



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2016-0395; FRL-9963-01-Region 5]

**Air Plan Approval; Ohio; Redesignation of the Cleveland Area to
Attainment of the 2008 Lead Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On June 29, 2016, the Ohio Environmental Protection Agency (OEPA) submitted a request for the Environmental Protection Agency (EPA) to redesignate the partial Cuyahoga County nonattainment area (known as and referred to as the Cleveland area) to attainment for the 2008 national ambient air quality standards (NAAQS or standards) for lead. EPA finds that the Cleveland area meets the requirements for redesignation and is also approving several additional related actions. EPA is approving, as revisions to the Ohio state implementation plan (SIP), reasonably available control measure/reasonably available control technology (RACM/RACT) requirements, emissions inventory requirements, and the state's plan for maintaining the 2008 lead NAAQS through 2030 for the area. EPA is taking these actions in accordance with the Clean Air Act (CAA) and EPA's implementation regulations regarding the 2008 lead NAAQS.

DATES: This direct final rule will be effective **[insert date 60**

days after date of publication in the Federal Register], unless EPA receives adverse comments by [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2016-0395 at <http://www.regulations.gov> or via email to blakley.pamela@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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

- I. What action is EPA taking?
- II. Why is EPA concerned about lead?
- III. What is the background for these actions?
- IV. What are the criteria for redesignation to attainment?
- V. What is EPA's analysis of the state's request?
- VI. What are the effects of EPA's actions?
- VII. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is taking several actions related to the redesignation of the Cleveland area to attainment for the 2008 lead NAAQS. EPA is approving Ohio's lead maintenance plan for the Cleveland area as a revision to the Ohio SIP. EPA is also approving RACM/RACT that satisfies 172(c)(1) requirements and is approving the 2013 lead base year emission inventories, which satisfy the requirement in section 172(c)(3) for a current, accurate and comprehensive emission inventory.

EPA finds that Ohio meets the requirements for redesignation of the Cleveland area to attainment of the 2008 lead NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus granting Ohio's request to change the designation of the Cleveland area from nonattainment to attainment for the 2008 lead NAAQS. EPA's analysis for these actions are discussed in Section V. of today's rulemaking.

II. Why is EPA concerned about lead?

Lead is a metal found naturally in the environment as well as in manufactured products. However, lead has serious public health effects and depending on the level of exposure can adversely affect the nervous system, kidney function, immune system, reproductive and developmental systems and the cardiovascular system. Infants and young children are especially sensitive to even low levels of lead, which may contribute to behavioral problems, learning deficits and lowered IQ. Today the highest levels of lead in the air are usually found near lead smelters. In Cleveland, the Ferro facility was the primary source of lead in the area. The primary manufacturing process employing lead at the facility is the production of frit. Frits compounds are used for glazing surfaces such as porcelain, ceramic, enamel and glass. The lead raw material used at the Ferro facility is used primarily in leaded glass production.

III. What is the background for these actions?

On November 12, 2008 (73 FR 66964), EPA revised the 1978 NAAQS and established the 2008 primary and secondary lead NAAQS from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0.15 $\mu\text{g}/\text{m}^3$ based on a maximum arithmetic three-month mean concentration for a three-year period. See 40 CFR 50.16. On November 22, 2010 (75 FR 71033), EPA published its initial air quality designations and classifications for the 2008 lead NAAQS based upon air quality monitoring data for calendar years 2007-2009. These designations became effective on December 31, 2010.¹ The Cleveland area was designated nonattainment for the 2008 lead NAAQS. See 40 CFR 81.336. OEPA submitted its redesignation request to EPA on June 29, 2016.

IV. What are the criteria for redesignation to attainment?

The CAA sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) the Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator

¹ EPA completed a second round of designations for the 2008 lead NAAQS on November 22, 2011, see 76 FR 72097, and designated one additional area on September 3, 2014. See 79 FR 52205. No additional areas in Ohio were designated as nonattainment for the 2008 lead NAAQS after the initial round of designations.

determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, or other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

V. What is EPA's analysis of the state's request?

EPA is approving the redesignation of the Cleveland area to attainment of the 2008 lead NAAQS and is also approving Ohio's maintenance plan, emissions inventory, and RACM for the area. The bases for these actions follow.

