

boundaries of the park area and the Regional Director determines that the operation will not degrade any of the natural or cultural resources of the park area. Such a transfer station must comply with the remaining provisions of part 6 of this chapter. A transfer station means a public use facility for the deposit and temporary storage of solid waste, excluding a facility for the storage of a regulated hazardous waste.

19. Add § 13.1912 to read as follows:

§ 13.1912 Solid waste disposal.

(a) A solid waste disposal site may accept non-National Park Service solid waste generated within the boundaries of the park area.

(b) A solid waste disposal site may be located within one mile of facilities as defined by this part so long as it does not degrade natural or cultural resources of the park area.

(c) A transfer station located wholly on nonfederal lands within Wrangell-St. Elias National Park and Preserve may be operated without the permit required by §§ 6.4(b) and 6.9(a) only if:

(1) The solid waste is generated within the boundaries of the park area;

(2) The Regional Director determines that the operation will not degrade any of the natural or cultural resources of the park area; and

(3) The transfer station complies with the provisions of part 6 of this chapter.

(d) For purposes of this section, a transfer station means a public use facility for the deposit and temporary storage of solid waste, excluding a facility for the storage of a regulated hazardous waste.

Dated: November 21, 2006.

David M. Verhey,

Acting Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. E6-22100 Filed 12-26-06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2006-0046; FRL-8261-6]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Belmont County to Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 20, 2006, the Ohio Environmental Protection Agency (Ohio EPA), submitted a request for EPA approval of redesignation of Belmont County (the Ohio portion of the Wheeling, West Virginia-Ohio (WV-OH) bi-state ozone nonattainment area) to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) and a request for EPA approval of an ozone maintenance plan for Belmont County as a revision to the Ohio State Implementation Plan (SIP). On August 24, 2006, the State submitted public hearing records for the ozone redesignation request and ozone maintenance plan. On December 4, 2006, the State submitted a clarification of its intent to implement contingency measures in the event of an ozone standard violation in the Wheeling, WV-OH area subsequent to the redesignation of this area to attainment of the ozone standard. EPA is proposing to approve Ohio's request and corresponding SIP revision. EPA is also proposing to approve the Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_x) Motor Vehicle Emission Budgets (MVEBs) for Belmont County, as supported by the ozone maintenance plan for this County, for purposes of conformity determinations.

DATES: Comments must be received on or before January 26, 2007. Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-0046, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: *mooney.john@epa.gov*.
- Fax: (312) 886-5824.
- Mail: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office's official hours of operation are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2006-0046. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hardcopy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hardcopy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. It is recommended that you telephone Edward Doty, Environmental Scientist, at (312) 886-6057, before visiting the Region 5 office.

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

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean the EPA. This supplementary

information section is arranged as follows:

- I. What Action is EPA Proposing to Take?
- II. What is the Background for These Actions?
- III. What Are the Criteria for Redesignation to Attainment?
- IV. What Are EPA's Analyses of the State's Requests and What Are the Bases for EPA's Proposed Actions?
- V. Has Ohio Adopted Acceptable Motor Vehicle Emissions Budgets for the End Year of the Ozone Maintenance Plans Which Can Be Used To Support Conformity Determinations?
- VI. What Are the Effects of EPA's Proposed Actions?
- VII. Statutory and Executive Order Reviews

I. What Action is EPA Proposing to Take?

We are proposing to take several related actions for Belmont County, Ohio. First, we are proposing to determine that Belmont County has attained the 8-hour ozone NAAQS and that Belmont County and the State of Ohio have met the requirements for redesignation to attainment of the 8-hour ozone NAAQS under section 107(d)(3)(E) of the CAA. We are, therefore, proposing to approve the June 20, 2006 and August 24, 2006 requests from the State of Ohio to change the designation of Belmont County from nonattainment to attainment of the 8-hour ozone NAAQS.¹

Second, we are proposing to approve Ohio's ozone maintenance plan for Belmont County as a revision to the Ohio SIP. The maintenance plan is designed to keep Belmont County and, in conjunction with a West Virginia ozone maintenance plan for Marshall and Ohio Counties, the entire Wheeling, WV-OH area in attainment of the 8-hour ozone NAAQS for the next 12 years, through 2018. As supported by and consistent with the ozone maintenance plan, we are also proposing to approve the 2018 VOC and NO_x MVEBs for Belmont County for conformity determination purposes.

II. What is the Background for These Actions?

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS (62 FR 38856) of 0.08 parts per million parts of air (0.08 ppm) (80 parts per billion (ppb)).² This

¹ A separate proposed rule from EPA addresses a request from the State of West Virginia to redesignate Marshall and Ohio Counties, West Virginia to attainment of the 8-hour ozone NAAQS. See 71 FR 57894, October 2, 2006.

² This standard is violated in an area when any ozone monitor in the area (or in its impacted downwind environs) records 8-hour ozone concentrations with a three-year average of the

8-hour ozone standard replaced a prior 1-hour ozone NAAQS, which was promulgated on February 8, 1979 (44 FR 8202) and revoked on June 15, 2005.

Ground-level ozone is not emitted directly by sources. Rather, emitted NO_x and VOC react in the presence of sunlight to form ground-level ozone along with other secondary compounds. NO_x and VOC are referred to as "ozone precursors."

The CAA required EPA to designate as nonattainment any area that violated the 8-hour ozone NAAQS. Ozone data for the three most recent years at the time when the 8-hour ozone designations were initially established (2001–2003) were considered to establish the ozone designations. The **Federal Register** notice making these designations was signed on April 15, 2004, and was published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and emission control requirements for nonattainment areas. (Both are found in title I, part D of the CAA.) Subpart 1 contains general, less prescriptive requirements for nonattainment areas for any pollutant governed by a NAAQS, and applies to all nonattainment areas. Subpart 2 contains more specific requirements for certain ozone nonattainment areas, and applies to ozone nonattainment areas classified under section 181 of the CAA.

In the April 30, 2004 designation rulemaking, EPA divided 8-hour ozone nonattainment areas into the categories of subpart 1 nonattainment ("basic" nonattainment) and subpart 2 nonattainment ("classified" nonattainment) based on their 8-hour ozone design values (*i.e.*, on the three-year average of the annual fourth-highest daily maximum 8-hour ozone concentrations at the worst-case monitoring sites in the designated areas) and on their 1-hour ozone design values (*i.e.*, on the fourth-highest daily maximum 1-hour ozone concentrations over the three-year period at the worst-case monitoring sites in the designated areas).³ 8-hour ozone nonattainment areas with 1-hour ozone design values equaling or exceeding 121 ppb were designated as subpart 2, classified nonattainment areas. Classification of the subpart 2 nonattainment areas were based on the levels of the monitored 8-

annual fourth-highest daily maximum 8-hour ozone concentrations equaling or exceeding 85 ppb.

