

Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, the relationship between the national government and the States, or 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. The EPA interprets Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it would approve a State program. Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Because this rule merely proposes to approve a State rule implementing a Federal standard, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations. In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the 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 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. 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.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 11, 2007.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. E7-11942 Filed 6-19-07; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2006-0956; FRL-8328-9]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Dayton-Springfield Area to Attainment for Ozone

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to make a determination under the Clean Air Act (CAA) that the nonattainment area of Dayton-Springfield, Ohio (Clark, Green, Miami, and Montgomery Counties) has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on complete, quality-assured ambient air quality monitoring data for the 2004-2006 seasons that demonstrate that the 8-hour ozone NAAQS have been attained in the area. EPA is also proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), the State's plan for maintaining the 8-hour ozone NAAQS through 2018 in the area.

EPA is proposing to approve a request from the State of Ohio to redesignate the Dayton-Springfield area to attainment of the 8-hour ozone NAAQS. The Ohio Environmental Protection Agency (OEPA) submitted this request on November 6, 2006 and supplemented it on November 29, 2006, December 4, 2006, December 13, 2006, January 11, 2007, March 9, 2007, March 27, 2007, and May 31, 2007. EPA is also proposing to approve the State's 2005 and 2018 Motor Vehicle Emission Budgets (MVEBs) for the Dayton-Springfield area.

**DATES:** Comments must be received on or before July 20, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-0956, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax*: (312) 886-5824.

4. *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.

5. *Hand delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business 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-2006-0956. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://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](http://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, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://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 hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy 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 legal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886-1767 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, [dagostino.kathleen@epa.gov](mailto:dagostino.kathleen@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

### Table of Contents

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. What Actions Is EPA Proposing To Take?
- III. What Is the Background for These Actions?
  - A. What Is the General Background Information?
  - B. What Is the Impact of the December 22, 2006 United States Court of Appeals Decision Regarding EPA's Phase 1 Implementation Rule?
- IV. What Are the Criteria for Redesignation?
- V. Why Is EPA Proposing To Take These Actions?
- VI. What Is the Effect of These Actions?
- VII. What Is EPA's Analysis of the Requests?
  - A. Attainment Determination and Redesignation
  - B. Adequacy of Ohio's MVEBs
- VIII. What Actions Is EPA Taking?
- IX. Statutory and Executive Order Reviews

### I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

### II. What Actions is EPA Proposing To Take?

EPA is proposing to take several related actions. EPA is proposing to make a determination that the Dayton-Springfield nonattainment area has attained the 8-hour ozone standard and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Ohio's request to change the legal designation of the Dayton-Springfield area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve Ohio's maintenance plan SIP revision for Dayton-Springfield (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Dayton-Springfield area in attainment of the ozone NAAQS through 2018. Additionally, EPA is proposing to approve the newly-established 2005 and 2018 MVEBs for the Dayton-Springfield area. The adequacy comment period for the MVEBs began on November 14, 2006, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>). The adequacy comment period for these MVEBs ended on December 14, 2006. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. On April 3, 2007, EPA published a **Federal Register** notice announcing the adequacy of the 2005 and 2018 MVEBs. Please see the Adequacy section of this rulemaking for further explanation on this process. Therefore, we find adequate, and are proposing to approve, the State's 2005 and 2018 MVEBs for transportation conformity purposes.

### III. What Is the Background for These Actions?

#### A. What Is the General Background Information?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO<sub>x</sub> and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the current 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56813), the Dayton-Springfield area was designated as a moderate nonattainment area under the 1-hour ozone NAAQS. The area was subsequently redesignated to attainment of the 1-hour standard on May 5, 1995 (60 FR 22289). At the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005, the Dayton-Springfield area was designated as attainment under the 1-hour ozone NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour standard. On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001-2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in title I, part D, 42 U.S.C. 7501-7509a and 7511-7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas.

Under EPA's 8-hour ozone implementation rule, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas are covered under subpart 1, based upon their 8-

hour design values (69 FR 23958). The Dayton-Springfield area was designated as a subpart 1, 8-hour ozone nonattainment area by EPA on April 30, 2004, (69 FR 23857, 23927) based on air quality monitoring data from 2001–2003 (69 FR 23860).

40 CFR 50.10 and 40 CFR Part 50, Appendix I provide that the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. See 40 CFR Part 50, Appendix I, 2.3(d).

