown what suite of control measures are needed for a given area to attain these standards. EPA concludes that states should be allowed to substitute equivalent emission reductions to compensate for the control measure being removed as long as the actual emissions in the area are not increased, 70 FR 57.

This line of reasoning is unlawful and arbitrary for a number of reasons. First, the construction that EPA characterizes as ''strict'' is in fact the only one that is consistent with both the plain language of the statute and common sense. Second, the fact that a plain reading of section 110(l) of the CAA prevents removal of a SIP requirement prior to a complete attainment demonstration is the very reason for the existence of both anti-backsliding and non-interference requirements. Third, EPA's reference to changes in the SIP when the exact control measures that will be required to attain the new NAAQS are unknown is a point well taken. It is unlawful, arbitrary, and capricious to eliminate effective control measures from the SIP when the State has not shown that these measures will not be needed for timely progress toward and timely attainment of the new standards. The State has not shown that control measures apart from I/M are available to meet all of the emission reductions that will be required. Finally, the EPA proposal for Ohio refers to ''EPA redesignation guidance,'' as does the Helms/Cook memo referenced in the anti-backsliding context:

> EPA is currently developing guidance on what areas need to include in a section 110(l) demonstration of non-interference.

The redesignation guidance has not yet been published. Thus, states with 8-hour and $PM_{2.5}$ nonattainment areas are being allowed to remove effective control programs from their SIPs, which were required for the purposes of the 1-hour standard, at a time when the guidance applicable to attainment of the new standards has not been provided.

The 8-hour ozone standard was promulgated because the 1-hour ozone standard is insufficiently protective of human health. The transition between these standards should not provide an opportunity to weaken air quality standards.

Response 19: EPA is the Agency responsible for implementing the CAA and is accorded deference in interpreting ambiguous provisions of the CAA when it does so through notice and comment rulemaking. Through the April 15, 2005, proposed rule (70 FR 19895), EPA sought public comment on its current interpretation of section 110(l) of the CAA. EPA has evaluated the comments and continues to believe its interpretation to be reasonable. Section 110(l) of the CAA requires the State to demonstrate that the removal of an emissions control measure from the SIP will not interfere with the attainment of any NAAQS or with compliance with any other requirement of the CAA. EPA believes the appropriate interpretation of this section would allow states to substitute equivalent (or greater) emission reductions to compensate for the removal of emission control measures from the SIPs. As long as actual emissions in the air are not increased, EPA believes that equivalent (or greater) emissions reductions would be acceptable to demonstrate non-interference because ambient air quality levels will not change. EPA does not believe that areas must wait to produce a complete attainment demonstration (or be required to produce one when not otherwise required based on the area's classification) to make any revisions to the SIP, provided the status quo air quality is preserved (emissions will not be allowed to increase in an area through the removal of an emissions control from the SIP). EPA believes such an approach will not interfere with an area's ability to develop a timely attainment demonstration. A state seeking to remove an emission control requirement from the SIP would not be granted an extension for attainment of NAAQS as a result of such an action. Although EPA believes this interpretation to be reasonable, we are not taking final action invoking the use of this interpretation in this final action because, as noted elsewhere in this final

rulemaking, we are not acting on a section 110(l) demonstration of non-interference at this time.

D. Comments Received After the Close of the Comment Period

On June 9, 2005, a commenter submitted late comments. Notwithstanding the facts that the comments were submitted more than three weeks after the close of the comment period and that EPA is not obligated to take into account or respond to such late comments, EPA is responding to the comments in this notice.

Comment 20: The commenter contends that EPA may not redesignate the Cincinnati area as attainment because Ohio did not prove that its maintenance plan for the Cincinnati area will not interfere with attainment of the 8-hour ozone standard and because ''the nature of non-interference, which requires states to prove a negative, means that not only was Ohio required to demonstrate that the control measures in its SIP would not interfere with attainment of the $PM_{2.5}$ and 8-hour ozone standards, but also that additional control measures are not necessary to prevent interference with attainment of the $PM_{2.5}$ and 8-hour ozone standards.''