A. Attainment Determination and Redesignation The Area Has Attained the 2008 Lead NAAQS (Section 107(d)(3)(E)(i))

In a rulemaking on May 26, 2015, EPA determined that the Cleveland area was attaining the standard with a monitored air quality design value of $0.03 \mu\text{g}/\text{m}^3$ for the period of 2010-2012, well below the standard of $0.15 \mu\text{g}/\text{m}^3$. See 80 FR 29964.

EPA today is reaffirming that the Cleveland, Ohio area is attaining the 2008 lead NAAQS based on the most current data with a design value equal to or less than $0.15 \mu\text{g}/\text{m}^3$. This finding is based on complete, quality-assured and certified lead

monitoring data for the 2013-2015 period. The 2013-2015 design value for the area is 0.02 $\mu\text{g}/\text{m}^3$ and preliminary 2014-2016 data indicate that the area is attaining with no violations. The monitoring data for the 3 years (2013-2015) can be found at <https://www.epa.gov/air-trends>.

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

EPA has determined that Ohio has met all currently applicable SIP requirements for purposes of redesignation for the Cleveland area under section 110 of the CAA (general SIP requirements). In addition, with the exception of the emissions inventory under section 172(c)(3) and RACM/RACT requirements under 172(c)(1), all applicable planning requirements of the Ohio SIP for purposes of redesignation have either been approved or have been suspended by either a clean data determination or determination of attainment. As discussed below, in this action, EPA is approving Ohio's 2013 emissions inventory as meeting the section 172(c)(3) comprehensive emissions inventory requirement, as well as approving RACM provisions as meeting the 172(c)(1) requirement. Thus, we are determining that the Ohio submittal meets all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA, in accordance with sections 107(d)(3)(E)(ii) and 107(d)(3)(E)(v).

In making these determinations, we have ascertained which SIP requirements are applicable for purposes of redesignation, and concluded that the Ohio SIP includes measures meeting those requirements and that they are fully approved under section 110(k) of the CAA.

a. Ohio Has Met All Applicable Requirements for Purposes of Redesignation of the Cleveland Area under Section 110 and Part D of the CAA

i. Section 110 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, among other things, must include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; include criteria for stationary source emission

control measures, monitoring, and reporting; include provisions for air quality modeling; and provide 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.

EPA interprets the "applicable" requirements for an area's redesignation to be those requirements linked with a particular area's nonattainment designation. Therefore, we believe that the section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status, such as the "infrastructure SIP" elements of section 110(a)(2), are not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment, and thus EPA does not interpret such requirements to be relevant applicable requirements to evaluate in a redesignation. For example, the requirement to submit state plans addressing interstate transport obligations under section 110(a)(2)(D)(i)(I) continue to apply to a state regardless of the designation of any one particular area in the state, and thus are not applicable requirements to be evaluated in the redesignation context.

EPA has applied this interpretation consistently in many

redesignations for decades. See e.g., 81 FR 44210 (July 7, 2016) (final redesignation for the Sullivan County, Tennessee area); 79 FR 43655 (July 28, 2014) (final redesignation for Bellefontaine, Ohio lead nonattainment area); 61 FR 53174-53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997) (proposed and final redesignation for Reading, Pennsylvania ozone nonattainment area); 61 FR 20458 (May 7, 1996) (final redesignation for Cleveland-Akron-Lorain, Ohio ozone nonattainment area); and 60 FR 62748 (December 7, 1995) (final redesignation of Tampa, Florida ozone nonattainment area). See also 65 FR 37879, 37890 (June 19, 2000) (discussing this issue in final redesignation of Cincinnati, Ohio 1-hour ozone nonattainment area); 66 FR 50399 (October 19, 2001) (final redesignation of Pittsburgh, Pennsylvania 1-hour ozone nonattainment area).

We have reviewed the Ohio SIP and determined that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of Ohio's SIP addressing section 110 requirements (including provisions addressing lead), at 40 CFR 52.1870.

