

Dated: September 2, 2005.

Stefan G. Vencus,

*Chief, Office of Regulations and
Administrative Law, U.S. Coast Guard.*

[FR Doc. 05-17831 Filed 9-8-05; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05-OAR-2005-IN-0006; FRL-7965-7]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Evansville Area to Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 2, 2005, the State of Indiana, through the Indiana Department of Environmental Management (IDEM), submitted: A request for the EPA to redesignate the area of Evansville (Vanderburgh and Warrick Counties) from nonattainment to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS); and a request for EPA approval of an Indiana State Implementation Plan (SIP) revision containing a 10-year maintenance plan for the Evansville area. EPA is proposing to approve the State's request to redesignate the Evansville area to attainment of the 8-hour ozone NAAQS. EPA's proposed approval of the redesignation request is based on the determination that the Evansville area and the State of Indiana have met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the Evansville area has attained the 8-hour ozone standard. In conjunction with the proposed approval of the redesignation request for the Evansville area, EPA is proposing to approve the State's plan to maintain the attainment of the 8-hour ozone NAAQS through 2015 in this area as a revision to the Indiana SIP. EPA is also proposing to approve 2015 Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_x) Motor Vehicle Emissions Budgets (MVEBs), which are supported by and consistent with the 10-year maintenance plan for this area, for purposes of transportation conformity.

DATES: Comments must be received on or before October 11, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05-OAR-2005-IN-0006, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Agency Web site: <http://docket.epa.gov/rmepub/>. RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select quick search, then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: mooney.john@epa.gov.

Fax: (312) 886-5824.

Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's 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 RME ID No. R05-OAR-2005-IN-0006. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, and may be made available online at <http://docket.epa.gov/rmepub/>, 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 RME, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA RME Web site and the Federal [regulations.gov](http://www.regulations.gov) Web site are "anonymous access" systems, 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 RME or [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.

Docket: All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Edward Doty, Environmental Scientist, at (312) 886-6057, before visiting the Region 5 office. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6057, doty.edward@epa.gov.

SUPPLEMENTARY INFORMATION:

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

- I. EPA's Proposed Actions
 - A. What Actions Is EPA Proposing to Take?
 - B. Do These Actions Apply to Me?
 - C. What Is the Background for These Proposed Actions?
- II. What Are the Criteria for Redesignation to Attainment?
- III. What Is the Effect of EPA's Actions?
- IV. What Is EPA's Analysis of the State's Request?
- V. Has Indiana Adopted Acceptable Motor Vehicle Emissions Budgets for the End of the 10-Year Maintenance Plan (for 2015) Which Can Be Used to Support Conformity Determinations?
 - A. How Are the MVEBs Developed and What Are the MVEBs for the Evansville Area?
 - B. What Is a Safety Margin?
 - C. Are the MVEBs Approvable?
- VI. Statutory and Executive Order Reviews

I. EPA's Proposed Actions

A. What Actions Is EPA Proposing to Take?

EPA is proposing to take two related actions. First, EPA is proposing to determine that the Evansville, Indiana ozone nonattainment area (Vanderburgh and Warrick Counties) has attained the 8-hour ozone NAAQS, and that it has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve a request from the State of Indiana to change the designation of the Evansville area from nonattainment to attainment for the 8-hour ozone NAAQS.

Second, EPA is proposing to approve Indiana's ozone maintenance plan, as a requested SIP revision, for this area. The maintenance plan is designed to keep the Evansville area in attainment of the 8-hour ozone NAAQS for the next 10 years, through 2015. As supported by and consistent with the ozone maintenance plan, EPA is proposing to approve the 2015 VOC and NO_x MVEBs for the Evansville area for conformity purposes.

B. Do These Actions Apply to Me?

These proposed actions pertain to the designation of the Evansville area for the 8-hour ozone NAAQS and to the emission controls in this area and in its upwind environs related to attainment and maintenance of the 8-hour ozone NAAQS. The emissions of concern are VOC and NO_x. If you own or operate a VOC or NO_x emissions source in the Evansville area or live in this area, this proposed rule may impact or apply to you. It may also impact you if you are involved in transportation planning or implementation of emission controls in the Evansville area.

C. What Is the Background for These Proposed Actions?

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997, the EPA promulgated an 8-hour ozone NAAQS (62 FR 38856) of 0.08 parts per million parts of air (0.08 ppm) (80 parts per billion (ppb)).¹ This 8-hour ozone standard replaces a prior 1-hour ozone NAAQS, which had been promulgated on February 8, 1979 (44 FR 8202), and which was revoked on June 15, 2005. Ground-level ozone is not emitted directly by sources. Rather, emitted NO_x and VOC react in the

presence of sunlight to form ground-level ozone along with other secondary compounds. NO_x and VOC are referred to as "ozone precursors."

The CAA required EPA to designate as nonattainment any area that violated the 8-hour ozone NAAQS based on the three most recent years of air quality data (2001–2003 ozone data were considered for the initial 8-hour ozone designations). The **Federal Register** notice making these designations was signed on April 15, 2004, and was published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and emission control requirements for nonattainment areas. (Both are found in title I, part D of the CAA.) Subpart 1 contains general, less prescriptive requirements for nonattainment areas for any pollutant, including ozone, governed by any NAAQS, and applies to all nonattainment areas. Subpart 2 contains more specific requirements for certain ozone nonattainment areas, and applies to ozone nonattainment areas classified under section 181 of the CAA. Subpart 1 nonattainment areas, those areas not classified under section 181 of the CAA, are subject only to the provisions of subpart 1. Subpart 2 nonattainment areas, however, are subject to the provisions of subpart 2, as well as to provisions of subpart 1 (many of the requirements in subpart 1 are superseded by the more stringent requirements of subpart 2).