Response 20: EPA believes that the commenter misunderstands the nature of section 110(l). The commenter appears to contend that, even though the maintenance plan for Cincinnati does not relax any existing control measures, the State must somehow demonstrate that additional control measures are not necessary to prevent interference with attainment of the $PM_{2.5}$ and 8-hour ozone standards. EPA does not believe that approving a maintenance plan containing existing control measures that the State has demonstrated will provide emission reductions sufficient to maintain the 1-hour ozone standard can in any way interfere with Ohio's obligations under the $PM_{2.5}$ and 8-hour ozone standards for Cincinnati. EPA is not approving any relaxation of the existing control measures so emissions of VOC and NO_X will not increase as a consequence of this action. Morevoer, Ohio will still have to meet whatever obligations it may have regarding the implementation of the new standards and determining that existing control measures will provide for maintenance of the 1-hour standard does not impair nor interfere with the state's obligations regarding the new standards. EPA does not believe that section 110(l) transforms this redesignation action into an obligation for the state to comply with its SIP obligations for the new standards earlier than otherwise required, which is the implication of the assertion that this action cannot proceed without a demonstration that additional control measures are not necessary to prevent interference with attainment of the $PM_{2.5}$ and 8-hour ozone standards. Moreover, the commenter does not present any evidence or even assert that there is anything about any of the control measures contained in the maintenance plan that would somehow interfere with $PM_{2.5}$, 8-hour ozone attainment, or other requirements. EPA does not believe that approval of this maintenance plan would interfere with the 8-hour ozone or $PM_{2.5}$ attainment or other obligations applicable to the Cincinnati area. As Cincinnati's ability to implement those standards would be the same if this redesignation were not occurring, approval of the maintenance plan cannot interfere with the requirements applicable for those standards.

Comment 21: The commenter also asserts that the redesignation may not occur because Ohio has not met the section 110(a)(2)(D) requirement concerning interstate transport. It cites EPA's recent finding of failure to submit regarding the section 110(a)(2)(D) requirement.

Response 21: EPA's recent finding concerning section 110(a)(2)(D) concerned SIPs for the 8-hour ozone and $PM_{2.5}$ standards. It did not concern the 1-hour ozone standard, the standard pertinent for this redesignation to attainment for the 1-hour ozone standard. Consequently, EPA's recent finding is simply irrelevant for the standard at issue in this redesignation. (EPA notes that Ohio has complied with section 110(a)(2)(D) for the 1-hour ozone standard by virtue of having received EPA approval of its SIP to address the NO_X SIP Call. See 68 FR 46089 (August 5, 2003))

Furthermore, even if the recent finding of failure to submit a section 110(a)(2)(D) SIP had been for a pertinent standard, it would still not prevent redesignation of the area. EPA has repeatedly interpreted such SIP requirements as not being applicable requirements for purposes of a redesignation since the states remain obligated to make such submissions even after redesignation to attainment, *i.e.*, they remain applicable requirements notwithstanding the redesignation. See 65 FR37879, 37890 (June 19, 2000) (Cincinnati redesignation), 66 FR 53097, 53099 (October 19, 2001) (Pittsburgh redesignation), 68 FR 25418, 25426–27 (May 12, 2003) (St. Louis redesignation).

Comment 22: The same commenter also contends that EPA may not redesignate the Cincinnati area as attainment since the State has failed to meet all applicable part D requirements ''because Ohio does not have legal authority for the I/M program until it is no longer necessary.'' The commenter contends that EPA requires that states have legal ''authority for I/M program operation until such time as it is no longer necessary (*i.e.*, until a Section 175 maintenance plan without an I/M program is approved by EPA).'' 40 CFR 51.372(a)(6). According to the commenter, this requirement is not met since the legislative authorization for the I/M program expires at the end of 2005 while Ohio is currently required to have legislative authority passed the end of 2005.

Response 22: EPA believes that it may approve the redesignation at this time because Ohio has a fully approved I/M program for the Cincinnati area with legal authority. As noted previously, the existing federally enforceable SIP includes a fully approved I/M program. Should Ohio fail to reauthorize this program or otherwise terminate the program prior to receiving EPA approval of a subsequent SIP revision that satisfies section 110(l) then Ohio would be in violation of the federally approved SIP and subject to potential enforcement and sanctions. Furthermore, since the new maintenance plan for Cincinnati demonstrates that the area can maintain the 1-hour ozone standard for the requisite 10 years without the I/M program, even though the I/M program currently remains an enforceable part of the Ohio SIP EPA is in fact today approving a section 175 maintenance demonstration without an I/M program. Therefore, EPA believes that the legislative authority of the current I/M program is in fact sufficient to support the maintenance plan, although as previously noted it is not sufficient to satisfy 40 CFR 51.372(c). Thus, although EPA concludes that it could not at this time approve termination of the I/M program nor conversion of the I/M program to a contingency measure, EPA believes that it can approve the maintenance plan and redesignation of the area consistent with the requirements of section 175 and 40 CFR 51.372(a)(6).