On October 12, 2011, and supplemented on June 7, 2013, Ohio made submittals addressing "infrastructure SIP" elements for the lead NAAQS required under CAA section 110(a)(2). EPA approved

the lead infrastructure SIPs in 2014, however, as noted above, the requirements of section 110(a)(2) are statewide requirements that are not linked to the lead nonattainment status of the Cleveland area. Therefore, these SIP elements are not applicable requirements for purposes of review of the state's lead redesignation request.

ii. Part D Requirements

EPA has determined that upon approval of the base year emissions inventory and RACM provisions discussed in this rulemaking, the Ohio SIP will meet the requirements applicable for purposes of redesignation under part D of the CAA for the Cleveland lead nonattainment area. Subpart 1 of part D sets forth the general nonattainment requirements applicable to all nonattainment areas.

1) Section 172 Requirements.

Section 172(c) sets out general nonattainment plan requirements. A thorough discussion of these requirements can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) ("General Preamble"). EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not "applicable" for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In

the General Preamble, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. See 57 FR at 13564. EPA noted that the requirements for reasonable further progress and other measures designed to provide for an area's attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements "have no meaning" for an area that has already attained the standard. *Id.* This interpretation was also set forth in the Calcagni² Memorandum.

EPA's understanding of section 172 also forms the basis of its Clean Data Policy. Under the Clean Data Policy, EPA promulgates a determination of attainment, published in the Federal Register and subject to notice-and-comment rulemaking, and this determination formally suspends a state's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for reasonable further progress (RFP), RACM, and contingency measures under section 172(c)(9). The Clean Data Policy has been codified in regulations regarding the implementation of the ozone and PM_{2.5} NAAQS. See e.g., 70 FR 71612 (November 29, 2005) and 72 FR 20586 (April 25, 2007). The

2 September 4, 1992, Memorandum from John Calcagni, Director, Air Quality Management Division (EPA), entitled, "Procedures for Processing Requests to Redesignate Areas to Attainment."

Clean Data Policy has also been specifically applied in a number of lead nonattainment areas where EPA has determined that the area is attaining the lead NAAQS. See, e.g., 79 FR 46212 (August 7, 2014) (proposed determination of attainment of Lyons, Pennsylvania lead nonattainment area); 80 FR 51127 (determination of attainment of Eagan, Minnesota lead nonattainment area). EPA finalized a Clean Data Determination under this policy for the Cleveland lead nonattainment area in 2015. 80 FR 29964 (May 26, 2015).

EPA's long-standing interpretation regarding the applicability of section 172(c)'s attainment planning requirements for an area that is attaining a NAAQS applies in this redesignation of the Cleveland lead nonattainment area as well, with the exception of the applicability of the requirement to implement all RACM under section 172(c)(1). On July 14, 2015, the United States Court of Appeals for the Sixth Circuit (6th Circuit) ruled that, in order to meet the requirement of section 107(d)(3)(E)(ii), states are required to submit plans addressing RACM/RACT under section 172(c)(1) and EPA is required to approve those plans prior to redesignating the area, regardless of whether the area is attaining the standard. *Sierra Club v. EPA*, 793 F.3d 656 (6th Cir. 2015). Because Ohio is within the jurisdiction of the 6th Circuit, EPA is acting in accordance with the *Sierra Club* decision by approving RACM

provisions in parallel with this redesignation action.³

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the primary NAAQS. Under this requirement, a state must consider all available control measures, including reductions that area available from adopting RACT on existing sources, for a nonattainment area and adopt and implement such measures as are reasonably available in the area as components of the area's attainment demonstration. As discussed in further detail below, EPA is today approving Ohio's RACM submission. Therefore, Ohio has met its requirements under CAA section 172(c)(1) and section 107(d)(3)(E)(v).

As noted above, the remaining section 172(c) "attainment planning" requirements are not applicable for purposes of evaluating the state's redesignation request. Specifically, the reasonable further progress (RFP) requirement under section 172(c)(2), which is defined as progress that must be made toward attainment, the requirement to submit section 172(c)(9) contingency measures, which are measures to be taken if the area fails to make reasonable further progress to attainment, and

³ Although the approach being implemented here is inconsistent with the Agency's longstanding national policy, such deviation is required in order to act in accordance with a Circuit Court decision. Consistent with 40 CFR 56.5(b), the Region does not need to seek concurrence from EPA Headquarters for such deviation in these circumstances. See also 81 FR 51102 (August 3, 2016).