In the April 30, 2004 designation rulemaking, EPA divided 8-hour ozone nonattainment areas into the categories of subpart 1 nonattainment and subpart 2 nonattainment based on their 8-hour ozone design values (*i.e.*, the three-year average annual fourth-highest daily maximum 8-hour ozone concentrations at the worst-case monitoring sites in the designated areas) and their 1-hour ozone design values (*i.e.*, the fourth-highest daily maximum 1-hour ozone concentrations over the three-year period at the worst-case monitoring sites in the designated areas).² 8-hour ozone nonattainment areas with 1-hour ozone design values equaling or exceeding 121 ppb were designated as classified nonattainment areas (as nonattainment areas required to meet the requirements of subpart 2 of the CAA). All other 8-hour nonattainment areas were designated as basic nonattainment areas

(as ozone nonattainment areas required to meet the requirements of subpart 1 only).

In the April 30, 2004 designation/classification rulemaking, the Evansville area was designated as nonattainment for the 8-hour ozone standard, and was identified as a subpart 1 nonattainment area.³ This designation was based on ozone data collected in the Evansville area during the 2001–2003 period.

On June 2, 2005, the State of Indiana requested redesignation of the Evansville area to attainment for the 8-hour ozone NAAQS based on ozone data collected during the 2002–2004 period. Today's proposed rule addresses this redesignation request.

II. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emissions reductions resulting from implementation of the applicable SIP, applicable Federal air pollution control regulations, and other permanent and enforceable emissions reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and, (5) the state containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA provided further guidance on processing redesignation requests in the following documents:

"Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, June 18, 1990; "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide

¹ This standard is violated in an area when any ozone monitor in the area (or in its impacted downwind environs) records 8-hour ozone concentrations with an average of the annual fourth-highest daily maximum 8-hour ozone concentrations over a three-year period equaling or exceeding 85 ppb.

² The 8-hour ozone design value and 1-hour ozone design value for each area were not necessarily recorded at the same monitoring site. The worst-case monitoring site for each concentration averaging time was considered for each area.

³ Because this area was not violating the 1-hour ozone NAAQS, with a 1-hour ozone design value below the 121 ppb cutoff, at the time of the promulgation of the 8-hour ozone designations and classifications, EPA determined that this area should be addressed through the less prescriptive requirements of subpart 1 of the Clean Air Act rather than through the more prescriptive requirements of subpart 2 of the Clean Air Act.

Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

“Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

“Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

“State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

“Technical Support Documents (TSD’s) for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

“State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

“Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

“Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and,

“Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

III. What Is the Effect of EPA’s Actions?

Approval of this redesignation request would change the official designation of the Evansville area for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Indiana SIP a plan for maintaining the 8-hour ozone NAAQS in the area through 2015. The maintenance plan includes contingency measures to remedy possible future violations of the 8-hour ozone NAAQS, and establishes MVEB’s of 4.20 tons per day (tpd) for VOC, and 5.40 tpd for NO_x.

IV. What Is EPA’s Analysis of the State’s Request?

EPA is proposing to: (1) Determine that the Evansville area has attained the 8-hour ozone standard and approve the redesignation of the Evansville area to attainment of the 8-hour ozone NAAQS; and, (2) approve the ozone maintenance plan for this area. The bases for our proposed determination and approvals are as follows:

1. The Evansville Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Evansville area has attained the 8-

hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and Appendix I, based on the most recent three complete, consecutive calendar years of quality-assured air quality monitoring data at any monitoring site in the area. To attain this standard, the average of the annual fourth-high daily maximum 8-hour average ozone concentrations measured at each monitor (the monitoring site’s ozone design value) within the area (or in its downwind environs) over the 3-year period must not exceed the ozone standard. Based on the rounding convention described in 40 CFR part 50, appendix I, the 8-hour ozone standard is attained if the area’s ozone design value is 0.084 ppm or lower. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA’s Aerometric Information Retrieval System (AIRS). The ozone monitors generally should have remained at the same locations for the duration of the monitoring period required for demonstrating attainment (for three years or more).

As part of the June 2, 2005 ozone redesignation request, IDEM submitted summarized ozone monitoring data indicating the top four daily maximum 8-hour ozone concentrations for each monitoring site for each year during the 2002–2004 period. These summarized worst-case ozone concentrations are part of the quality-assured ozone data collected in the Evansville area. These data have been entered into EPA’s AIRS. The fourth high 8-hour daily maximum concentrations, along with their three-year averages are summarized in Table 1.