VI. Did Ohio Adopt All Of the Volatile Organic Compound Emission Control Regulations Needed To Comply With the Reasonably Available Control Technology Requirements of the Clean Air Act?

Since the Cincinnati area is nonattainment for the 1-hour ozone

NAAQS, Ohio is required to ensure that all major VOC sources and all VOC sources that meet the applicability criteria in any of EPA's Control Technique Guideline (CTG) documents in the Cincinnati area are subject to RACT regulations. In prior SIP approval actions, EPA approved into the SIP Ohio's VOC RACT regulations covering all pre-1990 CTG categories and ''non-CTG'' RACT for most categories of major VOC sources. Today, EPA is acting on RACT rules and negative declarations for the remaining CTG categories and for remaining non-CTG RACT sources.

To qualify for a redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS, Ohio was required to fully comply with the RACT requirement of section 182(b)(2) of the CAA. An analysis of how this RACT requirement is satisfied for these additional source categories (source categories in addition to those covered by VOC emission control regulations that had been previously approved into the SIP) is presented on a category-by-category basis below.

New VOC RACT regulations were required for any facilities exceeding the applicability criteria specified in the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor/Distillation, Wood Furniture Manufacturing, Ship Building and Ship Repair and Aerospace Manufacturing CTG documents. For the other source categories (*i.e.*, non-CTG categories including bakeries), VOC RACT regulations were required if a facility in the Cincinnati area has the potential to emit greater than 100 tons VOC per year of non-CTG VOC emissions. A facility is not subject to RACT if it is subject to federally enforceable operating and/or production restrictions limiting the facility emissions to a level below the applicable cutoff (*e.g.*, for non-CTG RACT to less than 100 tons per year of non-CTG emissions).

A. Source Categories Not Requiring New VOC Regulations

The following VOC source categories do not require any additional regulations because there are no sources in the Cincinnati area that exceed the CTG or non-CTG applicability criteria; there are no major sources in the category; and/or any such sources are subject to federally enforceable operating and/or production restrictions limiting the facility's VOC emissions to less than the applicable cutoff. Non-CTG emissions include emissions from source categories for which there is not a CTG document and also unregulated emissions from source categories covered by a CTG category. PTE emissions are the emissions at maximum production levels and 8760 hours per year and represent the maximum emissions that can occur without a modification.

1. Industrial Cleaning Solvents

On May 23, 2003, the Ohio EPA submitted to EPA a Negative Declaration letter for Industrial Cleaning Solvents, which adequately documented that there are no sources in this category in the Ohio portion of the Cincinnati-Hamilton area with non-CTG potential emissions of equal to or greater than 100 tons VOC/year.

Ohio EPA made a thorough search to ensure that it considered all sources with solvent clean-up emissions. This included looking at the Standard Industrial Classification (SIC) Manual, the local Yellow Pages, a database associated with the Ohio EPA permitting system, as well as information from several trade associations and web sites. Based on that review, 122 facilities were identified that are normally associated with solvent clean-up emissions. None of these facilities were found to have solvent clean-up potential VOC emissions of over 50 Tons Per Year (TPY), and there are no facilities with solvent cleaning operations that have combined non-CTG potential VOC emissions of 100 TPY or more. EPA reviewed the negative declaration submitted by the State and concluded that Ohio EPA has adequately documented that there are no major non-CTG sources with potential emissions of 100 TPY or more and, therefore, there are no sources in this category in the Cincinnati area with emissions that are subject to RACT for this source category.

2. Shipbuilding and Ship Repair Industry

On May 23, 2003, the Ohio EPA submitted to EPA a Negative Declaration letter for the Ship Building and Ship Repair Industry which adequately documented that there are no sources for this CTG category in the Ohio portion of the Cincinnati-Hamilton area.