³ The 8-hour ozone design value and the 1-hour ozone design value for each area were not necessarily recorded at the same monitoring site. The worst-case monitoring site for each ozone concentration averaging time was considered for each area.

hour ozone design values for each nonattainment area. All other 8-hour nonattainment areas were designated as subpart 1, basic nonattainment areas, which have no area-specific classifications.

Emission control requirements for classified nonattainment areas are linked to area classifications. Areas with more serious ozone pollution problems are subject to more prescribed requirements. The requirements are designed to bring areas into attainment by their specified attainment dates, which also depend on the area classifications. For example, marginal nonattainment areas are subject to the fewest mandated control requirements and have the earliest attainment deadline. Whereas, severe nonattainment areas are required to meet more mandated emission controls, including tighter restrictions on the sizes of existing VOC and NO_x sources required to install emission controls and tighter restrictions on mandated emission controls and offsetting of new sources, and have a later attainment deadline. In contrast, the attainment deadline for basic nonattainment areas does not depend on the magnitude of the area 8-hour ozone design values.

Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, less than or equal to 0.084 ppm or 84 ppb based on data rounding conventions specified in appendix I of 40 CFR part 50) over the most recent three-year period at all monitors in an area and in its impacted downwind environs. (See 69 FR 23857 (April 30, 2004) for further information.) Such supporting data must meet a minimum data completeness requirement. The completeness requirement (specified in appendix I of 40 CFR part 50) for ozone data supporting a determination of attainment and a redesignation to attainment is met when the annual average percent of days with valid ambient monitoring data is greater than 90 percent for the ozone seasons during the three-year period, with no single year with less than 75 percent data completeness during the ozone season.

In the April 30, 2004 designation/classification rulemaking, the Wheeling, WV-OH area, including Belmont County, was designated as subpart 1 nonattainment for the 8-hour ozone standard. The designation was based on ozone data collected during the 2001–2003 period.

On June 20, 2006, the State of Ohio requested redesignation of Belmont County to attainment of the 8-hour ozone NAAQS based on ozone data collected in these Counties during the 2003–2005 period. On August 24, 2006, the State of Ohio completed the ozone redesignation request by submitting documentation of the public hearing conducted by the State for the redesignation request and ozone maintenance plan. All information contained in the State's June 20, 2006 ozone redesignation request submittal was unchanged through the State's public review process (summarized in the August 24, 2006 submittal). On December 4, 2006, the State submitted a clarification to the State's ozone maintenance plan, indicating that the State is committed to implement contingency emission control measures in the event of a violation of the 8-hour ozone standard subsequent to the redesignation of Belmont County and the Wheeling, WV–OH area to attainment of the 8-hour ozone NAAQS.

Note that the State of West Virginia has also submitted an ozone redesignation request for the West Virginia portion of the Wheeling, WV–OH area (for Marshall and Ohio Counties). The West Virginia ozone redesignation request is being addressed through a separate rulemaking process. EPA published a notice of proposed rulemaking on the West Virginia request on October 2, 2006 (71 FR 57894).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation to attainment provided that:

(1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable state 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 emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

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

“Ozone and Carbon Monoxide Design Value Calculations,” Memorandum from Bill Laxton, June 18, 1990;

“Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

“Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

“Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

“State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

“Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

“State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS). On or After November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

“Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

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

“Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National

Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What Are EPA's Analyses of the State's Requests and What Are the Bases for EPA's Proposed Actions?

EPA is proposing to: (1) Determine that Belmont County has attained the 8-hour ozone standard and approve the redesignation of this County to attainment of the 8-hour ozone NAAQS; and (2) approve the ozone maintenance plan for this County and the VOC and NO_x MVEBs supported by the ozone maintenance plan. The bases for our proposed determination and approvals are as follows:

1. Belmont County and the Wheeling, WV–OH Area Have Attained the 8-Hour Ozone NAAQS

For ozone, as noted above, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and 40 CFR part 50 appendix I based on the most recent three complete, consecutive calendar years of quality-assured air quality monitoring data at all monitoring sites in the area and in its impacted downwind environs. To attain this standard, the average of the annual fourth-high daily maximum 8-hour average ozone concentrations measured and recorded at each monitor (the monitoring site's ozone design value) within the area and in its impacted downwind environs over the most recent three-year period must not exceed the ozone standard. Based on the ozone data rounding convention described in 40 CFR part 50 appendix I, the 8-hour ozone standard is attained if the area's ozone design value⁴ is 0.084 ppm (84 ppb) or less. The data must be collected and quality-assured in accordance with 40 CFR part 50, and must be recorded in EPA's Air Quality System (AQS).

As part of the June 20, 2006 ozone redesignation request, the Ohio EPA submitted ozone monitoring data indicating the top four daily maximum 8-hour ozone concentrations for each monitoring site in the Wheeling, WV–OH area during the 2002–2005 period. These ozone concentrations are part of the quality-assured ozone data collected in this area and recorded in the AQS. The annual fourth-high 8-hour daily maximum concentrations for each year during the 2002–2005 period, along

⁴ The worst-case monitoring site-specific ozone design value in the area or in its impacted downwind environs.

with the three-year averages,⁵ are summarized in Table 1.

TABLE 1.—ANNUAL FOURTH-HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS IN PARTS PER MILLION (PPM)

Site ID	County	Address	Year	Percent observations	Fourth-high concentration	Three-year average
54-069-0007	Ohio (WV)	Northern Panhandle	2002	100	0.097	NA
54-069-0007	Ohio (WV)	Northern Panhandle	2003	99	0.076	NA
54-069-0009	Ohio (WV)	Wheeling EPA	2004	100	0.063	0.079
54-069-0010	Ohio (WV)	Warwood Water Plant	2005	100	0.089	0.076

It is noted that the ozone monitor for this area was moved several times during the three-year attainment period. While the monitor was relocated twice after 2003, the monitoring site remained within five miles of its original location in 2003. Statistical analysis of data submitted by the State of West Virginia, which was conducted by EPA during the review of the West Virginia ozone redesignation request, led to the conclusion that the various ozone monitoring sites can be treated as one and that, collectively, the three monitoring sites have maintained the integrity of the conclusions drawn concerning the three-year averages of the fourth-high daily maximum 8-hour ozone concentrations. (See the Technical Support Document prepared for the review of the West Virginia ozone redesignation request available at EPA's Region III Air Division office. Also see 71 FR 57894, October 2, 2006.)