On November 6, 2006, Ohio requested that EPA redesignate the Dayton-Springfield area to attainment for the 8-hour ozone standard. Ohio supplemented its submittal on November 29, 2006, December 4, 2006, December 13, 2006, January 11, 2007, March 9, 2007, March 27, 2007, and May 31, 2007. The redesignation request included three years of complete, quality-assured data for the period of 2004 through 2006, indicating the 8-hour NAAQS for ozone had been attained for the Dayton-Springfield area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard, and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

### *B. What Is the Impact of the December 22, 2006 United States Court of Appeals Decision Regarding EPA's Phase 1 Implementation Rule?*

#### 1. Summary of Court Decision

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). The Court held that certain provisions of EPA's Phase 1 Rule were inconsistent with the requirements of the CAA. The Court rejected EPA's reasons for implementing the 8-hour standard in nonattainment areas under Subpart 1 in lieu of subpart 2 of Title I, part D of the Act. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New

Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) Measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain conformity requirements for certain types of federal actions. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions.

This section sets forth EPA's views on the potential effect of the Court's ruling on this redesignation action. For the reasons set forth below, EPA does not believe that the Court's ruling alters any requirements relevant to this redesignation action so as to preclude redesignation, and does not prevent EPA from finalizing this redesignation. EPA believes that the Court's decision, as it currently stands or as it may be modified based upon any petition for rehearing that has been filed, imposes no impediment to moving forward with redesignation of this area to attainment, because in either circumstance redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

#### 2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the Court's ruling rejected EPA's reasons for classifying areas under Subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under Subpart 2. Although any future decision by EPA to classify this area under Subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon: (1) EPA's longstanding policy of evaluating State submissions in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any future requirements.

First, at the time the redesignation request was submitted, the Dayton-Springfield area was classified under Subpart 1 and was obligated to meet Subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that

came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division) See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See, e.g. also 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit has recognized the inequity in such retroactive rulemaking. See *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002), in which the D.C. Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: "Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under Subpart 2 that were not in effect at the time it submitted its redesignation request.

#### 3. Requirements Under the 1-Hour Standard

With respect to the requirements under the 1-hour standard, the Dayton-Springfield area was an attainment area subject to a CAA section 175A maintenance plan under the 1-hour standard. The Court's ruling does not impact redesignation requests for these types of areas.

First, there are no conformity requirements that are relevant for redesignation requests for any standard, including the requirement to submit a transportation conformity SIP. Under longstanding EPA policy, EPA believes that it is reasonable to interpret the conformity SIP requirement as not applying for purposes of evaluating a redesignation request under section

107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. 40 CFR 51.390. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995) (Tampa, FL redesignation).

Federal transportation conformity regulations apply in all States prior to approval of transportation conformity SIPs. The Dayton-Springfield, Ohio 1-hour ozone area was redesignated to attainment without approved State transportation conformity regulations because the federal regulations were in effect in Ohio. When challenged, these 1-hour ozone redesignations, which were approved without state regulations, were upheld by the courts. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001). See also 60 FR 62748 (December 7, 1995) (Tampa, Florida). Although Ohio does not have approved state transportation conformity regulations, it has developed memoranda of understanding, signed by all parties involved in conformity, to address conformity consultation procedures. The federal transportation conformity regulations, which apply in Ohio, require the approved 1-hour ozone budgets to be used for transportation conformity purposes prior to 8-hour ozone budgets being approved.

Second, with respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Dayton-Springfield area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)) and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus, the decision in South Coast should not alter requirements that would preclude EPA from finalizing the redesignation of this area.

#### IV. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area 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); (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 SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation 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 has provided further guidance on processing redesignation requests in the following documents:

“Ozone and Carbon Monoxide Design Value Calculations,” Memorandum from William G. Laxton, Director Technical Support Division, 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 Ozone and Carbon Monoxide (CO) 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, to Air Division Directors, Regions 1–10, dated 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.”

#### V. Why Is EPA Proposing To Take These Actions?

On November 6, 2006, Ohio requested redesignation of the Dayton-Springfield area to attainment for the 8-hour ozone standard. Ohio supplemented its submittal on November 29, 2006, December 4, 2006, December 13, 2006, January 5, 2007, January 11, 2007, March 9, 2007, March 27, 2007, and May 31, 2007. EPA believes that the area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA.

