

Governments, because it would 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.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant

environmental impact from this proposed rule.

### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.163 to read as follows:

#### § 117.163 Islais Creek (Channel).

(a) The draw of the Illinois Street Bridge, mile 0.3 at San Francisco, shall open on signal if at least 72 hours notice is given to the Port of San Francisco.

(b) The draw of the 3rd Street Bridge, mile 0.4 at San Francisco, shall open on signal if at least 72 hours notice is given to the San Francisco Department of Public Works.

Dated: July 10, 2008.

**J. E. Long,**

*Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.*

[FR Doc. E8–16896 Filed 7–23–08; 8:45 am]

**BILLING CODE 4910–15–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R05–OAR–2007–1100; FRL–8697–2]

#### Approval and Promulgation of Implementation Plans; Ohio; Removal of Vehicle Inspection and Maintenance Programs for Cincinnati and Dayton

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation plan (SIP) revision submitted by the State of Ohio to allow the State to discontinue the vehicle inspection and maintenance (I/M) program in the Cincinnati-Hamilton and Dayton-Springfield areas, also known as the E-Check program. The revision specifically requests that the E-Check program regulations be moved from the active control measures portion of the SIP to the contingency measures portion of the Cincinnati-Hamilton and Dayton-Springfield ozone maintenance plans. The Ohio Environmental Protection Agency (Ohio EPA) submitted this request on April 4, 2005,

and supplemented it on May 20, 2005, February 14, 2006, May 9, 2006, October 6, 2006, and February 19, 2008. EPA is proposing to approve Ohio's request because the State has demonstrated that discontinuing the I/M program in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the fine particulate NAAQS or with the attainment and maintenance of other air quality standards.

**DATES:** Comments must be received on or before August 25, 2008.

**ADDRESSES:** Submit comments, identified by Docket ID No. EPA–R05–OAR–2007–1100, 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) 353–6960.

4. *Mail*: John Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: John Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 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–2007–1100. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 Francisco J. Acevedo at (312) 886-6061 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Acevedo, Environmental Protection Specialist, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052.

**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 Should I Consider as I Prepare My Comments for EPA?
  - A. Submitting CBI
  - B. Tips for Preparing Your Comments
- II. What Are EPA’s Proposed Actions?
- III. What Changes to the Ohio SIP Have Been Submitted To Support the Removal of the I/M Programs in the Cincinnati-Hamilton and Dayton-Springfield Areas?
- IV. What Criteria Apply to Ohio’s Request?
- V. Has Ohio Met the Criteria for Converting the I/M Programs in the Cincinnati-Hamilton and Dayton-Springfield Areas to Contingency Measures?
- VI. What Are Our Conclusions Concerning the Removal of I/M Programs in the Cincinnati-Hamilton and Dayton-Springfield Areas?

## VII. Statutory and Executive Order Reviews

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

#### A. Submitting CBI

Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

#### B. Tips for Preparing Your Comments

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 Are EPA’s Proposed Actions?

EPA is proposing to approve a SIP revision submitted by the State of Ohio to modify the SIP such that the vehicle inspection and maintenance (I/M) program in the Cincinnati-Hamilton and Dayton-Springfield areas, also known as the E-Check program, is no longer an active program in these areas and is instead a contingency measure in these areas’ maintenance plans.

### III. What Changes to the Ohio SIP Have Been Submitted To Support the Removal of the I/M Programs in the Cincinnati-Hamilton and Dayton-Springfield Areas?

Ohio EPA submitted a revision to the Cincinnati-Hamilton and Dayton-Springfield portions of the Ohio SIP on April 4, 2005. This revision requested that the Ohio I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas be moved from the active control measures portion of the SIP to the contingency measures portion of the Cincinnati-Hamilton 1-Hour Ozone Maintenance Plan and the Dayton-Springfield 8-Hour Ozone Maintenance Plan.