The monitored ozone concentrations for 2002–2004 show that the entire Wheeling, WV–OH area has attained the 8-hour ozone standard with a current (2003–2005) ozone design value of 0.076 ppm. The data collected at the Ohio County, West Virginia monitoring sites satisfy the CAA requirement that the ozone standard must be attained at all sites in the ozone nonattainment area. The three-year ozone design value for the nonattainment area is less than 0.085 ppm.

West Virginia has committed to continue ozone monitoring in this area as part of the State's ozone maintenance plan (see 71 FR 57897, October 2, 2006). Since the State of Ohio does not conduct ozone monitoring in this area, but relies on the State of West Virginia for this purpose, the commitment of West Virginia to continue monitoring in this area meets the redesignation requirement, in accordance with 40 CFR part 58, that ozone monitoring will be continued to assure continued attainment of the 8-hour ozone standard.

We believe that the ozone monitoring data submitted by the State of West Virginia provide an adequate demonstration that the Wheeling, WV–OH area has attained the 8-hour ozone NAAQS. Therefore, we propose to determine that Belmont County, Ohio, as part of the Wheeling, WV–OH area, has attained the 8-hour ozone NAAQS.

Please note that available, non-quality assured data for 2006 show that this area continues to attain the 8-hour ozone standard through 2006.

2. Belmont County and the State of Ohio Have Met All Applicable Requirements Under Section 110 and Part D of the CAA and This Area Has a Fully Approved SIP Under Section 110(k) of the CAA

We have determined that Belmont County and the State of Ohio have met all currently applicable SIP requirements for Belmont County under section 110 of the CAA (general SIP requirements). We have determined that the Ohio SIP meets the currently applicable SIP requirements under subpart 1 part D of title I of the CAA (requirements specific to basic ozone nonattainment areas). See section 107(d)(3)(E)(v) of the CAA. In addition, we have determined that all applicable requirements are approved in the Ohio SIP. See section 107(d)(3)(E)(ii) of the CAA. In making these determinations, we determined the CAA requirements which are applicable to Belmont County, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to currently applicable requirements of the CAA, which in this case are those CAA requirements applicable to Belmont County at the time the State submitted a complete ozone redesignation request for this area, on August 24, 2006.

a. Belmont County Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992 Calcagni memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. To qualify for redesignation of an area to attainment under this interpretation, the state and the area must meet the relevant CAA requirements that apply at the time of the State's submittal of a complete redesignation request for the area. See also the September 17, 1993 Michael Shapiro memorandum, and 66 FR 12459, 12465–12466 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete redesignation request remain applicable until a redesignation of the area to attainment of the standard is approved, but are not required as prerequisites to redesignation. See section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

General SIP requirements: Section 110(a) of title I of the CAA contains the general requirements for a SIP, which include: enforceable emission limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the emission limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements and SIP elements include, but are not limited to, the

⁵ Three-year averages are specified for the last year of each three-year period.

following: (a) Submittal of a SIP that has been adopted by the State after reasonable public notice and a hearing; (b) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (c) implementation of a source permit program; (d) provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and part D requirements (New Source Review (NSR)) for new sources or major source modifications; (e) criteria for stationary source emission control measures, monitoring, and reporting; (f) provisions for air quality modeling; and (g) provisions for public and local agency participation.

SIP requirements and elements are discussed in the following EPA documents: "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993. See also other guidance documents listed above.

Section 110(a)(2)(D) of the CAA requires SIPs to contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA required states to establish programs to address transport of air pollutants (NO_x SIP call and Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) of the CAA to meet the interstate transport requirements of section 110(a)(2)(D)(i) of the CAA (70 FR 21147, April 25, 2005). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's classification. EPA believes that the requirements linked with a particular nonattainment area's classification are the relevant measures to evaluate when reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

We believe that these requirements should not be construed to be applicable requirements for purposes of redesignation. Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and that are not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with an area's designation and classification are the relevant measures for evaluating this aspect of a redesignation request. This approach is consistent with EPA's policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See: Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996 and 62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We believe that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Nonetheless, we also note that EPA has previously approved provisions in the Ohio SIP addressing section 110 elements under the 1-hour ozone standard. We have analyzed the Ohio SIP as codified in 40 CFR part 52, subpart KK and have determined that it is consistent with the requirements of section 110(a)(2) of the CAA. The SIP, which has been adopted after reasonable public notice and hearing, contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications of existing sources; provisions for adequate funding, staff, and associated resources necessary to implement its requirements; requires stationary source emissions monitoring and reporting; and otherwise satisfies the applicable requirements of section 110(a)(2).

Part D SIP requirements: EPA has determined that the Ohio SIP meets applicable SIP requirements under part D of the CAA. Under part D, an area's

classification (subpart 1, marginal, moderate, serious, severe, and extreme) indicates the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment area plan requirements applicable to all nonattainment areas. Subpart 2 of part D, found in section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

Part D, subpart 1 requirements: For purposes of evaluating this redesignation request, the applicable subpart 1 part D requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and 176. A thorough discussion of the requirements of section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). See also 68 FR 4852–4853, a notice of proposed rulemaking for an ozone redesignation for the St. Louis area, for a discussion of section 172 requirements.

No requirements under part D of the CAA came due for Belmont County prior to the State's submittal (August 24, 2006) of a complete ozone redesignation request for this area. For example, the requirement for an ozone attainment demonstration, as contained in section 172(c)(1), is not yet applicable, nor are the requirements for Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) (section 172(c)(1)), Reasonable Further Progress (RFP) (section 172(c)(2)), and attainment plan and RFP contingency measures (section 172(c)(9)). Therefore, none of the part D requirements are applicable to Belmont County for purposes of redesignation.

Section 176 conformity requirements: Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity SIP revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

As with other 8-hour ozone nonattainment area requirements, EPA believes that the conformity requirements do not apply for purposes of evaluating the ozone redesignation request under section 107(d) of the

CAA. Further support for this view lies in the fact that state conformity rules are still required after redesignation of areas to attainment of a NAAQS and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001). See also 60 FR 62748 (December 7, 1995) (Tampa, Florida).