TABLE 1.—FOURTH-HIGH 8-HOUR OZONE CONCENTRATIONS IN PARTS PER BILLION (PPB)

| County | Monitoring site | 2002 | 2003 | 2004 | Average fourth-high concentration |
|-------------------|-------------------|------|------|------|-----------------------------------|
| Vanderburgh | Evansville | 95 | 81 | 72 | 82 |
| Vanderburgh | Inglesfield | 86 | 75 | 57 | 73 |
| Warrick | Yankeetown | 94 | 82 | 74 | 83 |
| Warrick | Boonville | 91 | 76 | 72 | 79 |
| Warrick | Lynville | 90 | 78 | 64 | 77 |

These data show that the ozone design values (averaged fourth-high daily maximum 8-hour concentrations) for the monitoring sites are all below the 84 ppb ozone standard violation cut-off. These data support the conclusion that the Evansville area did not experience a monitored violation of the 8-hour ozone standard during the 2002–2004 period.

Preliminary data through July of the 2005 ozone season show that the area continues to attain the 8-hour ozone standard.

As discussed below with respect to the ozone maintenance plan, Indiana has committed to continue ozone monitoring in this area. IDEM commits to consult with the EPA prior to making

any changes to the existing monitoring network.

EPA believes that the data submitted by Indiana provide an adequate demonstration that the Evansville area has attained the 8-hour ozone NAAQS. Therefore, we propose to find that the Evansville area has attained the 8-hour ozone standard.

2. The Evansville Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and the Area Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that Indiana has met all currently applicable SIP requirements for the Evansville area under section 110 of the CAA (general SIP requirements). EPA has also determined that the Indiana SIP meets currently applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 nonattainment areas). See section 107(d)(3)(E)(v) of the CAA. In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements. See section 107(d)(3)(E)(ii) of the CAA. In making these determinations, EPA ascertained what requirements are applicable to the area, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

a. *The Evansville area has met all applicable requirements under section 110 and part D of the CAA.* The September 4, 1992 Calcagni memorandum (see "Procedures for Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, to qualify for redesignation of an area to attainment, the state and the area must meet the relevant CAA requirements that come due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993 Shapiro memorandum and 66 FR 12459, 12465–12466 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete redesignation request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

General SIP requirements: Section 110(a) of title I of the CAA contains the

general requirements for a SIP, which include: enforceable emission limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the emission limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements and SIP elements include, but are not limited to, the following: (a) Submittal of a SIP that has been adopted by the state after reasonable public notice and a hearing; (b) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (c) implementation of a source permit program; (d) provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and part D requirements (New Source Review (NSR)) for new sources or major source modifications; (e) criteria for stationary source emission control measures, monitoring, and reporting; (f) provisions for air quality modeling; and (g) provisions for public and local agency participation.

SIP requirements and SIP elements are discussed in the following EPA documents: "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993. See also other guidance documents listed above.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO_x SIP call, Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i)

(70 FR 21147, April 25, 2005). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

We believe that these requirements should not be construed to be applicable requirements for purposes of redesignation. Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh ozone redesignation (66 FR 50399, October 19, 2001). Finally, Indiana's submission under the CAIR rule is not due until September 2006.

We believe that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Nonetheless, we also note that EPA has previously approved provisions in the Indiana SIP addressing section 110 elements under the 1-hour standard. See 40 CFR part 52, subpart P. We believe that the section 110 SIP approved for the 1-hour standard may likely be sufficient to meet requirements under the 8-hour ozone standard, as well. EPA is in the process of further evaluating this question, and will, in the future if necessary, announce whether any additional section 110 SIP

provisions are needed for the Evansville area under the 8-hour ozone standard.

Part D SIP requirements. EPA has determined that the Indiana SIP meets applicable SIP requirements under part D of the CAA since no such requirements became due for the 8-hour ozone standard prior to submission of the area's redesignation request. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment area plan requirements applicable to all nonattainment areas. Because the Evansville area is a subpart 1 8-hour ozone nonattainment area and is not classified under subpart 2 of part D of the CAA for the 8-hour ozone standard, subpart 2 of part D of the CAA does not apply to this area.

Section 172(c) requirements. For purposes of evaluating this ozone redesignation request, the applicable part D, subpart 1 SIP requirements for the Evansville area are contained in section 172 of the CAA. A thorough discussion of the requirements of section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

No requirements under part D became due prior to submission of the redesignation request, and, therefore, none is applicable to the area for purposes of redesignation. For example, the requirement for an ozone attainment demonstration to meet the requirement of section 172(c)(1) is not yet applicable, nor are the requirements for Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) (section 172(c)(1)), Reasonable Further Progress (RFP) (section 172(c)(2)), and contingency measures (section 172(c)(9)).

Since the State of Indiana has submitted a complete ozone redesignation request for the Evansville area prior to the deadline for any submissions, we are proposing to determine that the part D requirements do not apply to the Evansville area for purposes of redesignation.

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 projects, conform to the air planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity SIP revisions must be consistent with Federal conformity

regulations that the CAA required the EPA to promulgate.