Ohio EPA made a thorough search to determine whether any ship building or ship repair facilities were located within the Cincinnati area. This included reviewing the Ohio EPA air pollution control permitting system, contacting the local office of the United States Coast Guard, reviewing ship building trade association information identified on the web and, in addition, the Harris Directory, which provides SIC information for more than 800,000 companies across the country, was investigated for those categories related to ship building and repair. None of the above sources of information resulted in the identification of any ship building and repair facilities. In addition, staff from the Hamilton County Department of Environmental Services confirmed that there are no military or commercial ship building and repair operations along the Ohio River, the only plausible location for such operations in the ozone nonattainment area. EPA reviewed the negative declaration and concludes that Ohio EPA has adequately documented that there are no ship building and repair facilities located in the Ohio portion of the Cincinnati-Hamilton area.

3. Automobile Refinishing

On May 23, 2003 the Ohio EPA submitted to EPA a Negative Declaration letter for Automobile Refinishing which adequately documented that there are no automobile refinishing major sources (also referred to as auto body shops)in the Ohio portion of the Cincinnati-Hamilton area with non-CTG potential VOC emissions of equal to or greater than 100 tons/year.

In order to determine whether there were any major automobile refinishing sources within the Cincinnati area, Ohio EPA searched the SIC Code Manual for automobile refinishing in conjunction with the Harris Directory, the local and business to business Yellow Pages for automobile refinishing companies, the Ohio EPA permitting system, and Ohio EPA's Small Business Assistance Program. After reviewing all of the above sources of information, 142 automobile refinishing facilities were identified. Of the 142 facilities, 103 are each subject to a federally enforceable Permit to Install which limits VOC emissions to less than 25 tons/year. A review of each of the remaining 39 facilities established that the potential VOC emissions from each of them was less than 25 tons VOC/year. EPA reviewed the negative declaration and concludes that Ohio EPA has adequately documented that there are no automobile refinishing facilities with potential emissions of 100 TPY or more and, therefore, there are no such facilities for which a RACT rule is required.

4. Aerospace Manufacturing and Rework Facilities

On October 14, 2003, the Ohio EPA submitted to EPA a Negative Declaration letter for Aerospace Manufacturing and Rework Facilities which adequately documented that there are no major sources (sources with potential emissions equal to or greater than 25

tons VOC/year for this source category) in the Cincinnati area.

Ohio EPA made a thorough search to determine what aerospace manufacturing and/or rework facilities were located within the Cincinnati area. Ohio EPA searched the Ohio EPA permitting system, the local and business Yellow Pages for aerospace manufacturing and rework facilities, they utilized the web and found a number of trade associations, and used the Harris Directory, which provides SIC information for more than 800,000 companies across the country.

After reviewing all of the above sources of information, Ohio EPA identified 22 facilities in the Cincinnati area that are generally associated with aerospace manufacturing and rework operations. These 22 facilities are listed in a table attached to the October 14, 2003, letter. In reviewing the status of those 22 facilities, it was determined that 14 facilities do not have aerospace manufacturing or rework operations. Two facilities, CTL Aerospace and Gayston Corporation have federally enforceable Permits to Install which limit the allowable VOC emissions to less than 25 TPY for each facility. One facility has shut down all coating operations. The individual files were reviewed for the remaining 5 facilities and it was determined that the potential VOC emissions for operations subject to the CTG were less than 25 TPY at each of the facilities. EPA reviewed the negative declaration submitted by the State and concludes Ohio EPA has adequately documented that there are no aerospace manufacturing and rework operations located in the Ohio portion of the Cincinnati-Hamilton area with potential emissions that exceed the applicability criteria for this CTG category and therefore there are no such facilities for which a RACT regulation is needed.

5. Volatile Organic Liquid Storage Tanks

On January 27, 2004, the Ohio EPA submitted to EPA a Negative Declaration letter for volatile organic liquid (VOL) storage tanks, which adequately documented that there are no sources in this category in the Ohio portion of the Cincinnati-Hamilton area with potential non-CTG emissions of 100 TPY that are not already subject to RACT level controls on their VOL storage tanks. Ohio EPA performed the following searches to identify all VOL storage tanks in the Cincinnati ozone nonattainment area. Ohio EPA checked the Harris Directory for those SICs which may have VOL storage tanks. They also checked the local Yellow and business Yellow Pages for petroleum, oils and solvent storage facilities, their permitting system for storage tanks and on the web, information was obtained from several trade associations.

