program do not occur. Ohio assumed that NSR would not apply after redesignation to attainment, and therefore, assumed source growth factors based on projected growth in the economy and in the area's population. (It should be noted that the growth factors assumed may be overestimates under PSD, which would restrain source growth through the application of best available control techniques.) Thus, contrary to the assertion of the commentor, Ohio has demonstrated that there is no need to retain the part D NSR as an operative program in the SIP during the maintenance period in order to provide for continued maintenance of the NAAQS. (If this demonstration had not been made, NSR would have had to have been retained in the SIP as an operative program since it would have been needed to maintain the ozone standard.)

The other purpose that requiring the full-approval of a part D NSR program might serve would be to ensure that NSR would become a contingency provision in the maintenance plan required for these areas by section 107(d)(3)(E)(iv) and 175A(d). These provisions require that, for an area to be redesignated to attainment, it must receive full approval of a maintenance plan containing ''such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.'' Based on this language, it is apparent that whether an approved NSR program must be included as a contingency provision depends on whether it is a ''measure'' for the control of the pertinent air pollutants.

As the USEPA noted in the proposal regarding this redesignation request, the term ''measure'' is not defined in section 175A(d) and Congress utilized that term differently in different provisions of the Act with respect to the PSD and NSR permitting programs. For example, in section 110(a)(2)(A), Congress required that SIPs to include ''enforceable emission limitations and other control measures, means, or techniques * * * as may be necessary or appropriate to meet the applicable requirements of the Act.'' In section 110(a)(2)(C), Congress required that SIPs include ''a program to provide for the enforcement of the *measures* described in subparagraph (A), *and* regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.'' (Emphasis added.) If the term measures as used in section 110(a)(2) (A) and (C) had been intended to include PSD and NSR there would have been no point to requiring that SIPs include both measures *and* preconstruction review under parts C and D (PSD or NSR). Unless ''measures'' referred to something other than preconstruction review under parts C and D, the reference to preconstruction review programs in section 110(a)(2)(C) would be rendered mere surplusage. Thus, in section 110(a)(2) (A) and (C), it is apparent that Congress distinguished ''measures'' from preconstruction review. On the other hand, in other provisions of the Act, such as section 161, Congress appeared to include PSD within the scope of the term ''measures.''

The USEPA believes that the fact that Congress used the undefined term ''measure'' differently in different sections of the Act is germane to this issue. This indicates that the term is susceptible to more than one interpretation and that the USEPA has the discretion to interpret it in a reasonable manner in the context of section 175A. Inasmuch as Congress itself has used the term in a manner that excluded PSD and NSR from its scope, the USEPA believes it is reasonable to interpret ''measure,'' as used in section 175A(d), not to include NSR. That this is a reasonable interpretation is further supported by the fact that PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR.[2] This distinguishes NSR from other required programs under the Act, such as inspection and maintenance and Reasonably Available Control Technology programs, which have no corollary for attainment areas. Moreover, the USEPA believes that those other required programs are clearly within the scope of the term ''measure.''

The USEPA's logic in treating part D NSR in this manner does not mean that other applicable part D requirements, including those that have been previously met and previously relied upon in demonstrating attainment, could be eliminated without an analysis demonstrating that maintenance would be protected. As noted above, Ohio has demonstrated that maintenance would be protected with PSD requirements in effect, rather than those of part D NSR. Thus, the USEPA is not permitting part D NSR to be removed without a demonstration that maintenance of the standard will be achieved. Moreover, the USEPA has not amended its policy with respect to the conversion of other SIP elements to contingency provisions, which provides that they may be converted to contingency provisions only upon a showing that maintenance will be achieved without them being in effect. Finally, as noted above, the USEPA believes that the NSR requirement differs from other requirements, and does not believe that the rationale for the NSR exception extends to other required programs.

The position taken in this action is consistent with the USEPA's current national policy. That policy permits redesignation to proceed without otherwise required NSR programs having been fully approved and converted to contingency provisions provided that the area demonstrates, as has been done in this case, that maintenance will be achieved with the application of PSD rather than part D NSR.

(11) *Comment:* Permitting Toledo, Ohio to defer adoption and implementation of I/M according to the revised USEPA I/M Program Requirements Rule published on January 5, 1995, at 60 FR 1735 frustrates meaningful control of vehicle emissions.

(11) *Response:* While the revised I/M rule (60 FR 1735) allows the I/M program to be placed in the contingency plan, there are still ongoing emission reductions in the area due to the FMVECP. The maintenance demonstration shows that the mobile source emissions are expected to decrease from 102,560 pounds of volatile organic compounds per day in 1996 to 57,412 pounds per day in 2005. The mobile source emissions of oxides of nitrogen are expected to decrease from 65,128 pounds per day in 1996 to 49,374 pounds per day in 2005. These

[2] The U.S. EPA is not suggesting that NSR and PSD are equivalent, but merely that they are the same type of program. The PSD program is a requirement in attainment areas and designed to allow new source permitting, yet contains adequate provisions to protect the NAAQS. If any information including preconstruction monitoring, indicates that an area is not continuing to meet the NAAQS after redesignation to attainment, 40 CFR part 51 appendix S (Interpretive Offset Rule) or a 40 CFR 51.165(b) program would apply. The USEPA believes that in any area that is designated or redesignated as attainment under section 107, but experiences violations of the NAAQS, these provisions should be interpreted as requiring major new or modified sources to obtain VOC emission offsets of at least a 1:1 ratio, and as presuming that 1:1 NO_X offsets are necessary. See October 14, 1994 memorandum from Mary Nichols entitled *Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.*