

Approval of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes; Ohio

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Contact Information: Angela Lee, 312-353-5142

Action: Proposed rule

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SUMMARY: This action responds to a request from the State of Ohio to redesignate Columbiana, Jefferson and Preble Counties, Ohio to attainment for ozone based on supporting monitoring data the State has submitted. Under the Clean Air Act (CAA), area designations can be changed if sufficient data is available to warrant such change. USEPA is proposing to disapprove the redesignation requests for these areas as revisions to Ohio's State Implementation Plan (SIP) for ozone. The redesignations are being disapproved because the areas lack maintenance plans and adequate demonstrations that the improvement in air quality was due to permanent and enforceable emissions reductions. In addition, USEPA must approve corrections of the enforceability deficiencies in the volatile organic compound (VOC) reasonably available control technology (RACT) rules before these areas can be redesignated to attainment for ozone.

40 CFR Parts 52 and 81

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DATES: Comments on this requested redesignation and SIP revision, and on the proposed USEPA action must be received by January 19, 1994.

ADDRESSES: Written comments should be sent to:
William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.
U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Regulation Development Section, Air Enforcement Branch (AE-17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Region 5, Chicago, Illinois, 60604, (312) 353-5142.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the pre-amended Clean Air Act (CAA), the United States Environmental Protection Agency (USEPA) promulgated the ozone attainment status for each area of every State. For Ohio, USEPA designated Columbiana, Jefferson and Preble Counties as nonattainment areas for ozone. See 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. Public Law No. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. Pursuant to section 107(d)(4)(A) of the amended Act, the Preble County Area, Steubenville Area, and Columbiana County Area in Ohio retained their designations of nonattainment for ozone as a result of monitored violations of the ozone National Ambient Air Quality Standard (NAAQS) during 1988 and 1989.

The Steubenville Area consists of Jefferson County which is a transitional nonattainment area

for ozone. Preble County is also a transitional nonattainment area for ozone. Columbiana County is an incomplete data nonattainment area for ozone. See 56 FR 56694 (November 6, 1991). The Ohio Environmental Protection Agency (OEPA) requested that Preble County be redesignated to attainment in a letter to USEPA dated May 23, 1986. The OEPA requested the redesignation of Jefferson and Columbiana Counties to attainment in a letter to USEPA dated July 14, 1986.

USEPA has provided guidance on the redesignation process as set forth in section 107(d)(3)(E) of the amended Act in two memoranda. The first, dated September 4, 1992, was issued by John Calcagni, Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Redesignation Memorandum). The second, dated September 17, 1993, was signed by Michael Shapiro, Acting Assistant Administrator for Air and Radiation, Subject: 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. These guidance memoranda were used in the evaluation of Ohio's submittal.

After careful review of the request and supporting data, USEPA has concluded that Ohio has not demonstrated that its request meets all of the requirements for redesignation pursuant to CAA section 107(d)(3)(E). Section 107(d)(3)(E) requires that USEPA make the determination that certain criteria have been met before redesignating a nonattainment area to attainment. The required criteria are discussed in the following sections.

Section 107(d)(3)(E)(i). USEPA Must Determine That the Area Has Attained the National Ambient Air Quality Standard (NAAQS)

Consistent with the requirements of 40 CFR 50.9, the most recent three years of ozone air quality monitoring data, 1990-1992, for Preble, Jefferson and Stark Counties do not show any violations of the ozone NAAQS during that period. Since there are no monitors in Columbiana County, the monitoring data for Stark County, which is located upwind of Columbiana County, is used in the evaluation of the air quality in Columbiana County.

Section 107(d)(3)(E) (ii) and (v). USEPA Must Have Fully Approved the Applicable Implementation Plan for the Area Under Section 110(k) and the State Containing Such Area Must Have Met all Requirements Applicable to the Area Under Section 110 and Part D

In 1980, USEPA fully approved Ohio's SIP for Columbiana, Jefferson and Preble Counties as meeting the requirements of section 110(a)(2) and part D of the 1977 Act. (45 FR 72143, 45 FR 72122, 56 FR 56694, 45 FR 72122). The amended Act, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for classified nonattainment areas. For purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the Act, USEPA has reviewed the SIP to ensure that it contains all measures that were due under the amended Act prior to or at the time the State submitted a complete redesignation request.