The Cincinnati-Hamilton and Dayton-Springfield areas were required to implement “basic” I/M programs under section 182(b)(4) of the Act because they were originally designated as moderate 1-hour ozone nonattainment areas. In order to maximize nitrogen oxides (NO<sub>x</sub>), volatile organic compound (VOC) and carbon monoxide (CO) emissions reductions from the I/M program, Ohio EPA chose to implement an “enhanced” program in those areas and incorporated an on-board diagnostic (OBD) component into the programs. EPA fully approved Ohio’s I/M programs on April 4, 1995 (60 FR 16989). The E-Check programs began operation on January 2, 1996, to meet nonattainment area requirements for the ozone NAAQS effective at the time.<sup>1</sup> As noted in other portions of this action, both the Cincinnati-Hamilton and Dayton-Springfield areas have been redesignated to attainment for the 1-hour ozone standard and the Dayton-Springfield area has also been redesignated to attainment for the .08 ppm 8-hour ozone standard. The Cincinnati-Hamilton and Dayton-Springfield areas have approved maintenance plans for the 1-hour standard and the Dayton area has an approved maintenance plan for the .08 ppm 8-hour standard. Both of these maintenance plans show how the areas plan to maintain the standard without the need of emission reductions from E-Check.

The Cincinnati ozone nonattainment area also includes three counties (Boone, Campbell, and Kenton Counties) in Northern Kentucky. The discontinuation of the I/M program in these Kentucky counties was approved on October 4, 2005, at 70 FR 57750.

<sup>1</sup> Although the E-Check program began on January 1, 1996, there was a vehicle I/M program operating in the Cincinnati-Hamilton area prior to that date, and prior to November 15, 1990.

#### IV. What Criteria Apply to Ohio's Request?

Areas designated nonattainment for the ozone NAAQS and classified "moderate" are required by the Clean Air Act to implement vehicle I/M. See CAA section 182(b)(4).<sup>2</sup> These areas are no longer designated nonattainment for the 1-hour ozone standard. While Cincinnati-Hamilton is designated nonattainment for the .08 ppm 8-hour standard, it is not classified for that standard.<sup>3</sup> Thus, these areas are not currently subject to the I/M requirement based on their current nonattainment classifications under the CAA and the state may move them to the contingency measures portion of the SIP,<sup>4</sup> provided the state can satisfy the anti-backsliding requirements of the CAA (sections 110(l) and 193) and EPA's ozone implementation rule, 40 CFR 51.905.

CAA section 110(l) provides:

Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

In the absence of an attainment demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the Clean Air Act under section 110(l), EPA believes it is appropriate to allow States to substitute equivalent emissions reductions to compensate for the control measure being moved from the active portion of the SIP to the contingency measure portion of the SIP, as long as actual emissions in the air are not increased.

"Equivalent" emissions reductions mean reductions which are equal to or greater than those reductions achieved by the control measure to be removed from the active portion of the SIP. To show the compensating emissions

reductions are equivalent, modeling or adequate justification must be provided. (EPA memorandum from John Calcagni, Director, Air Quality Management Division, to the Air Directors in EPA Regions 1–10, September 4, 1992, pages 10 and 13.) As stated in the notice proposing approval to remove I/M from the active measures of the Northern Kentucky SIP (70 FR 17029, 17033), the compensating, equivalent reductions must represent actual, new emissions reductions achieved in a contemporaneous time frame to the termination of the existing SIP control measure, in order to preserve the status quo level of emissions in the air. In addition to being contemporaneous, the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP.

Section 193 of the Act provides in part that:

No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

In addition, EPA adopted anti-backsliding requirements as part of the implementation rule for the .08 ppm 8-hour ozone standard. See 40 CFR 51.905. For areas, such as these, that were required under the Act to implement basic I/M, EPA applies the provisions of the implementation rule in concert with the provisions of 40 CFR 51.372(c).