Part D new source review requirements: EPA has determined that areas being redesignated need not comply with the requirement that a New Source Review (NSR) program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR, since Prevention of Significant Deterioration (PSD) requirements will apply after redesignation. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Ohio has demonstrated that Belmont County will be able to maintain the 8-hour ozone standard without part D NSR in effect, and therefore, we conclude that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in Belmont County upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

We conclude that Belmont County and the State of Ohio have satisfied all applicable requirements under section 110 and part D of the CAA to the extent that these requirements apply for

purposes of reviewing the State's ozone redesignation request for this area.

b. Belmont County Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the Ohio SIP for Belmont County under section 110(k) of the CAA for all applicable requirements. EPA may rely on prior SIP approvals in approving a redesignation request (See the September 4, 1992 John Calcagni memorandum, page 3, *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998), *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to Belmont County for purposes of redesignation. No Belmont County SIP provisions are currently disapproved, conditionally approved, or partially approved. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of reviewing of the State's redesignation request. EPA has also noted that it may conclude that the section 110 SIP submission approved under the 1-hour standard will be adequate for purposes of attaining and maintaining the 8-hour standard. EPA also believes that since the part D requirements did not become due prior to Ohio's submission of a final, complete redesignation request for Belmont County, they also are not applicable requirements for purposes of redesignation.

3. *The Air Quality Improvement in the Wheeling, WV–OH Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP, Federal Air Pollution Control Regulations, and Other Permanent and Enforceable Emission Reductions*

In making this demonstration, the States of West Virginia⁶ and Ohio have documented changes in VOC and NO_x emissions from all anthropogenic (man-made or man-based) sources in the Wheeling, WV–OH area occurring between 2002, an ozone standard violation year, and 2004, one of the years in which the Wheeling, WV–OH area has recorded attainment of the 8-hour ozone standard. The States have also discussed permanent and enforceable emission reductions that have occurred elsewhere in the States and in other upwind areas that have contributed to the air quality improvement in the Wheeling, WV–OH area. Table 2 summarizes the VOC and NO_x emissions totals from the anthropogenic sources in 2002 and 2004 for the Wheeling, WV–OH area. From the table, it can be seen that VOC emissions have essentially remained constant between 2002 and 2004, whereas NO_x emissions have significantly declined between 2002 and 2004.

The States of Ohio and West Virginia conclude that the differences in the 2002 and 2004 emissions are due primarily to the implementation of permanent and enforceable emission control requirements. The States have asserted that these emission reductions along with those occurring elsewhere in the two States and in other upwind areas have led to the observed improvement in air quality in the Wheeling, WV–OH area.

TABLE 2.—TOTAL ANTHROPOGENIC VOC AND NO_x EMISSIONS FOR 2002 AND 2004 IN THE WHEELING, WV–OH AREA [tons per day]

County	Point	Area	Non-road	Mobile	Total
2002 Volatile Organic Compounds					
Belmont County, Ohio	0.2	4.1	1.0	4.2	9.5
Marshall and Ohio Counties, West Virginia	3.0	14.8	2.3	3.4	23.5
2002 Total	3.2	18.9	3.3	7.6	33.0
2004 Volatile Organic Compounds					
Belmont County, Ohio	0.2	4.0	0.9	3.5	8.6

⁶ West Virginia submitted a separate ozone redesignation request for its portion of the Wheeling, WV–OH area. The West Virginia

redesignation request is addressed in a separate EPA proposed rule. West Virginia did supply

emissions data for the Wheeling area to the State of Ohio for inclusion in Ohio's ozone request.

TABLE 2.—TOTAL ANTHROPOGENIC VOC AND NO_x EMISSIONS FOR 2002 AND 2004 IN THE WHEELING, WV–OH AREA—
Continued
[tons per day]

County	Point	Area	Non-road	Mobile	Total
Marshall and Ohio Counties, West Virginia	3.0	15.4	2.3	2.8	23.5
2004 Total	3.2	19.4	3.2	6.3	32.1
Difference (2002–2004) ⁷	0.0	–0.5	0.1	1.3	0.9
2002 Nitrogen Oxides					
Belmont County, Ohio	31.8	0.3	3.0	7.4	42.5
Marshall and Ohio Counties, West Virginia	152.2	3.4	5.6	5.4	166.6
2002 Total	174.0	3.7	8.6	15.8	209.1
2004 Nitrogen Oxides					
Belmont County, Ohio	28.7	0.3	2.9	6.3	38.2
Marshall and Ohio Counties, West Virginia	85.8	3.4	7.3	4.7	101.2
2004 Total	114.5	3.7	10.2	11.0	139.4
Difference (2002–2004)	59.5	0.0	–1.6	4.8	69.7

The significant decline in NO_x emissions in this area between 2002 and 2004 occurred primarily at Electric Generating Units (EGU) and at large industrial boilers as the result of the implementation of the States' NO_x emission control rules (resulting from the implementation of EPA's NO_x SIP call and acid rain emission controls under title IV of the CAA). Besides the NO_x emission reductions occurring within the nonattainment area itself, the implementation of the States' NO_x control rules have reduced NO_x emission throughout both Ohio and West Virginia. The additional statewide emission reductions have contributed to attainment of the 8-hour ozone standard in the Wheeling, WV-OH area.

We concur with the State of Ohio that NO_x emissions have been significantly lowered in the Wheeling, WV-OH area and throughout the States of Ohio and West Virginia. We also concur with the State that these emission reductions have contributed to attainment of the 8-hour ozone standard in the Wheeling, WV-OH area. Therefore, the State of Ohio has met this criteria for redesignation of Belmont County to attainment of the 8-hour ozone standard.

Besides implementation of the NO_x emission control rules and despite the general lack of decreasing emissions for VOC (the data imply that existing VOC control measures are reducing VOC

emission at current rates that are generally keeping pace with new source growth), additional emission controls are being implemented in the Wheeling, WV-OH area which will also contribute to attainment and maintenance of the 8-hour ozone standard. The State of Ohio notes that, in the mid-1990's, the State promulgated statewide rules requiring Reasonably Available Control Techniques (RACT) for significant new sources of VOC emissions. The RACT rules have been implemented for significant new sources locating in Ohio subsequent to the State adoption of the rules. Additional implemented, or soon to be implemented, emission control rules include several Federal rules: (1) Tier II emission standards for vehicles and gasoline sulfur standards (promulgated by EPA in February 2000 and currently being implemented); (2) heavy-duty diesel engine emission control rules (promulgated by the EPA in July 2000 and currently being implemented; and (3) clean air non-road diesel rule (promulgated by the EPA in May 2004 and currently being phased in through 2009). All of these rules have contributed to reducing VOC and NO_x emissions throughout the States of Ohio and West Virginia and will contribute to future emission reductions in these States.

