and as RFP was not due until November 15, 1993.

The section 172(c)(3) emissions inventory requirement has been met by the submission and approval of the 1990 base year inventory required under subpart 2 of part D, section 182(a)(1) (60 FR 15053).

As for the section 172(c)(5) NSR requirement, USEPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. Memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment. The rationale for this view is described fully in that memorandum, and is based on the Agency's authority to establish *de minimis* exceptions to statutory requirements. See Alabama Power Čo. v. Costle, 636 F. 2d 323, 360-61 (D.C. Cir. 1979). As discussed below, the State of Ohio has demonstrated that the Toledo area will be able to maintain the standard without part D NSR in effect and, therefore, the State need not have a fully-approved part D NSR program prior to approval of the redesignation request for Toledo. Ohio's part C PSD program will become effective in the Toledo area upon redesignation to attainment.

Finally, for purposes of redesignation, the Toledo SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, were satisfied. As noted above, USEPA believes the SIP satisfies all of those requirements. Section 176 Conformity Plan Provisions Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that, before they are taken, Federal actions conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (transportation conformity), as well as to all other Federal actions (general conformity). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the

Implementation of Title I informed States that its conformity regulations would establish a submittal date [see 57 FR 13498, 13557 (April 16, 1992)].

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of Ohio is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Ohio is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals did not come due prior to the date the Toledo redesignation request was submitted, however, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

b. Subpart 2 Requirements

The Toledo area is classified moderate nonattainment; therefore, part D, subpart 2, section 182(b) requirements apply. The requirements which came due prior to the submission of the request to redesignate the Toledo area must be fully approved into the SIP prior to redesignating the area to attainment. These requirements are discussed below:

(i) 1990 Base Year Emission Inventory. The 1990 base year emission inventory was due on November 15, 1992. It was submitted to the USEPA on March 15, 1994. The USEPA approved this submittal on March 22, 1995 (60 FR 15053).

(ii) Emission Statements. The emissions statement SIP was due on November 15, 1992. It was submitted to the USEPA on March 15, 1994. The USEPA approved this SIP revision through a direct final rulemaking action published on October 13, 1994 (59 FR 51863).

(iii) VOC RACT Fix-ups and Catchups. Sections 182(a)(2)(A) and 182(b)(2) establish VOC RACT requirements applicable to moderate ozone nonattainment areas such as Toledo. Section 182(a)(2)(A) required the submission to USEPA of all rules and

corrections to existing VOC RACT rules that were required under the RACT provision of the pre-1990 CAA (referred to as RACT "fix-ups"). Section 182(b)(2) required the submission to USEPA of (1) VOC RACT rules for all VOC sources covered by a CTG issued before the date of enactment of the 1990 CAA amendments (a requirement that the State has previously met), (2) VOC RACT for each VOC source covered by a CTG issued between the enactment of the 1990 CAAA and the attainment date (which is not an applicable requirement for purposes of this redesignation since the due date for these rules is November 15, 1994, a date after the submission of the redesignation request), and (3) VOC RACT for all other major stationary sources of VOC located in the area.

On June 9, 1988, August 24, 1990, and June 7, 1993, Ohio submitted VOC RACT rules. In a final rulemaking action, the USEPA partially approved, partially disapproved and granted partial limited approval/limited disapproval to portions of Ohio's VOC RACT rules on May 9, 1994 (see 58 FR 49458). The USEPA processed draft VOC RACT rules which addressed identified deficiencies in Ohio's VOC RACT rules in parallel with the ozone redesignation request. Ohio adopted these rules and submitted them to USEPA on February 14, 1995. Ohio's VOC RACT rules submittals have now been approved in a direct final notice published on March 23, 1995 (60 FR 15235). Thus, the State has now satisfied all of the VOC RACT requirements applicable to the Toledo area. (The approval of the redesignation is contingent upon the approval of the VOC RACT rules and the 1990 Base-Year Emissions Inventory. Thus, this redesignation will not become effective until the approval of the VOC RACT rules and the 1990 Base-Year Emissions Inventory become effective. Consequently, should the direct final notice approving the VOC RACT rules or 1990 Base-Year Inventory be withdrawn as a consequence of adverse comment, this direct final notice approving the redesignation will also be withdrawn and final action will be taken on the redesignation at a later

(iv) Stage II Vapor Recovery (Stage II). Section 182(b)(3) required States to submit Stage II rules to USEPA for moderate ozone nonattainment areas by November 15, 1992. Ohio submitted Stage II regulations as a SIP revision on June 7, 1993. However, as the USEPA promulgated onboard rules on April 6, 1994 (59 FR 16262), Stage II is no longer required for moderate ozone nonattainment areas (see section