The provisions of 40 CFR 51.372(c) allow certain areas seeking redesignation to submit only the authority for an I/M program (together with certain commitments), rather than an implemented program, in satisfaction of the applicable I/M requirements. Under these I/M rule provisions, a basic I/M area (i.e., was required to adopt a basic I/M program) which has been redesignated to attainment for the 1-hour ozone NAAQS can convert the I/M program to a contingency measure as part of the area's 1-hour ozone maintenance plan, notwithstanding the anti-backsliding provisions in EPA's 8-hour ozone implementation rule published April 30, 2004 (69 FR 23858). A basic I/M area which is designated nonattainment for the 8-hour ozone NAAQS, yet not required to have an I/M program based on its 8-hour ozone classification, continues to have the option to move its I/M program to a contingency measure pursuant to the

provisions of 40 CFR 51.372(c), provided the 8-hour ozone nonattainment area can demonstrate that doing so will not interfere with its ability to comply with any NAAQS or any other applicable Clean Air Act requirement pursuant to section 110(l) of the Act. For further details on the application of 8-hour ozone anti-backsliding provisions to basic I/M programs in 1-hour ozone maintenance areas, please refer to the May 12, 2004, EPA Memorandum from Tom Helms, Group Leader, Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards, and Leila H. Cook, Group Leader, State Measures and Conformity Group, Office of Transportation and Air Quality, to the Air Program Managers, entitled "1-Hour Ozone Maintenance Plans Containing Basic I/M Programs." A copy of this memorandum may be obtained at <http://www.epa.gov/ttn/oarpg/t1pgm.html> under the file date "5–12–04."

#### V. Has Ohio Met the Criteria for Converting the I/M Programs in the Cincinnati-Hamilton and Dayton-Springfield Areas to Contingency Measures?

Both the Cincinnati-Hamilton area and the Dayton-Springfield area have been redesignated to attainment with respect to the 1-hour ozone NAAQS. The Cincinnati-Hamilton area was redesignated to attainment of the 1-hour ozone NAAQS on June 21, 2005 (70 FR 35946). The Dayton-Springfield area was redesignated to attainment of the 1-hour ozone NAAQS on May 5, 1995 (60 FR 22289). On August 13, 2007 (72 FR 45169), EPA approved the redesignation of the Dayton-Springfield area to attainment with respect to the 8-hour ozone NAAQS. EPA approved maintenance plans for each of these areas in connection with these redesignations. These approved maintenance plans show that control measures in place in these areas are sufficient for overall emissions to remain beneath the attainment level of emissions until the end of the maintenance period. In both cases, the conformity budget in the maintenance plans reflects mobile source emissions without E-Check, and the maintenance plans demonstrate that the applicable standard will continue to be met without E-Check. In accordance with the Act and EPA redesignation guidance, states are free to adjust control strategies in the maintenance plan as long as they can satisfy section 110(l). With such a demonstration of noninterference with attainment or other applicable requirements, control

<sup>2</sup> Certain areas classified "marginal" are also required to implement I/M. See CAA section 182(a)(2)(B).

<sup>3</sup> Cincinnati-Hamilton was classified "basic" (i.e., subject to subpart 1) for the .08 ppm 8-hour standard but that classification was vacated by a decision of the Court of Appeals for the D.C. Circuit. See *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). EPA recently promulgated a .075 ppm 8-hour standard but no designations for that standard have been made.

<sup>4</sup> As discussed below, the measures must be retained as contingency measures because CAA section 175A requires that the contingency measures portion of the SIP include a requirement that the State will implement all measures that were part of the active SIP at the time the area was redesignated to attainment.

programs may be discontinued and removed from the SIP. However, section 175A(d) of the Act requires that contingency measures in the maintenance plan include all measures in the SIP for the area before that area was redesignated to attainment. Since the E-Check program was in the SIP prior to redesignation to attainment for ozone, the E-Check program must be included in the contingency portion of the ozone maintenance plan as required by section 175A(d). As part of its submittal, Ohio EPA provided a demonstration showing continued maintenance of the 1-hour ozone standard without taking credit for reductions from the Cincinnati-Hamilton E-Check program, and continued maintenance of the 1-hour and 8-hour ozone standards without taking credit for reductions from the Dayton-Springfield E-Check program.