The State of Ohio commits to continuing the existing VOC and NO_x emission controls after the Wheeling, WV-OH area is redesignated to attainment of the 8-hour ozone standard.

4. Belmont County Has a Fully Approvable Ozone Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate Belmont County to attainment of the ozone NAAQS, Ohio submitted a SIP revision request to provide for maintenance of the 8-hour ozone NAAQS in Belmont County and in the entire Wheeling, WV-OH area through 2018, exceeding the minimum 10 year maintenance period required by the CAA.

a. What Is Required in an Ozone Maintenance Plan?

Section 175A of the CAA sets forth the required elements of air quality maintenance plans for areas seeking redesignation from nonattainment to attainment of a NAAQS. Under section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves the redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that maintenance of the standard will continue for 10 years following the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary, to assure prompt correction of any future NAAQS violations. The September 4, 1992 John Calcagni memorandum provides additional guidance on the content of maintenance plans. An ozone maintenance plan should, at minimum, address the

⁷ Positive differences indicate a decrease in emissions over time from 2002 to 2004. Negative differences indicate emissions were increasing over time, primarily as the result of emission changes from source growth exceeding the impacts of implemented emission controls.

following items: (1) The attainment VOC and NO_x emissions inventories; (2) a maintenance demonstration showing maintenance for the first 10 years of the maintenance period; (3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment; and (5) a contingency plan to prevent and/or correct a future violation of the NAAQS.

b. What Are the Attainment Emission Inventories for Belmont County?

Ohio EPA prepared comprehensive VOC and NO_x emission inventories for Belmont County, including EGU and non-EGU point (significant stationary sources), other (area) (smaller and widely-distributed stationary sources), Marine, Aircraft, and Rail mobile (MAR), mobile on-road, and mobile non-road sources for 2002 (the base year). To develop the attainment year (2004) and projected maintenance years (2009 and 2018) emissions, the Ohio EPA projected the 2002 emissions applying various source category-specific growth factors and emission control factors.

The State has thoroughly documented how the 2002 base year emissions were derived. The following summarizes the procedures and sources of data used by the Ohio EPA to derive the base year emissions.

i. *Point Sources.* The primary source of point source information was facility-specific information collected annually by the State for sources covered by Title V source permits. This information includes emissions, process rates, operating schedules, emissions control data, and other relevant information. The State also used emissions data provided by EPA's EGU emission inventory, maintained to support the NO_x SIP call emissions trading program and the acid rain control program. The sources included in the 2002 point source inventory were identified using Ohio's Title V STARS database. The emissions included in this database are facility-reported actual emissions.

Ohio EPA defines point source process emissions as those which occur at an identifiable stationary stack or vent. Point source emissions not emitted from discrete stacks or vents are defined to be fugitive emissions. Facility-specific fugitive emissions are also reported by each Title V facility and stored in the Title V STARS database.

Point source emissions included in the 2002 base year emissions inventory were provided to the Lake Michigan Air Directors Consortium (LADCO) in National Emissions Inventory Input Format (NIF) 3.0 format. LADCO

imported and processed the NIF files in the Emissions Modeling System (EMS) and applied temporal and spatial profiles to calculate July weekday emissions rates. The Belmont County emissions derived from this set of emissions data were split into EGU emissions and non-EGU emissions for inclusion in the base year emissions inventory used to support the Belmont County ozone redesignation request.

ii. *Area (Other) Sources.* Area sources are those sources which are generally small, numerous, and have not been inventoried as specific point, mobile, or biogenic sources. The emissions for these sources are calculated and grouped by source type and are estimated using various surrogates, such as population, estimates of employees in various occupational groups and facility-types, etc. The area source emissions are typically defined at the county level.

To estimate the area source emissions, Ohio EPA has either used published Emission Inventory Improvement Program (EIIP) emissions estimation methodologies or other methodologies typically used by other states. Area source categories include: Various stationary combustion sources (not including the EGU sources included in the point source portion of the emissions inventory); human cremation; agricultural pesticides; architectural surface coatings; auto body refinishing; consumer and commercial solvents; degreasing and solvent cleaning (not included in point source emissions); fuel marketing; graphic arts (the emissions from the smaller facilities not included in the Title V STARS database); hospital sterilizers; small industry surface coating; small industry rubber and plastics coating; landfills; portable fuel containers; traffic markings; and Privately Owned Treatment Works (POTWs). The State has documented the data sources and emission factors or calculation procedures used for each of these area source categories.

iii. *Non-Road Mobile Sources.* The non-road mobile source emissions inventory was generated regionally by running EPA's National Mobile Inventory Model (NMIM). The output of the NMIM was converted to the NIF format and submitted to LADCO for processing in the EMS to obtain spatially and temporally allocated emissions for a July weekday. The basic non-road algorithm for calculating emissions in NMIM uses base year equipment populations, average load factors, available engine powers, activity hours and emission factors to calculate the emissions. To address concerns

about the accuracy of NMIM for some source categories, LADCO contracted with two consulting companies to review the base data and make recommended changes.

iv. *Marine, Aircraft, and Rail (MAR) Sources.* Due to the significance of the emissions from these source types, the Ohio EPA has decided to treat these source categories separately from other non-road mobile sources. The MAR emissions include emissions from commercial marine, aircraft, and locomotive sources.

Commercial marine vessels consist of several different categories of vessel types. For each vessel type, there are unique engine types, emission rates, and activity data sets. The emissions inventory documentation lists the vessel types and activity data sources by vessel type, along with the special distribution of each vessel type.

Locomotive activity was divided into various rail categories: Class I operations; Class II/III operations; passenger trains; consumer lines; and yard operations. Since Class I operations are expected to be the most significant rail operations in most areas, including Belmont County, operators of Class I operations were queried for activity and emissions-related information for each railroad line. Class I activity levels were provided by county in terms of ton-miles of freight movement and estimated fuel consumption. This approach provided for more specific estimates of emissions by railroad line. Class II/III emissions were based on national fuel consumption and per employee fuel consumption estimates. The number of employees in each county was used to allocate the fuel consumption to each county and, therefore, the emissions to each county. The passenger train estimates were based on information provided by AMTRAK on the weekly schedule of train operation, and the emissions were based on an assumption of 2.35 gallons of fuel use per train-mile of travel. No commuter lines or yard operations exist in Belmont County.