Ohio EPA identified 151 facilities in the four county Cincinnati area with a total of 1363 storage tanks of various sizes, that contained materials having a wide range of vapor pressures. Only VOL storage tanks with a capacity of greater than 40,000 gallons and storing material with a vapor pressure greater than 0.5 pounds per square inch absolute (psia) are subject to RACT controls. Of those 151 facilities, only 12 were potentially subject to RACT because total potential non-CTG emissions from the facility were above 100 TPY. However, 7 of those facilities have no storage tanks with a capacity greater than 40,000 gallons and storing a material with a vapor pressure greater than 0.5 pounds psia. Thus, those facilities had no tanks required to have RACT-level controls. As documented in Ohio EPA's January 27, 2004 letter, one facility is subject to a federally enforceable Permit to Install limiting facility emissions to less than 100 tons per year. At the remaining four facilities, the storage tanks over 40,000 gallons and with a vapor pressure greater than 0.5 pounds psia are subject to either existing petroleum liquid RACT control requirements or National Emission Standards for Hazardous Air Pollutant (NESHAP) regulations with control requirements that are at least as stringent as RACT. EPA reviewed the negative declaration submitted by the State and concludes Ohio EPA has adequately documented that, except for the four adequately controlled facilities described above, there are no major non-CTG sources with potential emissions of 100 TPY or more and VOL storage tanks over 40,000 gallons and with a vapor pressure greater than 0.5 pounds psia. Therefore, there are no VOL storage tanks in the Cincinnati-Hamilton area for which a RACT regulation is necessary.

6. Lithographic Printing

On July 31, 2003, the Ohio EPA submitted to EPA a Negative Declaration letter for Lithographic Printing, which adequately documented that there are no major lithographic printing sources (sources with potential emissions equal to or greater than 100 tons per year for this source category) in the Cincinnati area.

Ohio EPA made a thorough search to determine what lithographic printing facilities were located in the Cincinnati area. Ohio EPA searched their permitting system, the local and business Yellow Pages for Lithographic printing, utilized the web and reviewed trade association information, used the Small Business Assistance program, and also used the Harris Directory, which provides SIC information for more than 800,000 companies.

After reviewing the above sources of information, Ohio EPA determined that there are seven facilities which perform web offset lithographic printing. The potential to emit for three of these facilities is less than 12 tons of VOC per year. The other four facilities have federally enforceable Permits to Install limiting emissions to less than 100 tons per year for each facility. EPA reviewed the negative declaration submitted by the State and concludes that Ohio EPA has adequately documented that there are no lithographic printing facilities in the Cincinnati area for which a RACT regulation is needed.

7. Plastic Parts Coating

On March 31, 2005, the Ohio EPA submitted to EPA a Negative Declaration letter for the coating of Automotive Plastic Parts, which adequately documented that there are no major automotive plastic parts coating sources (sources with potential VOC emissions equal to or greater than 100 tons per year for this source category) in the Cincinnati area.

Ohio EPA made a thorough search to determine what automotive plastic parts coating facilities were located in the Cincinnati area. Ohio EPA searched their permitting system, the local and business Yellow Pages for automotive plastic parts coating, utilized the web and reviewed trade association information, used the small business assistance program, and also used the Harris Directory which provides SIC information on more than 800,000 companies.

After reviewing the above sources of information, Ohio EPA determined that there are three facilities which coat automotive plastic parts in the Cincinnati area. The potential to emit for one of these facilities is less than 10 tons VOC per year, and the other two automotive plastic parts coating facilities have federally enforceable Permits to Install limiting emissions to less than 100 tons per year for each facility. EPA reviewed the negative declaration submitted by the State and concludes that Ohio EPA has adequately documented that there are no automotive plastic parts coating facilities with potential emissions of 100 TPY or more in the Cincinnati area. Therefore, there are no automotive plastic parts coating facilities for which a RACT rule is required.

B. Source Categories for Which VOC RACT Regulations Have Been Proposed and Adopted

On March 8, 2005, Ohio EPA requested that EPA parallel process VOC regulations for five source categories that are discussed below. Parallel processing includes proposing action (by EPA) on draft rules submitted by the State with EPA's final rulemaking taking place subsequent to the State rules being finally adopted. Subsequent to submittal of their draft rules on March 8, 2005, Ohio EPA agreed to make some revisions to their rules, at EPA's request, so that they are consistent with EPA VOC RACT requirements and, therefore, approvable. Ohio's final rules incorporate these (and no other substantive) changes and represent RACT. The following discussion of the five VOC rules that EPA is approving includes a discussion of the changes made by Ohio EPA.