section 172(c)(6)'s requirement that the SIP contain control measures necessary to provide for attainment of the standard, are not applicable requirements that Ohio must meet here because the Cleveland area has monitored attainment of the 2008 lead NAAQS. As noted above, EPA issued a determination of attainment (or clean data determination) for the Cleveland area in May 2015, which formally suspended the obligation to submit any of the attainment planning SIPs. 80 FR 29964 (May 26, 2015).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Ohio submitted a 2013 base year emissions inventory along with their redesignation request on June 29, 2016, and requested that the 2013 inventories be used as the most accurate and current inventory. As discussed below in section IV.B., EPA is approving the 2013 base year inventory as meeting the section 172(c)(3) emissions inventory requirement for the Cleveland area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Ohio's current NSR program on January 10, 2003 (68 FR 1366). In addition, the state's maintenance plan

does not rely nonattainment NSR, therefore having a fully approved NSR program is not an applicable requirement, but that, nonetheless, we have approved the state's program.⁴

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we find that the Ohio SIP meets the section 110(a)(2) applicable requirements for purposes of redesignation.

2) 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 and transit 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). In light of the elimination of lead additives in gasoline, transportation conformity does not apply to the lead NAAQS. See 73 FR 66964, 67043 n.120. EPA approved Ohio's general conformity SIP on March 11, 1996 (61 FR 9646).

b. Ohio Has a Fully Approved Applicable SIP under

⁴ A 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."

Section 110(k) of the CAA

Upon final approval of Ohio's comprehensive 2013 emissions inventories and approval of RACM for the Cleveland lead area, EPA will have fully approved the Ohio SIP for the Cleveland area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). EPA may rely on prior SIP approvals in approving a redesignation request. See Calcagni Memorandum at 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). EPA also relies on measures approved in conjunction with a redesignation action. See, e.g., 68 FR 25413 (May 12, 2003) (approving I/M program for St. Louis) and 68 FR 25426 (May 12, 2003) (approving redesignation relying in part on I/M program approval). As discussed in the prior section, Ohio has adopted and submitted, and EPA has fully approved, a number of required SIP provisions addressing the 2008 lead standards. Of the CAA requirements applicable to this redesignation request, only two remain—the emissions inventory requirement of section 172(c)(3) and the RACM requirement of section 172(c)(1).

In today's action, EPA is approving Ohio's 2013 emissions inventories for the Cleveland area as meeting the requirement of section 172(c)(3) of the CAA, and approving RACM provisions meeting the requirement of 172(c)(1). No Cleveland area SIP

provisions are currently disapproved, conditionally approved, or partially approved. Therefore, the Administrator has fully approved the applicable requirements for the Cleveland area under section 110(k) in accordance with section 107(d)(3)(E)(ii).

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

EPA believes that Ohio has demonstrated that the observed air quality improvement in the Cleveland area is due to permanent and enforceable reductions in emissions at the Ferro facility. An analysis performed by Ohio identified malfunctions and poor maintenance of Ferro's bag houses (dust collectors) as the primary cause of violations in 2010. The bag houses, which have a normal efficiency of 99%, capture a majority of the lead emissions from the facility. Ohio required Ferro, as part of the permanent and enforceable permit to install, to decrease emission limits for lead and create a preventative maintenance plan (PMP) to maintain the bag house controls at maximum efficiency. The lower emission limits and PMP at Ferro resulted in monitored values well below the standard. Emissions went down 48% from 0.00605 tons per year (tpy) in nonattainment year

2010, to 0.00071 tpy in 2013 after the new emission limits and PMP were implemented (See Table 1). Both the PMP and the emission limit changes are permanent and enforceable through the facility's updated permit to install. In addition to the permit to install, EPA is also approving these measures into the SIP as providing maintenance and as being measures that meet the RACM requirement.

3. Ohio's Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with Ohio's request to redesignate the Cleveland nonattainment area to attainment status, Ohio has submitted a SIP revision to provide for maintenance of the 2008 lead NAAQS in the area through 2030.

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 EPA approves a redesignation to attainment. Eight years after 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 lead NAAQS violations.

The September 4, 1992, Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: the attainment emissions inventory, 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.