EPA provided the aircraft emission estimates based on Federal Aviation Administration (FAA) published Landing and Take-Off (LTO) rates by engine type for each airline and major airport in the State of Ohio. The LTO-engine information was combined with engine type-specific emission factors developed by the International Civil Aviation Organization (ICAO), and, through use of an FAA Emissions and Dispersion Modeling System (EDMS), emissions were assigned to each county in the State, including Belmont County.

LADCO processed all of the MAR emissions data through the EMS to calculate July 2002 weekday emissions for VOC and NO_x.

v. *On-Road Mobile Sources.* A regional transportation model operated by the Belmont, Ohio, Marshall Regional Council Metropolitan Planning Organization (Bel-O-Mar), West Virginia Department of Transportation (WVDOT), and Ohio Department of Transportation (Ohio DOT) was used to estimate traffic levels, vehicle age and type distributions, vehicle speeds, and other emissions-related vehicle parameters for the roadways in Belmont County and elsewhere in the Wheeling, WV-OH area. This vehicle travel information, along with the MOBILE 6.2 vehicle emission factor model, was used to estimate mobile source VOC and NO_x emissions for Belmont County and the entire Wheeling, WV-OH area.

vi. *Projected Emissions for the Attainment Year.* Ambient air quality data showed that the Wheeling, WV-OH area met the 8-hour ozone NAAQS in 2004. Ohio EPA used point source growth data provided by individual point source facilities along with other source category growth estimates and

emission control estimates to estimate 2004 VOC and NO_x emissions for Belmont County. The State of West Virginia estimated 2004 VOC and NO_x emissions for the remainder of the Wheeling, WV-OH area. The estimated 2004 emissions have been compared to the 2002 emissions to demonstrate the basis for the improved air quality in the Wheeling, WV-OH area. See Table 2 above for the 2004 attainment level emissions.

c. Demonstration of Maintenance

To demonstrate maintenance of the attainment of the 8-hour ozone standard for at least 10 years following the redesignation of the Wheeling, WV-OH area to attainment of the 8-hour ozone NAAQS, the State of Ohio and the State of West Virginia projected the VOC and NO_x emissions in the Wheeling, WV-OH area for the years of 2009 and 2018. For Belmont County, Ohio EPA used source growth estimates provided by LADCO along with mobile source growth estimates generated using the regional transportation model and MOBILE 6.2 to project the Belmont County VOC and NO_x emissions. The methods used by the State of West

Virginia are described in West Virginia's ozone redesignation request (reviewed in a separate EPA proposed rule. See 71 FR 57894, October 2, 2006). Note that a maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F. 3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001) and 68 FR 25430–25432 (May 12, 2003).

Table 3 summarizes the VOC emissions projected to occur in Belmont County, Ohio and in Marshall and Ohio Counties, West Virginia during the demonstrated ozone maintenance period. Similarly, Table 4 summarizes the NO_x emissions projected to occur in the same area during the demonstrated ozone maintenance period. The State of Ohio and the State of West Virginia chose 2018 as a projection year to meet the 10-year maintenance demonstration requirement, allowing several years for EPA to complete the redesignation rulemaking process. The States also chose 2009 as an interim year to demonstrate that VOC and NO_x emissions will remain below the attainment year levels throughout the 10-year maintenance period.

TABLE 3.—PROJECTED VOC EMISSIONS IN THE WHEELING, WV-OH AREA
[tons/day]

Source sector	2004 attainment	2009 interim	2018 maintenance	Safety margin
Belmont County VOC Emissions				
EGU Point	0.17	0.12	0.17	
Non-EGU Point	0.03	0.03	0.04	
Area (Other)	4.03	3.85	3.86	
Non-Road Mobile	0.88	0.76	0.56	
On-Road Mobile	3.52	*2.60	*1.52	
Marine-Air-Railroad	0.05	0.05	0.5	
Total Belmont County	8.68	7.41	6.20	**2.48
Marshall and Ohio Counties, West Virginia VOC Emissions				
EGU Point	0.5	0.7	0.7	
Non-EGU Point	2.5	2.1	2.6	
Area (Other)	15.4	7.3	8.4	
Non-Road Mobile (MAR included)	2.3	2.1	1.8	
On-Road Mobile	2.81	2.22	1.24	
Total Marshall and Ohio Counties	23.51	14.42	14.74	**8.77
Total Wheeling, WV-OH	32.19	21.83	20.94	

* Includes 15 percent mobile source budget increase as a safety margin. Actual projected 2018 on-road mobile source VOC emissions in Belmont County are 1.32 tons per day.

** Difference between 2004 attainment year emissions and 2018 maintenance year emissions.

TABLE 4.—PROJECTED NO_x EMISSIONS IN THE WHEELING, WV–OH AREA
[tons/day]

Source sector	2004 attainment	2009 interim	2018 maintenance	Safety margin
Belmont County NO_x Emissions				
EGU Point	28.61	20.96	18.85	
Non-EGU Point	0.08	0.08	0.08	
Area (Other)	0.29	0.36	0.38	
Non-Road Mobile	1.35	1.16	0.63	
On-Road Mobile	6.29	* 4.69	* 1.91	
Marine-Air-Railroad	1.54	1.38	1.28	
Total Belmont County	38.16	28.63	23.13	**15.03
Marshall and Ohio Counties, West Virginia NO_x Emissions				
EGU Point	73.20	51.1	14.9	
Non-EGU Point	12.6	10.6	11.3	
Area (Other)	3.4	1.8	2.0	
Non-Road Mobile (MAR included)	7.3	5.2	4.6	
On-Road Mobile	4.67	3.75	1.47	
Total Marshall and Ohio Counties	101.47	72.45	34.27	** 67.20
Total Wheeling, WV–OH	139.63	101.08	57.40

* Includes 15 percent mobile source budget increase as a safety margin. Actual projected 2018 on-road mobile source NO_x emissions in Belmont County are 1.66 tons per day.

**Difference between 2004 attainment year emissions and 2018 maintenance year emissions.

The Ohio EPA also notes that the State's EGU NO_x emissions control rules stemming from EPA's NO_x SIP call and Clean Air Interstate Rule (CAIR), to be implemented beyond 2006, will further lower NO_x emissions in upwind areas, resulting in decreased ozone and ozone precursor transport into Belmont County and the Wheeling, WV–OH area. This will also support maintenance of the ozone standard in this area.

The emission projections for Belmont County and the Wheeling, WV–OH area as a whole coupled with the expected impacts of the States' EGU NO_x rules and CAIR led to the conclusion that Belmont County and the Wheeling, WV–OH area should maintain the 8-hour ozone NAAQS throughout the required 10-year maintenance period and through 2018. The projected decreases in local VOC and local and regional NO_x emissions indicate that peak ozone levels in the Wheeling, WV–OH area may actually further decline during the maintenance period.