#### VI. What Is the Effect of These Actions?

Approval of the redesignation request would change the official designation of the area for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Ohio SIP a plan for maintaining the 8-hour ozone NAAQS through 2018. The maintenance plan includes contingency measures to remedy future violations of the 8-hour NAAQS. It also establishes MVEBs of 29.19 and 14.73 tons per day (tpd) VOC and 63.88 and 21.42 tpd NO<sub>x</sub> for the years 2005 and 2018, respectively.

#### VII. What Is EPA’s Analysis of the Requests?

##### A. Attainment Determination and Redesignation

EPA is proposing to make a determination that the Dayton-Springfield area has attained the 8-hour ozone standard and that the area has met all other applicable section 107(d)(3)(E) redesignation criteria. The basis for EPA’s determination is as follows:

1. The Area Has Attained the 8-Hour Ozone NAAQS. (Section 107(d)(3)(E)(i))

EPA is proposing to make a determination that the Dayton-Springfield area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour

ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and part 50, Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix

I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

OEPA submitted ozone monitoring data for the 2004 to 2006 ozone seasons. The OEPA quality-assured the ambient

monitoring in accordance with 40 CFR 58.10, and recorded it in the AIRS database, thus making the data publicly available. The data meet the completeness criteria in 40 CFR 50, Appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each three year period. Monitoring data is presented in Table 1 below. Data completeness information is presented in Table 2 below.

TABLE 1.—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND 3-YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS

County	Monitor	2004 4th high (ppm)	2005 4th high (ppm)	2006 4th high (ppm)	2004–2006 average 4th high (ppm)
Clark .....	Springfield, 39–023–001 .....	0.079	0.086	0.076	0.080
	Mud Run, 39–023–0003 .....	0.073	0.081	0.074	0.076
Greene .....	Xenia, 39–057–0006 .....	0.075	0.083	0.079	0.079
Miami .....	Miami, 39–109–0005 .....	0.075	0.079	0.073	0.076
Montgomery .....	Webster, 39–113–0033 .....	0.067	0.082	0.071	0.073

TABLE 2.—DATA COMPLETENESS IN PERCENT (%)

County	Monitor	2004 (%)	2005 (%)	2006 (%)	2004–2006 average (%)
Clark .....	Springfield, 39–023–001 .....	100	99	100	100
	Mud Run, 39–023–0003 .....	99	99	100	99
Greene .....	Xenia, 39–057–0006 .....	100	100	100	100
Miami .....	Miami, 39–109–0005 .....	99	100	99	99
Montgomery .....	Webster, 39–113–0033 .....	98	100	100	99

In addition, as discussed below with respect to the maintenance plans, OEPA has committed to continue operating the ozone monitors listed above. OEPA has also committed to consult with EPA prior to making changes to the existing monitoring network, should changes become necessary in the future. OEPA will continue to quality assure and report monitoring data in accordance with 40 CFR part 58 and all other federal requirements. In summary, EPA believes that the data submitted by Ohio provide an adequate demonstration that the Dayton-Springfield area has attained the 8-hour ozone NAAQS.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k). (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Ohio has met all currently applicable SIP requirements for purposes of redesignation for the Dayton-Springfield area under Section 110 of the CAA (general SIP requirements). We have also determined that the Ohio SIP meets

all SIP requirements currently applicable for purposes of redesignation under part D of Title I of the CAA (requirements specific to Subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, we have determined that the Ohio SIP is fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). In making these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

a. The Dayton-Springfield Area 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. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state’s submittal of a complete redesignation request for the area. See also the September 17, 1993 Michael Shapiro memorandum and 60 FR 12459, 12465–66 (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 request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite 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. Section

110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it includes enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provides for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provides for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; includes provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; includes criteria for stationary source emission control measures, monitoring, and reporting; includes provisions for air quality modeling; and provides for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO<sub>x</sub> SIP Call,<sup>1</sup> Clean Air Interstate Rule (CAIR) (70 FR 25162)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. When the transport SIP submittal requirements are applicable to a state, they will continue to apply to the state regardless of the attainment designation of any one particular area in the state. Therefore, 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

<sup>1</sup> On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP call requiring the District of Columbia and 22 states, including Ohio, to reduce emissions of NO<sub>x</sub> in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO<sub>x</sub> SIP call, OEPA has developed rules governing the control of NO<sub>x</sub> emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Ohio's rules as fulfilling Phase I of the NO<sub>x</sub> SIP Call on June 27, 2005 (70 FR 36845).

and 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 a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing 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), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, 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 ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh ozone redesignation (66 FR 50399, October 19, 2001).