In addition to the fact that part D requirements did not become due prior to Indiana's submission of the redesignation request and, therefore, are not applicable, EPA believes that it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the ozone redesignation request under section 107(d) of the CAA because state conformity rules are still required after redesignation of an area to attainment of a NAAQS and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001). See also 60 FR 62748 (December 7, 1995) (Tampa, Florida).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR, since PSD requirements will apply after redesignation. A more 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." Indiana has demonstrated that the area will be able to maintain the standard without part D NSR in effect, and therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Evansville area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the area has satisfied all applicable requirements under section 110 and part D of the CAA.

b. *The Evansville area has a fully approved applicable SIP under section 110(k) of the CAA.* EPA has fully approved the Indiana SIP for the Evansville area under section 110(k) of the CAA for all applicable requirements. EPA may rely on prior SIP approvals in approving a redesignation request (See the September 4, 1992 John Calcagni memorandum, page 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)) plus any additional

measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003). Since the passage of the CAA of 1970, Indiana has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to the Evansville area for purposes of redesignation. No Evansville area SIP provisions are currently disapproved, conditionally approved, or partially approved. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA has also noted that it may well conclude that the section 110 SIP submission approved under the 1-hour standard will be adequate for purposes of the 8-hour standard. EPA also believes that since the part D requirements did not become due prior to submission of the redesignation request, they also are, therefore, not applicable requirements for purposes of redesignation.

3. The Air Quality Improvement in the Evansville Area Is Due to Permanent and Enforceable Reductions in Emissions From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Emission Reductions

EPA believes that the State of Indiana has demonstrated that the observed air quality improvement in the Evansville area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures.

In making this demonstration, the State has documented the changes in VOC and NO_x emissions for both the Evansville ozone nonattainment area and for five additional counties⁴ (Dubois, Gibson, Pike, Posey, and Spencer) in the Southwestern Indiana

⁴ IDEM documented the VOC and NO_x emissions in these five counties at the request of the EPA. Although no analyses or modeling exist demonstrating that these specific emissions significantly contributed to the peak ozone levels in the Evansville area, it is recognized, based on available ozone analyses and modeling for the Midwest, that regional emissions outside of the Evansville area are likely to have significantly contributed to the peak ozone concentrations in the Evansville area. The documentation of the VOC and NO_x emissions for these neighboring counties characterizes the relative magnitude of regional versus local emissions, and, through emission projections (documented in subsequent tables in this proposed rule), the directionality of regional emissions that may also impact future ozone concentrations.

area between 1996, when the Evansville area was monitored with a violation of the 8-hour ozone NAAQS, and 2002, one of the years during the three-year period when the Evansville area monitored attainment of the 8-hour ozone NAAQS. The VOC emissions and NO_x emissions for the Southwestern Indiana area (with the Evansville area emissions given as a sub-portion of the summarized emissions) are given in Tables 2 and 3. The VOC and NO_x

emissions for the Evansville ozone nonattainment area and for the remainder of the Southwestern Indiana area have shown significant downward trends between 1996 and 2002. IDEM notes that the emissions in this area are decreasing substantially in response to national emission reduction programs affecting all Electric Generating Units (EGUs), including the acid rain control program and the NO_x SIP Call. A significant number of EGUs exist in the

Southwestern Indiana area. Therefore, the national emission control requirements for the EGUs have likely had a significant impact on the NO_x emissions in this area and on the ozone concentrations monitored in the Evansville area. To some extent, these emission controls have also resulted in reductions in VOC emissions from these sources.

TABLE 2.—VOC EMISSIONS IN THE EVANSVILLE AND SOUTHWESTERN INDIANA AREAS—1996–2002 IN TONS PER SUMMER DAY⁵

| County | 1996 | 1999 | 2002 |
|-------------------------------|--------|--------|-------|
| Vanderburgh/Warrick | 55.54 | 58.28 | 41.13 |
| Dubois | 24.84 | 23.23 | 18.83 |
| Gibson | 11.49 | 11.57 | 13.29 |
| Pike | 4.36 | 4.22 | 4.66 |
| Posey | 14.87 | 13.80 | 10.57 |
| Spencer | 7.38 | 8.68 | 7.39 |
| Southwest Indiana Total | 118.48 | 119.77 | 95.87 |

TABLE 3.—NO_x EMISSIONS IN THE EVANSVILLE AND SOUTHWESTERN INDIANA AREAS—1996–2002 IN TONS PER SUMMER DAY

| County | 1996 | 1999 | 2002 |
|-------------------------------|--------|--------|--------|
| Vanderburgh/Warrick | 119.72 | 130.40 | 95.42 |
| Dubois | 19.21 | 17.02 | 8.32 |
| Gibson | 143.52 | 163.00 | 140.12 |
| Pike | 81.73 | 66.08 | 64.65 |
| Posey | 36.84 | 48.77 | 38.43 |
| Spencer | 102.75 | 116.44 | 99.27 |
| Southwest Indiana Total | 503.78 | 541.71 | 446.21 |

Other emission controls have also been implemented in Southwestern Indiana. IDEM notes that statewide VOC RACT rules were adopted for a limited set of existing sources in the mid-1990s, and have been implemented by new sources located in Indiana since that time. The following Indiana VOC RACT rules have been adopted and implemented on a statewide basis: 326 Indiana Administrative Code (IAC) 8–2 (Surface Coating Emission Limitations); 326 IAC 8–3 (Organic Solvent Degreasing Operations); 326 IAC 8–4 (Petroleum Sources); 326 IAC 8–5 (Miscellaneous Operations); 326 IAC 8–6 (Organic Solvent Emission Limitations); and, 326 IAC 8–10 (Auto Body Refinishing). Compliance with these rules have reduced VOC emissions in the Southwestern Indiana area.