Based on the comparison of the projected emissions and the attainment year emissions, we conclude that Ohio EPA has successfully demonstrated that the 8-hour ozone standard should be maintained in Belmont County and in the Wheeling, WV–OH area. We believe that this is especially likely given the expected impacts of the NO_x SIP call and CAIR. As noted by Ohio EPA, this conclusion is further supported by the fact that other states in the eastern

portion of the United States are also expected to further reduce regional NO_x emissions through implementation of their ozone NO_x emission control rules for EGUs and other NO_x sources through the implementation of the NO_x SIP call and CAIR.

d. Contingency Plan

The contingency plan provisions of the CAA are designed to result in prompt correction or prevention of violations of the NAAQS that might occur after redesignation of an 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 might occur after redesignation. The maintenance plan must identify the contingency measures to be considered for possible adoption, a schedule and procedure for adoption and implementation of the selected contingency measures, and a time limit for action by the State. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the State will implement all measures with respect to control of the pollutant(s) that were included in the SIP before the

redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted a contingency plan to address a possible future ozone air quality problem in the Wheeling, WV–OH area. The contingency plan has two levels of actions/responses depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level Response) or has actually occurred or appears to be very imminent (Action Level Response).

A Warning Level Response will be triggered whenever an annual (1-year) fourth-high monitored 8-hour ozone concentration of 88 ppb occurs within the ozone maintenance area (within the Wheeling, WV–OH) area. A Warning Level Response will consist of a study to determine whether the ozone value indicates a trend toward higher ozone concentrations or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend taking into consideration ease and timing for implementation, as well as economic and social consideration, will be selected for possible adoption. Implementation of necessary controls in response to a Warning Level Response triggering will take place as expeditiously as possible, but in no event later than 12 months from the conclusion of the most recent ozone season (September 30).

An Action Level Response will be triggered whenever a two-year averaged annual fourth-high monitored 8-hour ozone concentration of 85 ppb occurs within the maintenance area or whenever a violation of the 8-hour ozone standard is actually monitored in the maintenance area. An Action Level Response will also be triggered if a violation of the 8-hour ozone standard is monitored in the Wheeling, WV–OH area. In the event that an Action Level Response is triggered and is not due to an exceptional event, malfunction, or noncompliance with a source permit condition or rule requirement, Ohio EPA will determine the additional emission control measures needed to assure future attainment of the ozone NAAQS. Emission control measures that can be implemented in a short time will be selected in order to be in place within 18 months from the close of the ozone season that prompted the Action Level Response. Any new emission control measure that is selected for implementation will be given a public review. If a new emission control measure is already promulgated and scheduled to be implemented at the Federal or State level and that emission control measure is determined to be sufficient to address the upward trend in peak ozone concentrations, additional local measures may be unnecessary. Ohio EPA will submit to the EPA an analysis to demonstrate that the proposed emission control measures are adequate to reverse the upward trend in peak ozone concentrations and to maintain the 8-hour ozone standard in the Wheeling, WV–OH area. The selection of emission control measures will be based on cost-effectiveness, emission reduction potential, economic and social considerations, or other factors that the Ohio EPA and West Virginia Department of Environmental Protection (WVDEP) deem to be appropriate. Selected emission control measures will be subjected to public review and the States will seek public input prior to selecting new emission control measures.

The State of Ohio ozone redesignation request lists the following possible emission control measures as contingency measures in the ozone maintenance portion of the State's submittal:

- Extension of Reasonably Available Control Techniques (RACT) requirements to include source categories previously excluded. New VOC RACT rules could be adopted for the following source categories:
 - Consumer products
 - Architectural and industrial maintenance coatings

- Stage I gasoline dispensing facilities (including pressure valves)
- Automobile refinishing
- Cold cleaner degreasers
- Portable fuel containers
- Synthetic organic compound manufacturing
- Organic compound batch processes
- Wood products manufacturing
- Industrial wastewater
- Aerospace industry
- Ship building
- Bakeries
- Plastic parts coating
- Volatile organic liquid storage
- Industrial solvent cleaning
- Offset lithography
- Industrial surface coating; and
- Other sources with VOC emissions greater than 50 tons per year;
 - Revision of new source permitting requirements to require more stringent emissions control technology and/or greater emissions offsets;
 - NO_x RACT, with the following being potential source categories covered by such RACT requirements:
 - EGUs
 - Asphalt batching plants
 - Industrial/commercial and institutional boilers
 - Process heaters
 - Internal combustion engines
 - Combustion turbines
 - Other sources with NO_x emissions exceeding 100 tons per year;
 - Regulations to establish plant-wide emission caps (potentially with emission trading provisions);
 - Stage II vapor recovery regulations for gasoline service stations; and,
 - Establishment of a Public Awareness/Ozone Action Days Program, focusing on increasing the public's understanding of air quality issues in the region and on increasing support for actions to improve the air quality, resulting in reduced emissions on days with the potential for high ozone concentrations.

One or more of these regulatory revisions would be selected within three (3) months after verification of a monitored ozone standard violation. For each regulatory revision selected, a draft rule will be developed within six (6) months of selection. The State will file the rule as an emergency rule, which will become effective within 42 days after filing and fully implemented within six (6) months after adoption. Rules will be filed as legislative rules for permanent authorization by the Legislature during the following legislative session. This approach means that less than 18 months should elapse from the time a violation of the standard occurs until the appropriate control

measure(s) is fully in place. No contingency measure, however, will be implemented without the State providing the opportunity for full public participation and review.

e. Provisions for a Future Update of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, the State commits to submit to the EPA an update of the ozone maintenance plan eight years after redesignation of Belmont County to attainment of the 8-hour ozone NAAQS. The updated maintenance plan will provide for maintenance of the 8-hour ozone standard in Belmont County and the Wheeling, WV–OH area for an additional 10 years beyond the period covered by the initial ozone maintenance plan.

We consider Ohio's ozone maintenance demonstration and contingency plan to be acceptable.

V. Has Ohio Adopted Acceptable Motor Vehicle Emissions Budgets for the End Year of the Ozone Maintenance Plans Which Can Be Used To Support Conformity Determinations?

A. How Are the Motor Vehicle Emission Budgets Developed and What Are the Motor Vehicle Emission Budgets for Belmont County?