As discussed above, EPA interprets its regulations as allowing basic I/M areas such as these to have the option to move an I/M program to a contingency measure pursuant to 40 CFR 51.372(c), provided that moving I/M to contingency measures will not interfere with the area's ability to comply with any NAAQS or any other applicable CAA requirement (including section 193). Under 40 CFR 51.372(c), an area is required to include in its submittal, with a request to place the I/M program into the contingency measures: (1) Legal authority to implement a basic I/M program; (2) a commitment by the Governor of the State, or the Governor's designee, to adopt or consider adopting regulations to implement an I/M program to correct a violation of the ozone or carbon monoxide standard, in accordance with the maintenance plan; and (3) a contingency commitment that includes an enforceable schedule, with appropriate milestones, for adoption and implementation of an I/M program.

In the State's supplemental submittal of February 19, 2008, Ohio EPA states that Ohio has retained the necessary legal authority to implement I/M under Ohio Revised Code 3704.14(E). EPA examined the applicable Ohio statutory language and concurs with Ohio's finding that the State has the necessary legal authority to implement I/M if it becomes necessary under the Clean Air Act to implement I/M as a contingency measure. In addition, the State's supplemental submittal includes a commitment by Ohio EPA to consider the adoption of E-Check as a corrective measure should an ambient 1-hour ozone design value trigger a contingency measure in the Cincinnati-Hamilton and Dayton-Springfield areas, and the required program was determined by

the State to be an I/M program. The submittal also contains an I/M implementation schedule in the event that I/M is selected by the State as a corrective measure as required by 40 CFR 51.372(c).

Section 110(l) of the Clean Air Act dictates that EPA "shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress \* \* \* or any other applicable requirement". The discontinuation of E-Check will allow greater emissions of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) from certain sources than would continuation of the programs. As discussed above, EPA interprets section 110(l) to require a demonstration that the discontinuation of E-Check would not interfere with timely attainment or with meeting other applicable requirements, and areas may satisfy this requirement by adopting emissions reductions which are equal to or greater than the emissions increases, as well as being contemporaneous, permanent, enforceable, quantifiable, and surplus.

In this case, the most significant relevant requirement is timely attainment of the ozone air quality standard. Ohio has adopted several measures that achieve equivalent, contemporaneous, permanent, enforceable, quantifiable and surplus reductions to assure that the discontinuation of E-Check, which occurred starting January 1, 2006, will not interfere with timely attainment of the ozone air quality standard. The emission reductions from Ohio's replacement measures that are discussed in more detail below have been made permanent through Ohio's rulemaking process. All the replacement measures are currently in effect and establish obligatory requirements applicable to affected groups. The emission reductions are enforceable by the State of Ohio as of the State effective date of these regulations and they are all Federally enforceable by EPA since all the replacement measures have been approved into the Ohio SIP. In addition, the emission reductions from the State's replacement measures are considered surplus because they go beyond the reductions previously required in the Ohio SIP. While "contemporaneous" is not explicitly defined in the Clean Air Act, a reasonable interpretation is that the compensating, equivalent emissions reductions should be in place within one year (prior to or following) the cessation of the substituted control measure. Toward that end, Ohio adopted various measures to reduce VOC emissions by the start of the 2006

ozone season, including a rule requiring use of lower emitting solvents in cold cleaner degreasers, a rule requiring the use of more efficient paint application techniques for auto refinishing, and a rule requiring that portable fuel containers be designed for less volatilization and fuel spillage. EPA approved these rules on March 30, 2007, at 72 FR 15045.