Since the Evansville area was previously classified as a marginal nonattainment area for the 1-hour ozone

standard, and was not required to demonstrate attainment of the 1-hour ozone standard, no ozone precursor emission controls were specifically required for the Evansville area. Therefore, the statewide and national emission control requirements have provided the majority of the emission reductions in this area.

Besides the statewide VOC RACT rules and national NO_x emission control requirements, other Federal emission reduction requirements have resulted in decreased ozone precursor emissions in the Southwestern Indiana area and/or will produce future emission reductions leading to maintenance of the ozone standard in the Evansville area. These emission reduction requirements include the following:

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower emissions from new cars

and light duty trucks, including sport utility vehicles. The Federal rules are being phased in between 2004 and 2009. Mobile source NO_x emissions are expected to be decreased by 65 to 90 percent, depending on vehicle type. Mobile source VOC emissions are expected to be decreased by 12 to 18 percent depending on vehicle type.

Heavy-Duty Diesel Engines. The Heavy-Duty Diesel Engine rule applies to new heavy-duty gasoline and diesel trucks and buses, and is expected to reduce NO_x emissions from new vehicles by up to 40 percent. The rule is being phased in from 2004 through 2007.

Non-Road Diesel Rule. This rule generally applies to new stationary diesel engines used in certain industries, including construction, agriculture, and mining. In addition to affecting engine design, this rule includes requirements for cleaner fuels.

⁵ See Footnote 4 above. The most relevant emissions in this table and in subsequent emissions tables are the VOC and NO_x emissions in Vanderburgh and Warrick Counties. The emissions

in the remaining counties serve only to demonstrate the relative magnitude of regional versus local emissions and the directionality over time of regional emissions in general that, along with local

emissions, impact the Evansville area's peak ozone levels.

It is expected to reduce NO_x emissions from these engines by up to 90 percent, and to significantly reduce particulate matter and sulfur emissions from these engines. This rule will limit emissions from new engines beginning in 2008. The rule has not impacted current emissions from these engines, but is expected to have a significant impact during the maintenance period for the Evansville area.

IDEM notes that some emission reductions have resulted from permanent source closures in the Evansville area, and that these emission reductions have contributed to the downward trend in emissions in the Evansville area and toward attainment of the 8-hour ozone standard. In its June 2, 2005 submittal, IDEM has listed the source closures that have occurred between 1996 and 2002. IDEM confirms that the emissions reductions resulting from the source closures are permanent and will be maintained in the future. To prevent these emission reductions from being totally consumed by unconstrained source growth, IDEM states that any reopening of the closed facilities will require review under Indiana's new source review program after the redesignation of the Evansville area to attainment of the 8-hour ozone NAAQS and the implementation of appropriate emission controls for new sources.

Indiana commits to maintain all existing emission control measures that affect the Evansville area after this area is redesignated to attainment. All changes in existing rules affecting the Evansville area and new rules subsequently needed for continued maintenance of the 8-hour ozone NAAQS in the Evansville area will be submitted to the EPA for approval as SIP revisions.

4. The Evansville Area Has a Fully Approvable Ozone Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Evansville area to attainment of the ozone NAAQS, Indiana submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Evansville area for at least 10 years after the redesignation of this area to attainment of the NAAQS.

a. What Is Required in an Ozone Maintenance Plan?

Section 175A of the CAA sets forth the required elements of maintenance plans for areas seeking redesignation from nonattainment to attainment. Under section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for

at least ten years after the Administrator approves the redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the 8-hour ozone maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary, to assure prompt correction of any future 8-hour ozone standard violations. The September 4, 1992 John Calcagni memorandum provides additional guidance on the content of maintenance plans. An ozone maintenance plan should, at minimum, address the following items: The attainment VOC and NO_x emissions inventories; a maintenance demonstration showing maintenance for the first 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; and, a contingency plan to prevent and/or correct any future violation of the NAAQS.

b. Attainment Emissions Inventories

IDEM prepared comprehensive VOC and NO_x emissions inventories for Vanderburgh and Warrick Counties, including point (significant stationary sources), area (smaller stationary sources and widely-distributed sources), mobile on-road, and mobile non-road sources for a base year/attainment year of 2002. IDEM has documented the VOC and NO_x emissions by major source categories for Vanderburgh and Warrick Counties, along with the VOC and NO_x emissions for other counties in the Southwestern Indiana area for 1996, 1999, and 2002, which were years EPA required states to prepare and submit periodic emission inventory updates.

To develop the base year emissions inventories, IDEM used the following approaches and sources of data:

Area Sources—Area source VOC and NO_x emissions were taken from the Indiana 2002 periodic emissions inventory, which was previously submitted to the EPA. The area source emission estimates were derived using United States Department of Commerce Bureau of Economic Analysis (BEA) growth factors to project emissions derived for 1996 and 1999. The area source estimates also involved the use of current local source surrogate data, including area populations and employment data by source type.

Mobile On-Road Sources—Mobile source emissions were calculated using MOBILE6 emission factors. Traffic data (vehicle miles traveled, vehicle speeds, and vehicle type and age distributions) for 2002 were calculated using the travel demand model and post-processor provided by the Evansville Urban Transportation Study (EUTS). IDEM has provided detailed data summaries to document the calculation of mobile on-road VOC and NO_x emissions for 2002, as well as for the projection years of 2010 and 2015 (further discussed below).