The RACT rules for these five categories were adopted by Ohio on May 16, 2005 and became effective on May 27, 2005.

1. Bakeries

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–12 ''Control of Volatile Organic Compound Emissions from Commercial Bakery Oven Facilities'' and the accompanying definitions in 37–45–21–01(U). This draft rule applies to any commercial bakery oven facility in the Cincinnati ozone nonattainment area with a potential VOC emissions equal to or greater than 100 tons per year. Each bakery oven subject to these control requirements must install and operate a VOC emission control system with an overall control efficiency of at least 95 percent by weight. A bakery oven is exempted from the control requirements of this rule if, as established by the recordkeeping requirements in this rule, it has annual VOC emissions of less than 25.0 tons and average daily VOC emissions of less than 192 pounds. This is consistent with the exemption levels that were approved by EPA in the Maricopa County (Arizona) bakery rule. This rule contains a calculation procedure to determine uncontrolled potential to emit, a requirement to achieve compliance within 12 months, as well as compliance testing requirements, monitoring and inspection requirements, and recordkeeping and reporting requirements. At EPA's request, Ohio EPA deleted the last sentence in the draft definition of ''Commercial bakery oven facility'' which improperly exempts establishments that produce bakery products primarily for direct sale on the premises to household consumers and that utilize only batch bakery ovens. This adopted rule, with the revised definition, is consistent with RACT and is, therefore, being approved.

2. Batch Processes

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–14 ''Control of Volatile Organic Compound Emissions from Process Vents in Batch Operations'' and the accompanying definitions in 3745–21–01(W). This draft rule applies to any batch process train for a variety of chemical manufacturing operations at facilities in the Cincinnati area with over 100 tons per year of potential VOC emissions. A batch operation is a non-continuous operation in which chemicals are added to the process in discrete intervals as opposed to on a continuous basis. A batch process train is a collection of equipment (*e.g.*, reactors, filters, distillation columns, extractors, crystallizers, blend tanks, neutralizer tanks, digesters, surge tanks and product separators) configured to produce a specific product or intermediate by a batch operation.

Exempted from the VOC control requirements of this rule are any unit operation with uncontrolled annual VOC emissions of less than 500 pounds per year and any batch process train containing process vents that have, in the aggregate, uncontrolled total annual mass emissions of less than 30,000 pounds per year.

For those process vents of batch process trains and unit operations within batch process trains subject to the control requirements of this rule, compliance can be achieved by: (1) Reducing uncontrolled VOC emissions by an overall efficiency of at least 90 percent, or to 20 parts per million volume, per batch cycle; (2) using a boiler or process heater to comply with the above by requiring that the vent stream be introduced into the flame zone of the boiler or process heater; or (3) using a flare, provided that it meets Ohio's approved flare requirements in 3745–21–09(DD)(10)(d). In addition, suitable recordkeeping, reporting, and test methods have been included.

Compliance with these control requirements is required within 12 months of the effective date of this rule. In order to eliminate ambiguity in 3714–21–14(A)(4), which deals with compliance deadlines, Ohio EPA eliminated (at EPA's request) the last sentence in 3714–21–14(A)(4) and added ''1990'' after baseline year in order to specify the year after which actual emissions could not have exceeded 100 tons per year of VOC to make the source eligible for avoiding applicability to the batch rule by restricting emissions to less than 100 tons VOC per year through federally enforceable operating restrictions.

This adopted batch rule is consistent with EPA VOC RACT guidance and is, therefore, being approved.

3. Industrial Wastewater

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–16 ''Control of Volatile Organic Compound Emissions from Industrial Wastewater'' and the accompanying definitions in 3745–21–01(Y). This draft rule applies to facilities in the Cincinnati area with the potential to emit over 100 tons VOC per year and that have operations in one of several industrial categories, such as organic chemicals, pesticides and pharmaceutical manufacturing, and that generate process wastewater.