In addition, Ohio adopted a rule requiring use of low volatility gasoline in the Cincinnati-Hamilton and Dayton-Springfield areas beginning on June 1, 2006. However, in response to a lawsuit challenging the rule, as well as a survey conducted by EPA of gasoline suppliers in the Cincinnati and Dayton areas determining that there was not enough low volatility gasoline to supply the areas during the 2006 ozone season, Ohio adopted amended rules to modify the implementation date for the required use of low volatility gasoline to be one year after the approval by EPA of a fuel waiver under CAA section 211(c)(4)(C). Since low volatility gasoline was no longer able to be implemented in 2006, Ohio adopted a further rule to provide the necessary reductions in 2006. This further rule retired 240 allowances from the new source set aside for the "NO<sub>x</sub> SIP Call" trading program, creating a surplus reduction for ozone season 2006 of 240 tons of NO<sub>x</sub> emissions. Implementation of low volatility gasoline was delayed further by enactment of the Energy Policy Act of 2005, which imposed new requirements on the EPA's approval of state fuel programs. EPA approved Ohio's low vapor pressure gasoline rule on May 25, 2007, at 72 FR 29269. Thus, given Ohio's adoption of a one year delay between approval and implementation, low RVP gasoline was implemented starting at the beginning of the 2008 ozone season.

Ohio's supplemental submittal of February 19, 2008, summarizes its estimates of the emission increases resulting from discontinuing E-Check, and of the emission reductions from the various replacement measures that they have adopted. Ohio provided separate estimates for Cincinnati-Hamilton and for Dayton-Springfield, and addressed both VOC and NO<sub>x</sub>. Ohio provided these estimates for 2006.

For the Cincinnati-Hamilton area, Ohio estimated that the discontinuation of E-Check would result in an increase of 5.2 tons per day of VOC emissions and 4.4 tons per day of NO<sub>x</sub> emissions. Based on modeling using MOBILE6 (EPA's mobile source emission factor model), Ohio estimated that the use of low volatility gasoline would reduce VOC emissions by 4.60 tons per day and

would reduce NO<sub>x</sub> emissions by 0.19 tons per day. Ohio estimated that its regulation on cold solvent degreasing would reduce VOC emissions by 2.57 tons per day, and Ohio estimated that its regulation on auto refinishing would reduce VOC emissions by 0.44 tons per day.

Ohio's rule retiring 240 allowances from the "NO<sub>x</sub> SIP Call" trading program serves to create a surplus reduction of 240 tons of NO<sub>x</sub>. As set forth in the rulemaking approving the retirement of the allowances [73 FR 8197], EPA believes that these reductions can be associated with a portion of the substantial emission reductions that have occurred in the Cincinnati-Hamilton and Dayton-Springfield areas. (The remainder of the reductions would be attributed to the NO<sub>x</sub> SIP Call.)

The measures Ohio adopted do not fully compensate for the increase in NO<sub>x</sub> emissions expected to result from discontinuation of E-Check. On the other hand, the adopted measures provide VOC emission reductions that more than compensate for the expected increase attributable to the discontinuation of E-Check. Ohio seeks for EPA to find that the extra VOC reductions will compensate for the effect on ozone levels of the otherwise uncompensated portion of the increase in NO<sub>x</sub> emissions expected to result from the discontinuation of E-Check.

EPA addresses the relationship between VOC and NO<sub>x</sub> emissions in its guidance on reasonable further progress. This guidance provides for states to assume, as an approximation, that equivalent percent changes in the area's inventory for the respective pollutant would yield an equivalent change in ozone levels; e.g., decreasing area NO<sub>x</sub> emissions by 3 percent would have the same effect as decreasing area VOC emissions by 3 percent. Stated another way, if an area has twice as many tons of NO<sub>x</sub> emissions as of VOC emissions, then 2 tons of NO<sub>x</sub> emissions would be assumed to have the same effect on ozone as 1 ton of VOC emissions. Ohio applied this approach to assess whether the reductions in VOC emissions are sufficient to compensate not only for the VOC emissions increase from discontinuing E-Check but also for the otherwise uncompensated portion of the NO<sub>x</sub> emissions increase from discontinuing E-Check.