Point Source Emissions—2002 point source emissions were compiled from IDEM's 2002 annual emissions statement database and the 2002 EPA Air Markets acid rain emissions inventory database.

Mobile Non-Road Emissions—Non-road mobile source emissions were generated by the EPA and documented in the 2002 National Emissions Inventory (NEI). In addition to the data taken from the NEI, IDEM also considered emissions for commercial marine vessels and railroads, obtained from the Lake Michigan Air Directors Consortium (LADCO). The NEI emissions data for recreational motorboats and construction equipment were significantly revised based on local data. The NEI emissions from recreational motorboats were revised to account for local motorboat population data and local spatial surrogates. The NEI construction equipment emissions were reviewed and updated based on surveys completed in the Midwest. IDEM also updated the temporal allocation of agricultural emissions.

The 2002 attainment year VOC and NO_x emissions for Vanderburgh and Warrick Counties are summarized along with the 2010 and 2015 projected emissions for these Counties in Tables 4 below, which covers the demonstration of maintenance for this area. It is our conclusion that the State has adequately derived and documented the attainment year VOC and NO_x emissions for this area.

c. Demonstration of Maintenance

As part of its June 2, 2005 ozone redesignation request submittal, IDEM included a requested revision of the SIP to include a 10-year ozone maintenance plan as required by section 175A of the CAA. This demonstration shows maintenance of the 8-hour ozone NAAQS by assuring that current and future emissions of VOC and NO_x remain at or below the attainment year

emission levels.⁶ Note that a maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100

(October 19, 2001) and 68 FR 25430–25432 (May 12, 2003).

Table 4 specifies the VOC and NO_x emissions for Vanderburgh and Warrick Counties combined for 2002, 2010, and 2015. IDEM chose 2010 as an interim

year in the 10-year maintenance demonstration period to demonstrate that the VOC and NO_x emissions are not projected to increase above the attainment levels in the middle of the 10-year period.

TABLE 4.—ATTAINMENT YEAR (2002) AND PROJECTED VOC AND NO_x EMISSIONS IN VANDERBURGH AND WARRICK COUNTIES (TPSD)

| Source sector | VOC | | | NO _x | | |
|----------------|-------|-------|-------|-----------------|-------|-------|
| | 2002 | 2010 | 2015 | 2002 | 2010 | 2015 |
| Point | 5.16 | 6.77 | 8.09 | 70.19 | 30.18 | 31.43 |
| Area | 18.60 | 21.36 | 23.46 | 2.95 | 3.20 | 3.27 |
| On-Road | 11.21 | 6.02 | 4.12 | 16.40 | 9.30 | 5.01 |
| Non-Road | 6.16 | 4.42 | 3.80 | 5.88 | 4.52 | 3.23 |
| Total | 41.13 | 38.56 | 39.47 | 95.42 | 47.19 | 42.94 |

IDEM also considered regional emissions from other counties in the Southwestern Indiana area. IDEM concluded, based on analyses by LADCO,⁷ that regional NO_x emissions changes may significantly impact the ozone levels in the Evansville area, whereas regional VOC emissions

outside of the nonattainment area were less of a concern. IDEM determined the attainment year and projected year NO_x emissions for Dubois, Gibson, Pike, Posey, and Spencer Counties, which are the other counties in the Southwestern Indiana area as noted above. Table 5 summarizes the NO_x emissions totals

for these counties by major source sector. It can be seen that the NO_x emissions totals in these counties are projected to decrease after 2002, which indicates that the transport of NO_x into the Evansville area will also decrease during the 10-year maintenance period.

TABLE 5.—ATTAINMENT YEAR AND PROJECTED NO_x EMISSIONS IN COUNTIES IN THE VICINITY OF THE EVANSVILLE AREA (TPSD)

| Source sector | NO _x | | |
|-----------------------|-----------------|--------|--------|
| | 2002 | 2010 | 2015 |
| Point | 318.03 | 134.22 | 134.71 |
| Area | 2.37 | 2.53 | 2.61 |
| On-Road Mobile | 18.63 | 10.68 | 6.70 |
| Non-Road Mobile | 11.76 | 9.72 | 7.73 |
| Total | 350.79 | 157.15 | 151.76 |

The emission projections show that the ozone precursor emissions in the Evansville area in addition to the NO_x emissions in other counties in its vicinity are not expected to exceed the levels of the 2002 attainment year during the 10-year maintenance period. The decreases in local and regional NO_x emissions indicate that peak ozone levels in the Evansville area may actually be expected to further decline during the 10-year maintenance period.

IDEM has documented the procedures used to project emissions. On-road mobile source emissions were projected using the MOBILE6 emission factor

model and projected traffic data obtained from the Evansville Urban Transportation Study's Travel Demand Model, the same procedure used to determine the attainment year on-road mobile source emissions. Emissions for the other major source sectors were determined using source activity/growth data provided by LADCO. LADCO has developed source growth and emission control data for sources in the upper Midwest for use in 8-hour ozone and fine particulate (PM_{2.5}) modeling analyses. Therefore, IDEM's emission projections for the Evansville area and its vicinity are consistent with the

planning analyses being conducted to attain the 8-hour ozone and PM_{2.5} standards in the upper Midwest urban areas and region. It should also be noted that the NO_x emission estimates are also consistent with the Indiana state-wide NO_x emission budget established in Indiana's EGU NO_x rule.