The proposed industrial wastewater rule contains the following control requirements: Each individual drain system shall be covered and, if vented, be routed through a closed vent system to an emissions control device, or each drain shall be equipped with water seal controls or a tightly fitting cap or plug; each surface impoundment that receives, manages or treats an affected VOC wastewater stream must be equipped with a cover and a closed-vent system which routes the VOC vapors to an emissions control device or the surface impoundment must be equipped with a floating flexible membrane cover; each oil-water separator shall be equipped with a fixed roof and a closed vent system that routes the vapors to an emissions control device or a floating roof; each portable container must be covered; each wastewater tank shall have a fixed roof and a closed-vent system that routes the VOC vapors to a control device, a fixed roof and an internal floating roof, or an external floating roof; and each treatment process must meet the applicable requirements described above along with other requirements, such as venting the gases from the treatment process to an emissions control device designed and operated to reduce wastewater VOC emissions by 90%. There is also an alternative control option requiring EPA approval.

There are inspection and monitoring requirements, a list of approved test methods, recordkeeping requirements, and a requirement that compliance be achieved within 12 months from the effective date of the rule.

At EPA's request, Ohio EPA made the following agreed upon changes to its draft rule: It revised the definition of

''Affected VOC'' in 3745–21–01(Y)(3) to ''means VOC with a Henry's Law Constant greater than * * *,'' because VOCs with a higher Henry's Law Constant have a greater potential to be emitted; in order to eliminate ambiguity in 3745–21–16(A)(4) it deleted the last sentence in this section; Ohio EPA added ''1990'' before ''baseline year'' (for the reason described in the prior section); and deleted the phrase ''or (D)(8)''from 3745–21–16(D)(1), as (D)(8) is a control option for treatment processes and was not intended to be an alternative to the control requirements in (D)(3) through (D)(7). The adopted rule is consistent with RACT and is being approved.

4. SOCMI Reactors/Distillation Units

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–13 ''Control of Volatile Organic Compound Emissions from Reactors and Distillation Units Employed in SOCMI Chemical Production'' and the accompanying definitions in 3745–21–01(V). This rule applies to any reactor or distillation unit within a process unit that produces a SOCMI chemical and that is located in the Cincinnati area. Any reactor or distillation unit in a process unit with a design capacity of less than 1,100 tons per year of chemicals produced is (consistent with the CTG) exempt from the control requirements of this rule. This rule also exempts any reactor or distillation unit that is regulated by either of two of Ohio's existing VOC RACT rules or three new source performance standards, each of which have federally enforceable control requirements that are at least as stringent as the control requirements for this SOCMI rule. Each process vent is classified according to characteristics of the process vent stream (VOC concentration, flow rate, and the total resource effectiveness (TRE))prior to a control device. The TRE is a cost-effectiveness tool established by EPA to determine if the annual cost of controlling a gas stream is reasonable based on the emission reduction that can be achieved by a combustion-type emissions control device.

One of the following controls is required for those process vents for which control is required: Discharge to a properly operating flare; discharge to the flame zone of a boiler or process heater with a heat input capacity of over 150 million BTU per hour; discharge to a boiler or process heater as the primary fuel or with the primary fuel; discharge to a control device that reduces VOC emissions by at least 98 percent or emits VOC at a concentration less than 20 ppmv; achieve and maintain a TRE index value greater than 1.0 (for which no additional control is warranted); or discharge to an existing combustion device with a 90 percent emission reduction efficiency.

Compliance is required within 12 months of the effective date of the rule. This rule also includes compliance testing, TRE determination testing and monitoring requirements, as well as recordkeeping and reporting requirements.

At EPA's request, Ohio EPA revised 3714–21–13(A)(2) and added a new (A)(3) that specifies that sources exempt from the requirements of the SOCMI rule because they are subject to another rule must be subject to the limits of such other rule. Ohio EPA also deleted (F)(1)(f), which allows emission reduction credit for a recovery device that is part of the process.

With the revisions made by Ohio EPA this adopted rule is consistent with EPA RACT guidance and is being approved.

5. Wood Furniture Manufacturing

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–15 ''Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations'' and the accompanying definitions in 3745–21–01(X). This draft rule applies to any facility that has wood furniture manufacturing operations with a potential to emit 25 tons VOC per year and is located in the Cincinnati area.