Because the State submitted its redesignation request prior to enactment, the measures that are

applicable are those that were due upon enactment or prior to redesignation. These requirements are identified and reviewed below.

A. Section 110 Requirements

Although section 110 was amended by the 1990 Amendments, the SIP for Columbiana, Jefferson and Preble Counties meets the requirements of amended section 110(a)(2). A number of requirements did not change in substance-- section 110(a)(2)(B); (C); (E)(i) and (ii); (F); (G); (H); (J); (L) and (M)-- and, therefore, USEPA believes that the pre-amendment SIPs met these requirements. A few of the other requirements deserve a more detailed analysis; this analysis is located in the TSD which is available at the USEPA address listed in the addresses section of this proposal. USEPA believes that the State has met these requirements.

B. Part D Requirements

Before Columbiana, Jefferson and Preble Counties may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D for these areas. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth requirements applicable to nonattainment areas regardless of classification.

Subpart 2 of part D establishes additional requirements for classified ozone nonattainment areas. The three counties for which Ohio seeks redesignation are not classified. (See 56 FR 56694, codified at 40 CFR 81.336). Therefore, in order to be redesignated, the State must meet the applicable requirements of subpart 1 of part D--specifically sections 172(c) and 176--for these areas.

1. Section 172 General Requirements

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years after an area has been designated as nonattainment. With the exception of the RACT requirement, the Administrator has not established a date earlier than November 15, 1993 for submittals for transitional areas. For RACT, USEPA provided in the General Preamble that States must correct all enforceability deficiencies in existing RACT rules prior to the redesignation of ozone nonattainment areas that are not classified. (See 57 FR 13498, 13525). For incomplete data areas, USEPA also established in the General Preamble an earlier due date, November 15, 1992, for the New Source Review (NSR) submittal. (See 57 FR 13527). Since the redesignation requests were submitted prior to November 15, 1992, the section 172 requirements with the exception of RACT are not applicable for purposes of redesignating the Columbiana, Jefferson and Preble county nonattainment areas. With respect to RACT, States must correct enforceability deficiencies of the existing RACT rules before transitional and incomplete data areas can be redesignated.¹ (See 57 FR 13525). Ohio's RACT rules at the time the redesignation requests were submitted contained enforceability deficiencies. The corrections to the RACT rule deficiencies, submitted by Ohio on August 24, 1990, have not yet been approved by USEPA. Therefore, the State does not have a fully approved SIP meeting the

requirements of part D for these areas.

Note 1 Preble County was included in the November 8, 1989 SIP Call, requiring among other things (e.g. emissions inventories) that these areas correct enforceability deficiencies of the existing RACT rules.

2. Section 176 Conformity Plan Provisions

Section 176 of the Act requires States to develop transportation/air quality conformity procedures which are consistent with federal conformity regulations and to submit these procedures as a SIP revision by November 15, 1992. USEPA has not promulgated final conformity regulations; however, the State has committed to develop conformity procedures consistent with the final federal regulations and will submit, if necessary, an appropriate SIP revision according to the schedule set forth in the regulations.

For ozone nonattainment areas, the amended Act specifies new and revised requirements applicable to ozone nonattainment areas. Although these requirements were not applicable for purposes of reviewing the current redesignation requests, they are applicable until these areas are redesignated to attainment areas.