Under the CAA, states are required to submit, at various times, SIP revisions and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard or revising existing ozone maintenance plans). These emission control SIP revisions (e.g. reasonable further progress and attainment demonstration SIP revisions), including ozone maintenance plans, must create MVEBs based on on-road mobile source emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance of the ozone NAAQS.

Under 40 CFR part 93, MVEBs for an area seeking a redesignation to attainment of the NAAQS are established for the last year of the maintenance plan (for the maintenance demonstration year). The MVEBs serve as ceilings on mobile source emissions from an area's planned transportation system and are used to test planned transportation system changes or projects to assure compliance with the emission limits assumed in the SIP. The MVEB concept is further explained in the preamble to the November 24, 1993 transportation conformity rule (58 FR

62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must “conform” to (i.e., be consistent with) the part of the SIP that addresses emissions from cars, trucks, and other on-roadway vehicles. Conformity to the SIP means that transportation activities will not cause new air quality standard violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of the roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA’s policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are “adequate” for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and Federal agencies in determining whether proposed transportation projects conform to the SIPs as required by section 176(c) of the CAA. EPA’s substantive criteria for determining the adequacy of MVEBs are specified in 40 CFR 93.118(e)(4).

EPA’s process of determining adequacy of MVEBs consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEBs during a public comment period; and (3) finally making a finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA’s May 14, 1999 guidance, “Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.” This guidance was finalized in the Transportation Conformity Rule Amendments for the “New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Rule Amendments—Response to Court Decision and Additional Rule Change” published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Transportation Conformity Rule, in 40 CFR 93.118(f), provides for adequacy findings through two mechanisms. First, 40 CFR 93.118(f)(1) provides for posting a notice to the EPA

conformity Web site at: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm> and providing a 30-day public comment period. Second, a mechanism is described in 40 CFR 93.118(f)(2) which provides that EPA can review the adequacy of an implementation plan submission simultaneously with its review of the implementation plan itself. In this notice, EPA is reviewing the adequacy of the Belmont County motor vehicle emission budgets as part of the review and proposal on the overall ozone maintenance plan. The State of Ohio had previously requested parallel processing and the expediency of this review process is best suited to following the 40 CFR 93.118(f)(2) mechanism.

The Belmont County ozone maintenance plan contains VOC and NO_x MVEBs for 2018. EPA has reviewed the submittal and the proposed VOC and NO_x MVEBs for Belmont County, and finds that the MVEBs meet the adequacy criteria in the Transportation Conformity Rule. The 30-day comment period for the adequacy period will be the same as the 30-day comment period for the proposed approval of the MVEBs and ozone maintenance plan. Any and all comments on the adequacy or approvability of the MVEBs should be submitted during the comment period stated in the DATES section of this notice.

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in Belmont County because EPA has determined that the budgets are consistent with the control measures and future emissions projected in the SIP and that Belmont County and the Wheeling, WV–OH area can maintain attainment of the 8-hour ozone NAAQS for the relevant required 10-year period with mobile source emissions at the levels of the MVEBs. Ohio EPA has determined the 2018 MVEBs for Belmont County to be 1.52 tons per day for VOC and 1.91 tons per day for NO_x. It should be noted that these MVEBs exceed the on-road mobile source VOC and NO_x emissions projected by the Ohio EPA for 2018, but do match the on-road mobile source emissions for 2018 summarized in Tables 3 and 4 above. Through discussions with all organizations involved in transportation planning for Belmont County, Ohio EPA decided to include 15 percent safety margins in the MVEBs to provide for mobile source growth not anticipated in the projected 2018 emissions. Ohio EPA has demonstrated that Belmont County and the Wheeling, WV–OH area can

maintain the 8-hour ozone NAAQS with mobile source emissions at the levels of the MVEBs since total source emissions with the increased mobile source emissions will remain under the attainment year levels.

B. What Is a Safety Margin?

A “safety margin” is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan for a future maintenance year. As noted in Tables 3 and 4 above, Belmont County VOC and NO_x emissions are projected to have safety margins of 2.48 tons per day for VOC and 15.03 tons per day for NO_x in 2018 (the differences between the 2004, attainment year, and 2018 VOC and NO_x emissions for all sources in Belmont County).

The MVEBs requested by Ohio EPA contain safety margins (selected by the State) significantly smaller than the safety margins reflected in the total emissions for Belmont County. The State is not requesting allocation of the entire available safety margins actually reflected in the demonstration of maintenance. Therefore, even though the State is requesting MVEBs that exceed the projected on-road mobile source emissions for 2018 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration.

C. Are the MVEBs Approvable?

The VOC and NO_x MVEBs for Belmont County are approvable because they maintain the total emissions for Belmont County at or below the attainment year emission inventory levels, as required by the transportation conformity regulations.

VI. What Are the Effects of EPA’s Proposed Actions?

Approval of the redesignation request would change the official designation of the Belmont County for the 8-hour ozone NAAQS, found at 40 CFR part 81, from nonattainment to attainment. It would also incorporate into the Ohio SIP a plan for maintaining the ozone NAAQS through 2018. The maintenance plan includes contingency measures to remedy possible future violations of the 8-hour ozone NAAQS, and establishes MVEBs of 1.52 tons per day for VOC and 1.91 tons per day for NO_x.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a “significant regulatory action” and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed 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.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 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 proposes to approve 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 13175: Consultation and Coordination With Indian Tribal Governments

This proposed 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 13045: Protection of Children From Environmental Health and Safety Risks

This proposed 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.

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

Because it is not a “significant regulatory action” under Executive Order 12866 or a “significant regulatory 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).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 19, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E6–22140 Filed 12–26–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0046; FRL–8261–5]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Allen and Stark Counties to Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 20, 2005, the Ohio Environmental Protection Agency (Ohio EPA), submitted a request for EPA approval of redesignations of Allen County (Lima) and Stark County (Canton) to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS), and a request for EPA approval of ozone maintenance plans for Allen and Stark Counties as revisions to the Ohio State Implementation Plan (SIP). Additional supporting information was submitted on August 24, 2006, and December 4, 2006. EPA is proposing to approve Ohio’s requests and corresponding SIP revisions. EPA is also proposing to approve the Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_x) Motor Vehicle Emission Budgets (MVEBs) for Allen and Stark Counties, as supported by the ozone maintenance plans for these Counties, for purposes of conformity determinations.

DATES: Comments must be received on or before January 26, 2007. Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0046, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* mooney.john@epa.gov.
- *Fax:* (312) 886–5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
 - *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. Such deliveries are only accepted during the Regional Office’s normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office’s official hours of operation are Monday through Friday,