According to Ohio's emission estimates, the number of tons of NO<sub>x</sub> emissions in the Cincinnati-Hamilton area is 1.96 times the number of tons of VOC emissions in the area. As noted above, the NO<sub>x</sub> emission increase expected to result from discontinuation

of E-Check in the Cincinnati-Hamilton area is 4.4 tons per day. Ohio estimated that low volatility gasoline will compensate for 0.19 tons per day. The remaining 4.21 tons per day of NO<sub>x</sub> emissions may be estimated to be equivalent to 2.15 tons per day of VOC. Thus, for this approach to substitution, for the Cincinnati-Hamilton area, Ohio would need to provide 5.2 tons per day of VOC emission reduction to compensate for the VOC emissions impact of discontinuing E-Check and 2.15 tons per day of VOC emission to compensate for the otherwise uncompensated portion of the NO<sub>x</sub> emission impact of discontinuing E-Check, for a total of 7.35 tons per day. The total reductions that Ohio's measures provide are 7.61 tons per day. Thus, Ohio has demonstrated that it has provided emission reductions that with respect to ozone have more than compensated for the emission increases expected to result from the discontinuation of E-Check.

Ohio provided emission estimates for 2006. EPA believes that 2006 represents a worst case scenario. As the vehicle fleet becomes cleaner over time, the impact of discontinuing E-Check will decline. On the other hand, the emission reductions that Ohio's measures provide can be expected to remain relatively constant and even to increase gradually as source growth occurs. Therefore, EPA concludes that the combination of discontinuing E-Check and use of low volatility gasoline and the other control measures Ohio adopted will result in total emissions levels which will not interfere with attainment of the ozone standard.

Ohio found similar results for the Dayton-Springfield area. Ohio estimated that the discontinuation of E-Check in the Dayton-Springfield area would increase VOC emissions by 1.89 tons per day and NO<sub>x</sub> emissions by 1.7 tons per day. Ohio estimated that use of low volatility gasoline would reduce Dayton-Springfield area emissions of VOC by 4.20 tons per day and of NO<sub>x</sub> by 0.20 tons per day. Ohio estimated that its rule regarding cold solvent degreasing would reduce Dayton-Springfield area VOC emissions by 1.75 tons per day, and Ohio estimated that its rule regarding auto refinishing would reduce Dayton-Springfield area VOC emissions by 0.30 tons per day. Thus the measures adopted by Ohio provide for a total of 6.25 tons per day of VOC emission decrease and 0.20 tons per day of NO<sub>x</sub> emission decrease.

According to Ohio's emissions estimates, the number of tons of NO<sub>x</sub> emitted in the Dayton-Springfield area is 0.62 times the number of tons of VOC

emitted in the area. Thus, 1.5 tons per day of NO<sub>x</sub> emissions (1.7 minus 0.2) would be considered equivalent to 2.43 tons per day of VOC. Thus, under Ohio's approach, the total necessary VOC emission reduction in the Dayton-Springfield area would be 1.89 plus 2.43 or 4.32 tons per day. Ohio provides substantially more reduction than this target. Thus, for the Dayton-Springfield area, like for the Cincinnati-Hamilton area, Ohio has provided sufficient compensating emission reductions for EPA to conclude that the discontinuation of E-Check in combination with the various measures Ohio has adopted will not interfere with attainment of the ozone standard.

In addition, on August 13, 2007, at 72 FR 45169, EPA concluded that Dayton-Springfield is meeting the .08 ppm ozone air quality standard and redesignated this area to attainment for that standard. The maintenance plan for this area shows that the area will continue to attain the standard even with the discontinuation of E-Check. This provides further support for the argument that discontinuing E-Check will not interfere with attainment of the ozone standard in the Dayton-Springfield area.

EPA must also consider whether the discontinuation of E-Check would interfere with timely attainment of the fine particulate matter (PM<sub>2.5</sub>) air quality standard. Ohio addressed PM<sub>2.5</sub> by providing modeling evidence that the Cincinnati and Dayton areas will achieve timely attainment of the PM<sub>2.5</sub> standards. The modeling uses the Comprehensive Air Model with Extensions (CAM<sub>x</sub>) and simulates emissions and PM<sub>2.5</sub> concentrations across much of the Eastern United States. Model simulations were performed for a base year of 2005 and a projection year of 2009. The base year simulations were performed to assess model performance, i.e., to assess whether the model provides adequately accurate and unbiased estimates of the concentrations of the various PM<sub>2.5</sub> components. The projection year simulations provided information on the reductions in concentrations of the various PM<sub>2.5</sub> components that can be expected to result from various anticipated emission reductions. Concentration estimates for 2009 were then derived by using the model results in a relative sense, determining a 2009 concentration for each PM<sub>2.5</sub> component by multiplying the base year concentration times the ratio of the model estimates for 2009 versus for the base year, and then summing these 2009 component concentration estimates to

obtain a total projected 2009 PM<sub>2.5</sub> concentration.