Based on the comparison of the projected emissions and the attainment year emissions, we conclude that IDEM has successfully demonstrated that the 8-hour ozone standard should be maintained in the Evansville area. We believe that this is especially likely given the projected decrease in the

⁶ The attainment year can be any of the three consecutive years where the area has clean air quality data (2002, 2003, or 2004 for the Evansville area). 2002 is the recommended base year for ozone attainment and rate-of-progress demonstrations, as discussed in a November 18, 2002 memorandum, "2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, PM_{2.5} and Regional Haze Programs," from Lydia N. Wegman, Director, Air Quality

Strategies and Standards Division. As noted here, Indiana chose to use 2002 as the attainment year because the State was already preparing emissions for this year to prepare the base year emissions inventory.

⁷ Analyses conducted by LADCO to support the development of 1-hour ozone attainment demonstrations showed that peak ozone concentrations in the Chicago and Milwaukee areas

were sensitive to changes in local VOC emissions and to changes in regional NO_x emissions outside of the urban areas. Changes in regional VOC emissions upwind of these urban areas produced minimal changes in the peak ozone concentrations in these urban areas. Modeling for the 8-hour ozone standard being conducted by LADCO and its member states suggests that the same principle also applies in other major urban areas in the region.

region's NO_x emissions.⁸ As noted by IDEM, this conclusion is further supported by the fact that other states in the eastern portion of the United States are expected to further reduce regional NO_x emissions through the implementation of their NO_x rules for EGUs and other major NO_x emission sources. In addition, further regional emission reductions are expected to occur as the result of the implementation of EPA rules for Tier 2 motor vehicle standards, gasoline sulfur content restrictions, highway heavy-duty diesel engines, and non-road diesel engines, all of which will be implemented during the next few years. The implementation of CAIR should also provide additional reductions in regional NO_x emissions.

d. Monitoring Network

As noted elsewhere in this proposed rule, IDEM commits to continue operating and maintaining an approved ozone monitoring network in the Evansville area in accordance with 40 CFR part 58 through the 10-year maintenance period. This will allow the confirmation of the maintenance of the 8-hour ozone standard in this area.

e. Verification of Continued Attainment

Continued attainment of the 8-hour ozone NAAQS in the Evansville area depends, in part, on the State's efforts toward tracking applicable indicators during the maintenance period. The State's plan for verifying continued attainment of the 8-hour standard in the Evansville area consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. In addition, IDEM will periodically revise and review the VOC and NO_x emissions inventories for the Evansville area to assure that emissions growth is not threatening the continued attainment of the 8-hour ozone standard in the Evansville area. Emissions inventories will be revised for 2005, 2008, and 2011, as necessary to comply with the emissions inventory reporting requirements of the CAA. The updated emissions inventories will be compared to the 2002 emissions inventories to assess emission trends and assure continued attainment of the 8-hour ozone standard.

⁸ As noted above, the emissions from the "neighboring counties" (those counties outside of the Evansville area) are indicative of the emission changes expected in the region as a whole. Therefore, since emissions are projected to decline in the neighboring counties, we can assume that emissions upwind of the Evansville area will also decline over the subject period.

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 of the NAAQS. 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 might occur 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 measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of an area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Indiana has adopted a contingency plan to address a possible future ozone air quality problem. The contingency plan adopted by Indiana has two levels of responses, depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level) or is imminent (Action Level).

A Warning Level response will occur when an annual (1-year) fourth-high monitored daily peak 8-hour ozone concentration of 88 ppb or higher is monitored in a single ozone season at any monitor within the ozone maintenance area. A Warning Level response will consist of Indiana performing a study to determine whether the high ozone concentration indicates a trend toward high ozone levels or whether emissions are increasing. If a trend toward higher ozone concentrations exists and is likely to continue, the emissions control measures necessary to reverse the trend will be determined taking into consideration ease and timing of implementation, as well as economic and social considerations. The study, including applicable recommended next steps, will be completed within 12 months from the close of the ozone season with the recorded high ozone concentration. If emission controls are needed to reverse the adverse ozone trend, the procedures for emission control selection under the Action Level response will be followed.

An Action Level response will occur when a two-year average annual fourth-high monitored daily peak 8-hour ozone concentration of 85 ppb occurs at any monitor in the ozone maintenance area. In this situation, IDEM will determine the additional emission control measures needed to assure future attainment of the 8-hour ozone NAAQS. IDEM will focus on emission control measures that can be implemented in a short time, and selected emission control measures will be adopted and implemented within 18 months from the close of the ozone season with ozone monitoring data that prompted the Action Level Response. Adoption of any additional emission control measures will be subject to the necessary administrative and legal procedures, including publication of notices and the opportunity for public comment and response. If a new emission control measure is adopted by the State (independent of the ozone contingency needs) or is adopted at a Federal level and is scheduled for implementation in a time frame that will mitigate an ozone air quality problem, IDEM will determine whether this emission control measure is sufficient to address the ozone air quality problem. If IDEM determines that existing or soon-to-be-implemented emissions control measures should be adequate to correct the ozone standard violation problem, IDEM may determine that additional emission control measures at the State level may be unnecessary. Regardless, IDEM will submit to the EPA an analysis to demonstrate that proposed emission control measures are adequate to provide for future attainment of the 8-hour ozone NAAQS in a timely manner.