As discussed above, we believe that section 110 elements which are not linked to the area's nonattainment status are not applicable for purposes of redesignation. Because there are no section 110 requirements linked to the part D requirements for 8-hour ozone nonattainment areas that have become due, as explained below, there are no part D requirements applicable for purposes of redesignation under the 8-hour standard.

**Part D Requirements.** EPA has determined that the Ohio SIP meets applicable SIP requirements under part D of the CAA, since no requirements applicable for purposes of redesignation became due for the 8-hour ozone standard prior to OEPA's submission of the redesignation request for the Dayton-Springfield area. Under part D, an area's classification determines 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 requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. The Dayton-Springfield area was classified as a subpart 1 nonattainment area, and, therefore, subpart 2 requirements do not apply.

**Part D, Subpart 1 applicable SIP requirements.** For purposes of evaluating these redesignation requests,

the applicable part D, subpart 1 SIP requirements for the Dayton-Springfield area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

No requirements applicable for purposes of redesignation under part D became due prior to submission of the redesignation request, and, therefore, none are applicable to the areas for purposes of redesignation. Since the State of Ohio has submitted a complete ozone redesignation request for the Dayton-Springfield area prior to the deadline for any submissions required for purposes of redesignation, we have determined that these requirements do not apply to the Dayton-Springfield area for purposes of redesignation.

Furthermore, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. 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 the area to be redesignated will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes 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 the Dayton-Springfield area 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); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

**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 quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation

conformity) as well as to all other federally-supported or funded projects (general conformity). State conformity revisions must be consistent with federal conformity regulations relating to consultation, enforcement and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Ohio's general and transportation conformity SIPs on March 11, 1996 (61 FR 9646) and May 30, 2000 (65 FR 34395), respectively. Ohio has submitted on-highway motor vehicle budgets for the Dayton-Springfield area of 29.19 and 14.73 tpd VOC and 63.88 and 21.42 tpd NO<sub>x</sub> for the years 2005 and 2018, respectively. The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval. Thus, the Dayton-Springfield area has satisfied all applicable requirements under section 110 and part D of the CAA.

**b. The Dayton-Springfield Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA**

EPA has fully approved the Ohio SIP for the Dayton-Springfield area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. 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 25413, 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 the Dayton-Springfield area under the 1-hour ozone standard. No Dayton-Springfield area SIP provisions are currently disapproved, conditionally approved, or partially approved.

**3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions. (Section 107(d)(3)(E)(iii))**

EPA finds that Ohio has demonstrated that the observed air quality improvement in the Dayton-Springfield area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state-adopted measures.

In making this demonstration, the State has calculated the change in emissions between 2002 and 2005, one of the years the Dayton-Springfield area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Ohio and upwind areas have implemented in recent years. The Dayton-Springfield is impacted by the transport of ozone and ozone precursors from upwind areas. Therefore, local controls as well as controls implemented in upwind areas are relevant to the improvement in air quality in the Dayton-Springfield area.

**a. Permanent and Enforceable Controls Implemented**

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

**NO<sub>x</sub> rules.** In compliance with EPA's NO<sub>x</sub> SIP call, Ohio developed rules to control NO<sub>x</sub> emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. These rules required sources to begin reducing NO<sub>x</sub> emissions in 2004. From 2004 on, NO<sub>x</sub> emissions from EGUs and large industrial boilers have been capped at a level well below pre-2002 levels. OEPA expects that NO<sub>x</sub> emissions will further

decline as the State meets the requirements of EPA's Phase II NO<sub>x</sub> SIP call (69 FR 21604 (April 21, 2004)) and CAIR.

**Federal Emission Control Measures.** Reductions in VOC and NO<sub>x</sub> emissions have occurred statewide as a result of federal emission control measures, with additional emission reductions expected to occur in the future as the state implements additional emission controls. Federal emission control measures include: The National Low Emission Vehicle (NLEV) program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards. In addition, in 2004, EPA issued the Clean Air Non-road Diesel Rule (69 FR 38958 (July 29, 2004)). EPA expects this rule to reduce off-road diesel emissions through 2010, with emission reductions starting in 2008.

**Control Measures in Upwind Areas.** On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP call requiring the District of Columbia and 22 states, including Ohio, to reduce emissions of NO<sub>x</sub>. The reduction in NO<sub>x</sub> emissions has resulted in lower concentrations of transported ozone entering the Dayton-Springfield area. Emission reductions resulting from regulations developed in response to the NO<sub>x</sub> SIP call are permanent and enforceable.