The baseline concentrations used in the modeling reflect data from 2003 to 2007. In accordance with recommendations in EPA's modeling guidance ("Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM<sub>2.5</sub>, and Regional Haze"), quarterly mean concentrations of PM<sub>2.5</sub> were determined by first averaging concentrations for 2003 to 2005, 2004 to 2005, and 2005 to 2007, and then averaging these three three-year averages. The analysis also used measurements of various species in order to determine the composition of the PM<sub>2.5</sub> for each of the four seasons of the year. The components addressed include ammonium sulfate, ammonium nitrate, organic particles, elemental carbon, other inorganic particulate matter, and particle bound water. The analysis of composition includes adjustments of the species measurements so as better to reflect the quantity of the species that would be captured by the Federal Reference Method (FRM). As two examples, the nitrate measurements were adjusted to reflect volatilization of nitrates off FRM monitors, and the measurements of the carbon portion of organic particles were adjusted to add the non-carbon components of these particles. These seasonal compositions were then applied to the quarterly weighted average PM<sub>2.5</sub> component concentrations to derive quarterly weighted average component concentrations.

The next step in the analysis was to use modeling to determine the degree to which concentrations are expected to be reduced between the baseline period and 2009. For each quarter for each PM<sub>2.5</sub> component, for each monitoring location, a relative response factor was computed, representing the ratio of the 2009 model estimate to the base year model estimate.

The final step in the analysis was to multiply the relative response factor for each component times that component's weighted average baseline concentration. This multiplication yields an estimate of the concentration of the component in 2009. The sum of these projected component concentrations represents the estimated 2009 concentration of PM<sub>2.5</sub>. An estimated 2009 PM<sub>2.5</sub> concentration of 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) represents a projection of attainment by that date.

In the Cincinnati area, the monitors with the highest average concentrations

of PM<sub>2.5</sub> are at the St. Bernard site in Hamilton County (site number 39-061-8001) and at the Middletown site in Butler County (site number 39-017-0003). The baseline, 5-year weighted average PM<sub>2.5</sub> concentrations at these sites were 17.6 and 16.2 µg/m<sup>3</sup>, respectively. The projected 2009 PM<sub>2.5</sub> concentrations at these sites were 14.7 and 13.5 µg/m<sup>3</sup>, respectively. In the Dayton area, the monitor with the highest average concentration is at 215 East Third Street (site number 39-113-0032). For this site, the baseline average concentration was 15.5 µg/m<sup>3</sup>, and the projected 2009 concentration was 13.2 µg/m<sup>3</sup>. Projected concentrations at other sites in these areas were lower. Thus, Ohio has projected that both areas will attain the standard by 2009, which would be timely (since the area was designated in 2005).

This modeling analysis was based on an emissions inventory that reflected no operation of E-Check in the Cincinnati and Dayton areas. Consequently, the modeling indicates that these areas will attain the standard by 2009 notwithstanding the discontinuation of E-Check in these areas. EPA believes, based on Ohio's modeling analysis, that discontinuation of E-Check in these areas will not interfere with timely attainment of the PM<sub>2.5</sub> standard in these areas.

EPA also notes that for the reasons stated in EPA's rulemaking concerning I/M for the Kentucky counties that are part of the Cincinnati-Hamilton nonattainment area for ozone and PM<sub>2.5</sub>, the measures providing equivalent emissions reductions, described in detail above for ozone, should also provide equivalent emission reductions for PM<sub>2.5</sub>. See 70 FR 17029, 17035 (April 4, 2005) (EPA's proposed approval of request to move I/M from the active measures to contingency measures of the Northern Kentucky SIP).