The five compliance options for wood finishing operations are: (1) A VOC content limit of 0.8 pound VOC per pound of solids for topcoats only; (2) VOC content limits for topcoats and sealers, wherein topcoats are subject to 1.8 pounds VOC per gallon of solids or 2.0 pounds VOC per gallon of solids for an acid-cured alkyd amino conversion topcoat, and sealers are subject to 1.9 pounds VOC per gallon of solids or 2.3 pounds VOC per gallon of solids for an acid-cured alkyd amino sealer; (3) a VOC emission control system for topcoats and/or sealers that is equivalent to the VOC content limits of the above options; (4) daily VOC emissions limits for topcoats; and (5) daily VOC emissions limit for topcoats, sealers, and other finishing materials. The compliance options associated with daily VOC emissions are based on a daily summation of actual VOC emissions not exceeding 90 percent of the daily summation of VOC emissions allowed under compliance options (1) or (2). This rule also allows 30-day averaging for dip coaters.

This rule also requires a work practice implementation plan that develops environmentally desirable work practices including: An operator training course; a leak inspection and maintenance plan; a cleaning and washoff accounting system, spray booth cleaning restrictions; storage requirements for coatings; coating application requirements; line cleaning and spray gun cleaning procedures; and emission control practices from washoff operations.

This rule also includes compliance testing and monitoring requirements for a VOC emission control system, as well as recordkeeping and reporting requirements. Compliance is required 12 months after the effective date of this rule. Ohio EPA revised its viscosity provisions, as was previously agreed between the State and EPA, so that viscosity cannot, by itself, be used to establish the VOC content for dip coaters. This rule is consistent with VOC RACT requirements and is being approved.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as

described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. By June 14, 2005, EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(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 August 22, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 10, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(133) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(133) On May 20, 2005, the Ohio Environmental Protection Agency submitted volatile organic compound (VOC) regulations for five source categories in the Cincinnati ozone nonattainment area. These regulations complete the requirement that all VOC reasonably available control technology (RACT) regulations, for which there are eligible sources, have been approved by EPA into the SIP for the Cincinnati ozone nonattainment area.

(i) *Incorporation by Reference.* The following sections of the Ohio Administrative Code (OAC) are incorporated by reference.

(A) OAC rule 3745–21–01(U), (definitions for commercial bakery oven facilities), effective May 27, 2005.

(B) OAC rule 3745–21–01(V), (definitions for reactors and distillation units employed in SOCMI chemical production), effective May 27, 2005.

(C) OAC rule 3745–21–01(W), (definitions for batch operations), effective May 27, 2005.

(D) OAC rule 3745–21–01(X), (definitions for wood furniture manufacturing operations), effective May 27, 2005.

(E) OAC rule 3745–21–01(Y), (definitions for industrial wastewater), effective May 27, 2005.

(F) OAC rule 3745–21–12: ''Control of Volatile Organic Compound Emissions from Commercial Bakery Oven Facilities'', effective May 27, 2005.

(G) OAC rule 3745–21–13: ''Control of Volatile Organic Compound Emissions from Reactors and Distillation Units Employed in SOCMI Chemical Production'', effective May 27, 2005.

(H) OAC rule 3745–21–14: ''Control of Volatile Organic Compound Emissions from Process Vents in Batch Operations'', effective May 27, 2005.

(I) OAC rule 3745–21–15: ''Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations'', effective May 27, 2005.

(J) OAC rule 3745–21–16: ''Control of Volatile Organic Compound Emissions from Industrial Wastewater'', effective May 27, 2005.

* * * * *

■ 2. Section 52.1885 is amended by revising paragraph (a)(14) to read as follows:

§ 52.1885 Control strategy: Ozone.

(a) * * *

(14) Approval-EPA is approving the 1-hour ozone maintenance plan for the Ohio portion of the Cincinnati-Hamilton area submitted by Ohio on May 20,

2005. The approved maintenance plan establishes 2015 mobile source budgets for the Ohio portion of the area (Butler, Clermont, Hamilton, and Warren Counties) for the purposes of transportation conformity. These budgets are 26.2 tons per day for volatile organic compounds and 39.5 tons per day for nitrogen oxides for the year 2015.

* * * * *

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.336 is amended by revising the 1-hour ozone table entry for the Cincinnati-Hamilton Area to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE (1–HOUR STANDARD)

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Cincinnati-Hamilton Area: Butler County. Clermont County. Hamilton County. Warren County.	06/14/2005	Attainment.		
* * *	*	*	*	*

[FR Doc. 05–12016 Filed 6–20–05; 8:45 am]

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