**b. Emission Reductions**

Ohio is using 2002 for the nonattainment inventory and 2005, one of the years used to demonstrate monitored attainment of the NAAQS, for the attainment inventory. OEPA developed a 2002 base year inventory which they provided to the Lake Michigan Air Directors Consortium (LADCO). The base year inventory was processed by LADCO to develop summer day emissions for use in regional air quality analyses and attainment demonstration modeling. Area source emissions data were taken from the Ohio 2002 periodic inventory submitted to EPA. Onroad mobile source emissions were calculated using MOBILE6.2. Point source emissions data was compiled from Ohio's STARShip annual emissions inventory database and EPA's 2002 Air Markets acid rain database. Nonroad mobile emissions were generated using EPA's National Mobile Inventory Model (NMIM), with the following exceptions. Recreational motorboat populations and spatial surrogates were updated and emissions estimates were developed for aircraft, commercial marine vessels, and railroads, three nonroad categories not included in NMIM. For 2005, OEPA

estimated point, area, and nonroad mobile source emissions by interpolating between the 2002 inventory and the 2009 inventory

described below. Onroad emissions were generated using MOBILE6.2. Based on the inventories described above, Ohio's submittal documents

changes in VOC and NO<sub>x</sub> emissions from 2002 to 2005 for the Dayton-Springfield area. Emissions data are shown in Tables 3 through 5 below.

TABLE 3.—DAYTON-SPRINGFIELD AREA: TOTAL VOC AND NO<sub>x</sub> EMISSIONS FOR NONATTAINMENT YEAR 2002 (TPD)

	Clark		Greene		Miami		Montgomery		Total	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Point .....	0.55	0.11	0.05	9.30	0.29	0.05	2.61	29.32	3.50	38.78
Area .....	10.40	0.70	5.98	0.67	6.34	0.53	22.35	2.43	45.07	4.33
Nonroad .....	1.94	3.56	1.79	3.70	1.74	3.49	8.62	12.17	14.09	22.92
Onroad .....	6.62	14.54	6.22	12.26	4.95	9.88	20.80	41.77	38.59	78.45
Total .....	19.51	18.91	14.04	25.93	13.32	13.95	54.38	85.69	101.25	144.48

TABLE 4.—DAYTON-SPRINGFIELD AREA: TOTAL VOC AND NO<sub>x</sub> EMISSIONS FOR ATTAINMENT YEAR 2005 (TPD)

	Clark		Greene		Miami		Montgomery		Total	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Point .....	0.50	0.11	0.05	8.75	0.30	0.05	2.60	27.69	3.45	36.60
Area .....	11.02	0.75	6.08	0.72	6.46	0.56	22.67	2.62	46.23	4.65
Nonroad .....	1.68	3.16	1.60	3.37	1.55	3.07	7.33	10.64	12.16	20.24
Onroad .....	4.98	11.82	4.74	10.04	3.81	8.17	15.66	33.85	29.19	63.88
Total .....	18.18	15.84	12.47	22.88	12.12	11.85	48.26	74.80	91.03	125.37

TABLE 5.—DAYTON-SPRINGFIELD AREA: COMPARISON OF 2002 AND 2005 VOC AND NO<sub>x</sub> EMISSIONS (TPD)

Sector	VOC			NO <sub>x</sub>		
	2002	2005	Net change (2002–2005)	2002	2005	Net change (2002–2005)
Point .....	3.50	3.45	– 0.05	38.78	36.60	– 2.18
Area .....	45.07	46.23	1.16	4.33	4.65	0.32
Nonroad .....	14.09	12.16	– 1.93	22.92	20.24	– 2.68
Onroad .....	38.59	29.19	– 9.4	78.45	63.88	– 14.57
Total .....	101.25	91.03	– 10.22	144.48	125.37	– 19.11

Table 5 shows that the Dayton-Springfield area reduced VOC emissions by 10.22 tpd and NO<sub>x</sub> emissions by 19.11 tpd between 2000 and 2005. Based on the information summarized above, Ohio has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Areas Have Fully Approved Maintenance Plans Pursuant to Section 175a of the CAA. (Section 107(d)(3)(E)(iv))

In conjunction with its requests to redesignate the Dayton-Springfield nonattainment area to attainment status, Ohio submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the area through 2018.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992 John Calcagni memorandum provides additional

guidance on the content of a maintenance plan. The memorandum clarifies that an ozone Maintenance Plan Should Address The Following Items: The attainment VOC and NO<sub>x</sub> emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The OEPA developed an emissions inventory for 2005, one of the years Ohio used to demonstrate monitored attainment of the 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 4, above.