As discussed in detail in the section below, the state's maintenance plan submission expressly documents that the area's emissions inventory and modeling show that the area will remain below the attainment year inventories through 2030, more than ten years after redesignation.

b. Attainment Inventory

Ohio developed an emissions inventory for lead for 2013, one of the years in the period during which the Cleveland area monitored attainment of the 2008 lead standard. The attainment level of emissions is summarized in Table 1, along with future maintenance projections.

c. Demonstration of Maintenance

Ohio submitted a revision to its lead SIP to include a maintenance plan for the Cleveland area, as required by section 175A of the CAA. Ohio's plan demonstrates maintenance of the 2008 lead standard through 2030 by showing that current and future emissions of lead in the area remain at or below attainment year emission levels, and in addition that the area can show modeled attainment of the standard with the permitted and SIP approved emission limits. EPA is primarily relying on the emissions inventory comparison showing the decline in emissions between 2013 and 2030, but we note that the modeling conducted in 2010 using the permitted emission limits (see docket) also supports the conclusion that they will model attainment in the future.

As discussed in the section below, the state's maintenance plan submission expressly documents that the area's emissions inventories will remain below the attainment year inventories through 2030.

Emissions from the Ferro facility's operations are calculated from the amount of lead oxide (tons) used during the facility's leaded glass operations. As shown in Table 1 as the 2010 baseline, the emissions were 0.00605 tons per year (tpy). Production at the Ferro facility is projected to go down slightly in the future based on current and historical trends in

leaded glass demand, resulting in a projected decrease in lead emissions. EPA is also approving into the SIP, as part of the maintenance plan and as meeting RACM requirements, the emission limits and PMP provisions needed to attain and maintain the 2008 lead standard as outlined in Ohio's request and provided in the docket which includes a 0.3 tpy combined emissions limit for units P064 through P069 as well as the base control devices and upgrades, in addition the 0.009 tpy limit for P071 and all base control devices and upgrades for units P001, P071, P100, P101, and P951.

In addition to projected emission reductions for the maintenance year of 2030, Ohio also conducted a modeling analysis to show that there would be no violation of the 2008 lead standard with the emission limits outlined in the permanent and enforceable limits and PMP that are now in place through the permit to install and what EPA is approving as provisions into the maintenance plan portion of Ohio's SIP.

Table 1. Comparison of 2010, 2013, 2021, and 2030 Lead Emission Totals (tpy) for the Cleveland Area.

2010 Baseline (nonattainment year)	2013 (Attainment)	2021 (Interim)	2030 (Maintenance)	Safety Margin
0.006050	0.000705	0.000732	0.000511	0.000194

d. Monitoring Network

Ohio currently operates one lead monitor in the Cleveland, Ohio area. Ohio's maintenance plan includes a commitment to

continue to operate its EPA-approved monitoring network to demonstrate ongoing compliance with the NAAQS.

e. Verification of Continued Attainment

Ohio remains obligated to continue to quality-assure monitoring data and enter all data into the Air Quality System (AQS) in accordance with Federal guidelines. Ohio will use these data, supplemented with additional information as necessary, to assure that the area continues to attain the standard. Ohio will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions. Both of these actions will help to verify continued attainment in accordance with 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 pollution control measures that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

Ohio's contingency plan defines a warning level and action level response. The warning level response will trigger when a lead monitor three-month rolling average exceeds $0.135 \mu\text{g}/\text{m}^3$ in the maintenance area. If a warning level response is triggered, Ohio will conduct a study to determine whether the lead values indicate a trend toward exceeding the standard and what control measure would be necessary to reverse the trend within 12 months of the conclusion of the calendar year. The action level response will be prompted by the determination of the warning level study that a reverse of the trend is needed, or by the three-month rolling average exceeding $0.143 \mu\text{g}/\text{m}^3$. The action level response will require Ohio to work with the culpable entity to evaluate and implement the needed control measures to bring the area into attainment within 18 months of the conclusion of the calendar year that triggered the response.

Currently, no new sources of lead are projected for the Cleveland area, so all control measures would be determined

after an analysis of the situation, but could include control devices, secondary controls, or improved housekeeping and maintenance. Ohio commits to continue implementing SIP requirements upon and after redesignation.

EPA believes that Ohio's contingency measures, as well as the commitment to continue implementing existing SIP requirements, satisfy the pertinent requirements of section 175A(d).

As required by section 175A(b) of the CAA, Ohio commits to submit to the EPA an updated lead maintenance plan eight years after redesignation of the Cleveland area to cover an additional ten year period beyond the initial ten year maintenance period.