Section 107(d)(3)(iii). USEPA Must Determine That the Improvement in Air Quality Is Due To Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the Applicable Implementation Plan and Applicable Federal Air Pollutant Control Regulations and Other Permanent and Enforceable Reductions

To satisfy this requirement, the State must rely on permanent and enforceable emissions reductions that occurred during the time the State's air quality improved bringing it from nonattainment to attainment. For Jefferson and Columbiana Counties, the State submitted actual and allowable emissions data from specific source for the years 1975 and 1980. The State claimed that the VOC emission reductions from 1975 to 1980 were due to the implementation of RACT rules. However, while USEPA may agree that the rules did contribute emissions reductions, the RACT rules have enforceability deficiencies and, therefore, cannot be considered to be regulations which secure permanent and enforceable emission reductions. In addition, 1980 would not be acceptable as an attainment year since violations of the ozone standard were monitored during the period of 1977 through 1980 in Jefferson County and the 1981-1984 period in Stark County which is upwind of Columbiana County. The State would need to show emissions reductions in these areas which occurred after these violations.

In the redesignation request submittals, Ohio credited mobile source emissions reductions for contributing to the improved air quality in Jefferson and Preble Counties. Ohio cited the Federal Motor Vehicle Control Program (FMVCP) and the inspection and maintenance program in Cincinnati for Preble County and transportation control measures (TCMs) for Jefferson County. However, these emission reductions were not quantified. In addition, since the TCMs have not been included into the (SIP), the resulting emission reductions cannot be considered permanent

and enforceable.

The foregoing discussion leads USEPA to conclude that the State has not adequately demonstrated that the improvement in air quality in Jefferson, Columbiana and Preble Counties was due to permanent and enforceable reductions in emissions.

Section 107(d)(3)(E)(iv). USEPA Must Fully Approve a Maintenance Plan for the Area as Meeting the Requirements of Section 175A

A maintenance plan consists of a maintenance demonstration, an attainment emissions inventory,² a contingency plan, a description of how the State plans to track the progress of the maintenance plan and a commitment from the State to maintain the air quality monitoring network. The State redesignation request submissions did not include maintenance plans for Jefferson, Columbiana and Preble Counties and, therefore, do not meet this requirement.

Note 2 The State did not submit emission inventories for VOC and CO in response to USEPA's SIP Call (which included Preble County) issued on November 8, 1989, and clarified on December 18, 1989. For purposes of the maintenance plan, the State must submit final emission inventories for VOC, CO, and NOX. The maintenance plan inventories will satisfy the inventory requirement of the SIP Call for Preble County.

Proposed Rulemaking Action

As discussed above, USEPA proposes to disapprove the redesignation requests for Columbiana, Preble and Jefferson Counties because not all of the requirements for redesignation under section 107(d)(3)(E) of the Act have been satisfied.

USEPA solicits comment on this proposed rulemaking action. Comments received by January 19, 1994, will be considered in the development of USEPA's final rulemaking action.

This action has been classified as a Table 2 action under USEPA guidance establishing SIP processing procedures. (See 54 FR 2214 (January 19, 1989), as revised by memorandum, dated October 4, 1993, "Changes to State Implementation (SIP) Tables," from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, to Regional Administrator, Regions I-X.) On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request.

This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C.

603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's denial of the State's redesignation request under section 107(d)(3)(E) does not affect any existing requirements applicable to small entities nor does it impose new requirements. The area retains its current designation status and will continue to be subject to existing statutory and regulatory requirements. To the extent that the State must adopt regulations for any area based on its nonattainment status, USEPA will review the effect of such regulations on small entities at the time of submittal. Therefore, I certify that denial of the redesignation request will not affect a substantial number of small entities.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control.

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

Dated: November 23, 1993.

David A. Ullrich,
Acting Regional Administrator.

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Legal Publications:

- Pub. Law 95-95 SEC. 129 -- Clean Air Act Amendments of 1977
- Pub. Law 84-159 SEC. 107 110 172 176 -- Air Pollution Control Act (Act of 7/14/55)
- Pub. Law 101-549 SEC. 102 -- Clean Air Act, Amendments (11/15/90)
- Pub. Law 91-604 SEC. 4 -- Noise Pollution and Abatement Act of 1970; Clean Air Act

Amendments of 1970