c. Demonstration of Maintenance

Ohio submitted with the redesignation request a revision to the 8-hour ozone SIP to include a maintenance plan for the Dayton-Springfield area, in compliance with section 175A of the CAA. This demonstration shows maintenance of the 8-hour ozone standard through 2018 by assuring that current and future emissions of VOC and NO<sub>x</sub> for the Dayton-Springfield area remain at or below attainment year emission levels. 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), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio is primarily using inventories developed by LADCO for the years 2009 and 2018. Point and area source

emissions were projected from the 2002 base year to 2009 and 2018 using growth factors. LADCO point source estimates have been supplemented with point source emissions projections based upon data compiled from Ohio's STARShip annual emissions inventory database and statewide EGU NO<sub>x</sub> budgets from the Ohio NO<sub>x</sub> rule. Nonroad mobile emissions were generated for 2009 and 2018 using NMIM, with the following exceptions. Recreational motorboat populations and spatial surrogates were updated and emissions estimates were developed for aircraft, commercial marine vessels, and railroads, three nonroad categories not included in NMIM. The Ohio Department of Transportation prepared onroad mobile source emissions estimates using MOBILE6.2. Modeling for 2009 and 2018 includes implementation of the 7.8 low Reid

Vapor Pressure fuels program for the area. It should be noted that because Ohio is in the process of seeking approval of the removal of the vehicle inspection and maintenance (I/M) program from the Dayton-Springfield SIP, MOBILE6.2 modeling was performed assuming no credit for I/M related emissions reductions in 2009 and 2018. This results in conservatively estimating onroad emissions to be higher in 2009 and 2018 than would be the case if the I/M program were to continue to operate. While the issue of I/M program discontinuation will be addressed in a separate action, it should be noted that Ohio's maintenance plan demonstrates that the area can maintain the standard through 2018 without operation of the I/M program. Emissions estimates are presented in Table 6 below.

TABLE 6.—DAYTON-SPRINGFIELD AREA: COMPARISON OF 2005–2018 VOC AND NO<sub>x</sub> EMISSIONS (TPD)

Sector	VOC				NO <sub>x</sub>			
	2005	2009	2018	Net change 2005–2018	2005	2009	2018	Net change 2005–2018
Point .....	3.45	3.47	3.72	0.27	36.60	36.24	37.94	1.34
Area .....	46.23	47.76	52.75	6.52	4.65	5.09	5.45	0.80
Nonroad .....	12.16	9.62	7.91	-4.25	20.24	16.68	9.84	-10.40
Onroad .....	29.19	20.50	11.66	-17.53	63.88	46.78	18.50	-45.38
Total .....	91.03	81.35	76.04	-14.99	125.37	104.79	71.73	-53.64

The emission projections show that OEPA does not expect emissions in the Dayton-Springfield area to exceed the level of the 2005 attainment year inventory during the maintenance period. In the Dayton-Springfield area, OEPA projects that VOC and NO<sub>x</sub> emissions will decrease by 14.99 tpd and 53.64 tpd, respectively.

As part of its maintenance plan, the State elected to include a “safety margin” for the area. 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 which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The Dayton-Springfield area attained the 8-hour ozone NAAQS during the 2004–2006 time period. Ohio used 2005 as the attainment level of emissions for the area. In the maintenance plan, OEPA projected emission levels for 2018. For Dayton-Springfield, the emissions from point, area, nonroad, and mobile sources in 2005 equaled 91.03 tpd of

VOC. OEPA projected VOC emissions for the year 2018 to be 76.04 tpd of VOC. The SIP submission demonstrates that the Dayton-Springfield area will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 14.99 tpd of VOC for 2018. By this same method, 53.64 tpd (i.e., 125.37 tpd less 71.73 tpd) is the safety margin for NO<sub>x</sub> for 2018. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network

Ohio currently operates two ozone monitors in Clark County, and one ozone monitor each in Greene, Miami, and Montgomery Counties. OEPA has committed to continue operating the ozone monitors located in these counties. OEPA has also committed to consult with EPA prior to making changes to the existing monitoring network, should changes become necessary in the future. OEPA will continue to quality assure and report monitoring data in accordance with 40

CFR part 58 and all other federal requirements.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Dayton-Springfield area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State's plan for verifying continued attainment of the 8-hour standard in the Dayton-Springfield area consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. 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 maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and

implementation of the 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 contained in the SIP before 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 for the Dayton-Springfield area to address possible future ozone air quality problems. The contingency plan adopted by Ohio has two levels of response, depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level Response) or has occurred (Action Level Response).