For the reasons set forth above, EPA is approving Ohio's 2008 lead maintenance plan for the Cleveland area as meeting the requirements of CAA section 175A.

B. Comprehensive Emissions Inventory

As discussed above, section 172(c)(3) of the CAA requires areas to submit a comprehensive emissions inventory including all lead sources in the nonattainment area. EPA is approving the Ohio 2013 emissions inventory outlined in Table 1 for the Ferro facility as fulfilling this requirement (see docket for full emissions inventory). EPA believes that the emissions inventories are complete and accurate, and meet the requirement of CAA section 172(c)(3).

C. RACM Requirements

As discussed above, section 172(c)(1), as interpreted by the 6th Circuit decision, requires areas to have an approved RACM/RACT provision in order to be redesignated. EPA is approving the existing controls and maintenance provisions for the Ferro facility as fulfilling this requirement, including the 0.3 tpy combined emissions limit for units P064 through P069 as well as the base control devices and upgrades, in addition the 0.009 tpy limit for P071 and all base control devices and upgrades for units P001, P071, P100, P101, and P951. The current controls and PMP have brought the area into attainment and constitute RACM, and meets the requirement of CAA section 172(c)(1).

VI. What are the effects of EPA's actions?

Approval of this redesignation request changes the official designation of the Cleveland, Ohio area for the 2008 lead NAAQS, found at 40 CFR part 81, from nonattainment to attainment. This action also approves as revisions to the Ohio SIP for the Cleveland area, the maintenance plan for the 2008 lead standard, Ohio's 2013 emissions inventory for the Cleveland area satisfies the requirement of section 172(c)(3), and approves that the existing limits and PMP in the construction permit satisfies the RACM/RACT 172(c)(1) requirement.

We are publishing this action without prior proposal

because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after the date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after the date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[insert date 60 days after the date of publication in the Federal Register]**.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501

et seq.);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b) (1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: May 11, 2017.

Cheryl L. Newton,
Acting Regional Administrator, Region 5.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

2. In §52.1870 the table in paragraph (e) is amended by adding a new entry for “Lead (2008)” at the end of the section titled “Summary of Criteria Pollutant Maintenance Plan” to read as follows:

§52.1870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
* * * * *				
Summary of Criteria Pollutant Maintenance Plan				
* * * * *				
Lead (2008)	Cleveland (partial Cuyahoga County)	6/29/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	Includes approval of the 2013 lead base year emissions inventory and emission limits and PMP as RACM for the Ferro facility.
***	***	*		

3. Section 52.1893 is amended by adding paragraphs (c), (d), and (e) to read as follows:

§52.1893 Control strategy: Lead (Pb).

* * * * *

(c) Ohio's 2013 lead emissions inventory for the Cleveland area as, as submitted on June 29, 2016, satisfying the emission inventory requirements of section 172(c)(3) of the Clean Air Act for the Cleveland area.

(d) Approval – The 2008 lead maintenance plan for the Cleveland, Ohio nonattainment area has been approved as submitted on June 29, 2016.

(e) EPA is approving the existing controls and maintenance provisions in the permit to install for the Ferro facility including the preventative maintenance plan, 0.3 tpy combined emissions limit for units P064 through P069 as well as the base control devices and upgrades, in addition the 0.009 tpy limit for P071 and all base control devices and upgrades for units P001, P071, P100, P101, and P951 as fulfilling the RACM/RACT 172(c)(1) requirement.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

5. Section 81.336 is amended by revising the entry for "Cleveland, OH:" in the table entitled "Ohio-2008 Lead NAAQS" to read as follows:

§81.336 Ohio.

* * * * *

Ohio-2008 Lead NAAQS

Designated Area	Designation for the 2008 NAAQS ^a	
	Date ¹	Type
* * * * *		
Cleveland, OH:		
Cuyahoga County (part)	[insert date of publication in the Federal Register]	Attainment
The portions of Cuyahoga County that are bounded on the west by Washington Park Blvd./Crete Ave./East 49th St., on the east by East 71st St., on the north by Fleet Ave., and on the south by Grant Ave.		
* * * * *		

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ December 31, 2011, unless otherwise noted.

[FR Doc. 2017-10968 Filed: 5/30/2017 8:45 am; Publication Date: 5/31/2017]