Ohio was required, pursuant to Sections 172(b) and 172(c) of the Clean Air Act, to submit a plan by April 2008 that provides for timely attainment of the PM<sub>2.5</sub> standard. EPA expects that Ohio will make a separate submittal to address this requirement. Although EPA expects that submittal to include a modeling analysis that is very similar to the modeling discussed here, EPA expects that the future submittal will provide weight-of-evidence analyses to assess whether other types of evidence corroborate these modeling results. EPA also expects that Ohio will hold a public hearing to obtain any public comments on this modeling. Therefore, EPA is not rulemaking here on whether Ohio has satisfied the requirement for a plan providing for timely attainment. Today's

action uses these modeling results only to address the issue of whether discontinuation of E-Check will interfere with timely attainment of the PM<sub>2.5</sub> standards.

EPA believes that discontinuation of E-Check will clearly not interfere with Ohio meeting other Clean Air Act requirements. Discontinuation of E-Check will not cause any increase in emissions of sulfur dioxide or lead, and any impact on emissions of carbon monoxide is expected to be relatively small. Furthermore, the concentrations of these pollutants and for nitrogen dioxide in the Cincinnati and Dayton areas are less than half of the applicable air quality standards. Therefore, discontinuation of E-Check will not interfere with attainment of any of these air quality standards. The rationale for finding noninterference with timely attainment also supports finding that the revisions will not interfere with achievement of reasonable further progress toward attainment. Other requirements such as for reasonably available control technology are not affected by whether E-Check is in place. Therefore, EPA believes that the combination of actions requested by Ohio, including discontinuation of E-Check and adoption of control measures such as reducing gasoline volatility, will not interfere with Ohio meeting applicable requirements.

Section 193 of the Act applies to the removal of the I/M program in the Cincinnati-Hamilton nonattainment area. For the reasons described above, however, EPA believes that Ohio has adopted equivalent, offsetting reductions which satisfy section 193.

## **VI. What Are Our Conclusions Concerning the Removal of I/M Programs in the Cincinnati-Hamilton and Dayton-Springfield Areas?**

We are proposing to find that the State has demonstrated that eliminating the I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the ozone NAAQS and the fine particulate NAAQS and with the attainment and maintenance of other air quality standards and requirements of the CAA. We are proposing further to approve Ohio's request to modify the SIP such that I/M is no longer an active program in these areas and is instead a contingency measure in these areas' maintenance plans.

As noted above, the Cincinnati area is currently designated nonattainment for ozone but is not classified. Pursuant to a decision of the Court of Appeals for the District of Columbia Circuit in the

case of *South Coast Air Quality Management Dist. v. EPA* (472 F.3d 882 (D.C. Cir. 2006)), EPA will be reevaluating the classification of ozone nonattainment areas that were formerly classified as "basic" (*i.e.* under subpart 1) for the .08 ppm standard. One possible outcome could be the reestablishment of a requirement for I/M for the Cincinnati area.<sup>5</sup> However, for the reasons stated above, EPA believes that Ohio has satisfied currently applicable criteria for discontinuing I/M in the Cincinnati and Dayton areas.

## VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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 Clean Air Act; 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone, Particulate matter, Volatile organic compounds.

Dated: July 16, 2008.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E8-16987 Filed 7-23-08; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2008-0537; FRL-8697-5]

### Revisions to the California State Implementation Plan, Approval of the South Coast Air Quality Management District—Reasonably Available Control Technology Analysis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern the District's analysis of whether its rules meet Reasonably Available Control Technology (RACT) under the 8-hour ozone National Ambient Air Quality Standard (NAAQS). We are approving the analysis under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by August 25, 2008.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-

OAR-2008-0537, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail.

[www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Stanley Tong, EPA Region IX, (415) 947-4122, [tong.stanley@epa.gov](mailto:tong.stanley@epa.gov).

### SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

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<sup>5</sup> Because the Dayton area is designated attainment for the 0.08 ppm 8-hour ozone standard, EPA's future classification rule for that standard would not apply to that area.