A Warning Level Response will occur when an annual (1-year) fourth-high monitored daily peak 8-hour ozone concentration of 0.88 ppm is monitored within the maintenance area. A Warning Level Response will consist of a study to determine whether the high ozone value indicates a trend toward higher ozone concentrations and whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue. If so, control measures necessary to reverse the trend will be selected by the State for evaluation and possible adoption. Implementation of necessary controls in response to a Warning Level Response triggering will occur 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 average fourth-high monitored value of 0.85 ppm or greater is monitored within the area, or a violation of the NAAQS (three-year average fourth-high value of 0.85 ppm or greater) is monitored within the area. When an Action Level Response is triggered, OEPA, in conjunction with the metropolitan planning organization or regional council of governments, will determine what control measures are needed to assure future attainment of the NAAQS. 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.

The State will select contingency measures for consideration from a comprehensive list of measures deemed appropriate and effective at the time the selection is made. In its maintenance

plan, OEPA included the following list of possible contingency measures:

- i. Lower Reid vapor pressure gasoline program;
- ii. Tighten RACT on existing sources covered by U.S. EPA Control Technique Guidelines issued in response to the 1990 CAA;
- iii. Apply RACT to smaller existing sources;
- iv. Alternative fuel and diesel retrofit programs for fleet vehicle operations;
- v. Controls on consumer products consistent with those adopted elsewhere in the United States;
- vi. Require VOC or NO<sub>x</sub> emission offsets for new and modified major sources;
- vii. Require VOC or NO<sub>x</sub> emission offsets for new and modified minor sources;
- viii. Increase the ratio of emission offsets required for new sources; and
- ix. Require VOC or NO<sub>x</sub> controls on new minor sources (less than 100 tons).

It should be noted that a lower Reid vapor pressure gasoline program would only be creditable as a contingency measure to the extent that it goes beyond the program currently approved and included in the maintenance plan emissions estimates.

#### g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, Ohio commits to submit to the EPA updated ozone maintenance plans eight years after redesignation of the Dayton-Springfield area to cover an additional 10-year period beyond the initial 10-year maintenance period. As required by section 175(A) of the CAA, Ohio has committed to maintaining the existing controls after redesignation unless the State demonstrates that the standard can be maintained without one or more controls. Ohio commits that any changes to its rules or emission limits applicable to VOC and/or NO<sub>x</sub> sources, as required for maintenance of the ozone standard in the Dayton-Springfield area will be submitted to EPA for approval as a SIP revision.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Ohio for the Dayton-Springfield area meets the requirements of section 175A of the CAA.

#### B. Adequacy of Ohio's MVEBs

##### 1. How Are MVEBs Developed and What Are the MVEBs for the Dayton-Springfield Area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard. These emission control strategy SIP revisions (e.g., reasonable further progress SIP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable 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.

Under 40 CFR Part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. 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 MVEB in the SIP and how to revise the MVEB 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 and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality 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 roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such 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 SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA's 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 codified in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity 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 Dayton-Springfield area's maintenance plan contains new VOC and NO<sub>x</sub> MVEBs for the years 2005 and 2018. The availability of the SIP submission with these 2005 and 2018 MVEBs was announced for public comment on EPA's Adequacy Web page on November 14, 2006 at: <http://www.epa.gov/otaq/stateresources/transconf/currstips.htm>. The EPA public comment period on adequacy of the 2005 and 2018 MVEBs for the Dayton-Springfield area closed on December 14, 2006. No requests for this submittal or adverse comments on the submittal were received during the adequacy comment period. In a letter dated February 9, 2007, EPA informed OEPA that we had found the 2005 and 2018 MVEBs to be adequate for use in transportation conformity analyses. EPA published a **Federal Register** notice announcing the adequacy of the 2005 and 2018 MVEBs on April 3, 2007 (72 FR 15879).

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in the Dayton-Springfield area because EPA has determined that the area can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. OEPA has determined the 2005 MVEBs for the Dayton-Springfield area to be 29.19 tpd for VOC and 63.88 tpd for NO<sub>x</sub>. OEPA has determined the 2018 MVEBs for the

area to be 14.73 tpd for VOC and 21.42 tpd for NO<sub>x</sub>. These MVEBs exceed the onroad mobile source VOC and NO<sub>x</sub> emissions projected by MDEQ for 2018, as summarized in Table 6 above ("onroad" source sector). OEPA decided to include safety margins (described further below) of 3.07 tpd for VOC and 2.92 tpd for NO<sub>x</sub> in the MVEBs to provide for mobile source growth. Ohio has demonstrated that the Dayton-Springfield area can maintain the 8-hour ozone NAAQS with mobile source emissions of 14.73 tpd of VOC and 21.42 tpd of NO<sub>x</sub> in 2018, including the allocated safety margins, since emissions will still remain under attainment year emission levels.

## 2. 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. As noted in Table 6, the Dayton-Springfield area VOC and NO<sub>x</sub> emissions are projected to have safety margins of 14.99 tpd for VOC and 53.64 tpd for NO<sub>x</sub> in 2018 (the difference between the attainment year, 2005, emissions and the projected 2018 emissions for all sources in the Dayton-Springfield area). Even if emissions reached the full level of the safety margin, the area would still demonstrate maintenance since emission levels would equal those in the attainment year.

The MVEBs requested by OEPA contain safety margins for mobile sources smaller than the allowable safety margins reflected in the total emissions for Dayton-Springfield area. The State is not requesting allocation of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the State is requesting MVEBs that exceed the projected onroad mobile source emissions for 2018 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

## VIII. What Actions Is EPA Taking?

EPA is proposing to make a determination that the Dayton-Springfield area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the Dayton-Springfield area. EPA's proposed approval of the maintenance plan is based on Ohio's

demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. After evaluating Ohio's redesignation request, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve the redesignation of the Dayton-Springfield area from nonattainment to attainment for the 8-hour ozone NAAQS. The final approval of this redesignation request would change the official designation for the Dayton-Springfield area from nonattainment to attainment for the 8-hour ozone standard. Finally, EPA is proposing to approve the 2005 and 2018 MVEBs submitted by Ohio in conjunction with the redesignation request.

## IX. 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. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. 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 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). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

*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 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).

*National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 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 impracticable. In reviewing program

submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program 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 Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. 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.

**List of Subjects***40 CFR Part 52*

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

*40 CFR Part 81*

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

Dated: June 12, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*  
[FR Doc. E7-11958 Filed 6-19-07; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 9 and 20**

**[PS Docket No. 07-114; WC Docket No. 05-196; FCC 07-108]**

**Wireless E911 Location Accuracy Requirements; E911 Requirements for IP-Enabled Service Providers**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document the FCC seeks comment on several issues relating to Enhanced 911 (E911) location accuracy and reliability requirements, in order to ensure that E911 service meets the needs of public safety and the American people, while taking into account the evolution in the use of wireless devices and the further development of location technologies.

**DATES:** Written comments on the geographic scope of the current wireless location accuracy requirements and the question of deferring enforcement of

§ 20.18(h) at the PSAP service area level are due on or before July 5, 2007 and reply comments are due on or before July 11, 2007. Written comments on all other questions raised in the NPRM are due on or before August 20, 2007 and reply comments are due on or before September 18, 2007.

**ADDRESSES:** You may submit comments, identified by PS Docket No. 07-114 and WC Docket No. 05-196, by any of the identified methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *Mail:* Follow the instructions for paper filers below.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Carol Simpson, Policy Division, Public Safety and Homeland Security Bureau, (202) 418-2391, or TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal

Communications Commission's *Notice of Proposed Rulemaking* (NPRM) in PS Docket No. 07-114 and WC Docket No. 05-196, FCC 07-108, adopted on May 31, 2007, and released on June 1, 2007. In section III.A of the NPRM, the FCC seeks comment on its tentative conclusion to adopt a proposal by the Association of Public-Safety Communications Officials-International, Inc. (APCO) to clarify § 20.18(h) of the Commission's rules, which specifies the standards for wireless E911 Phase II location accuracy and reliability, to require licensees subject to this rule to satisfy these standards at a geographical level defined by the coverage area of each respective local Public Safety Answering Point (PSAP). We also grant APCO's request for an expedited consideration of its proposal, and seek comment on whether, if we adopt this tentative conclusion, we should defer enforcement of § 20.18(h) to allow wireless carriers to come into compliance.

In section III.B, of the NPRM, the FCC seeks comment on a number of other tentative conclusions and proposals,