Contingency measures contained in the maintenance plan are those emission controls or other measures that Indiana may choose to adopt and implement to correct possible air quality problems. These include, but are not limited to, the following:

- i. Lower Reid vapor pressure gasoline requirements;
- ii. Broader geographic applicability of existing emission control measures;
- iii. Tightened RACT requirements on existing sources covered by EPA Control Technique Guidelines (CTGs) issued in response to the 1990 CAA amendments;
- iv. Application of RACT to smaller existing sources;
- v. Vehicle Inspection and Maintenance (I/M);
- vi. One or more Transportation Control Measure (TCM) sufficient to achieve at least a 0.5 percent reduction in actual area wide VOC emissions, to be selected from the following:

A. Trip reduction programs, including, but not limited to, employer-based transportation management plans, area wide rideshare programs, work schedule changes, and telecommuting;

B. Transit improvements;

C. Traffic flow improvements; and

D. Other new or innovative transportation measures not yet in widespread use that affect State and local governments as deemed appropriate;

vii. Alternative fuel and diesel retrofit programs for fleet vehicle operations;

viii. Controls on consumer products consistent with those adopted elsewhere in the United States;

ix. VOC or NO_x emission offsets for new or modified major sources;

x. VOC or NO_x emission offsets for new or modified minor sources;

xi. Increased ratio of emission offset required for new sources; and,

xii. VOC or NO_x emission controls on new minor sources (with VOC or NO_x emissions less than 100 tons per year).

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, Indiana commits to submit to the EPA an update of the ozone maintenance plan eight years after redesignation of the Evansville area to cover an additional 10-year period beyond the initial 10-year maintenance period.

V. Has Indiana Adopted Acceptable Motor Vehicle Emissions Budgets for the End of the 10-Year Maintenance Plan (for 2015) Which Can Be Used To Support Conformity Determinations?

A. How Are the MVEBs Developed and What Are the MVEBs for the Evansville Area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard). These emission control strategy SIP revisions (e.g., reasonable further progress and attainment demonstration SIP revisions) and ozone maintenance plans must create MVEBs based on on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to

attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993 transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the part of the SIP that addresses emissions from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA's policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and federal agencies in determining whether proposed transportation projects conform to the SIPs as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submissions; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas: Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change"

published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Evansville area's 10-year maintenance plan contains VOC and NO_x MVEBs for 2015. The availability of the SIP submission with these 2015 MVEBs was announced for public comment on EPA's adequacy Web page on April 12, 2005, at: <http://www.epa.gov/otaq/transp/conform/currstips.htm>. The EPA public comment period on the adequacy of the 2015 MVEBs for the Evansville area closed on May 12, 2005. EPA did not receive any adverse comments. On June 30, 2005 (70 FR 37856), EPA published a notice of adequacy to notify the public that we had found the 2015 MVEBs to be adequate for use in transportation conformity analyses.

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in the Evansville area because EPA has determined that the budgets are consistent with the control measures in the SIP and that the Evansville area can maintain attainment of the 8-hour ozone NAAQS for the relevant 10-year period with mobile source emissions at the levels of the MVEBs. IDEM has determined the 2015 MVEBs for the Evansville area (for Vanderburgh and Warrick Counties combined) to be 4.20 tpd for VOC and 5.40 tpd for NO_x. It should be noted that these MVEBs exceed the on-road mobile source VOC and NO_x emissions projected by IDEM for 2015, as summarized in Table 4, above ("On-Road" source sector). Through discussions with all organizations involved in transportation planning for the Evansville area, IDEM decided to include safety margins of 0.08 tpd of VOC and 0.39 tpd of NO_x in the MVEBs to provide for mobile source growth. Indiana has demonstrated that the Evansville area can maintain the 8-hour ozone NAAQS with mobile source emissions of 4.20 tpd of VOC and 5.40 tpd of NO_x in 2015, since emissions will still remain under the attainment year levels.

B. What Is a Safety Margin?

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 4, the Evansville area VOC and NO_x emissions are projected to have safety margins of 1.66 tons per day for VOC and 52.48 tons per day for NO_x in 2015 (the difference between the attainment year, 2002, emissions and the 2015 emissions for all sources in

Vanderburgh and Warrick Counties combined).

The MVEBs requested by IDEM contain safety margins (selected by the State) significantly smaller than the safety margins reflected in the total emissions for the Evansville area. The State is not requesting allocation of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the State is requesting MVEBs that exceed the on-road mobile source emissions for 2015 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration.

C. Are the MVEBs Approvable?

The VOC and NO_x MVEBs for the Evansville area are approvable because they maintain the total emissions for Vanderburgh and Warrick Counties at or below the attainment year inventory levels, as required by the transportation conformity regulations.

VI. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state

law and does not impose any additional enforceable duty beyond that required by state law, it 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).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Transportation conformity, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 29, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05-17819 Filed 9-8-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R03-OAR-2005-MD-0008; FRL-7996-8]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Maryland; Control of Emissions From Commercial and Industrial Solid Waste Incineration (CISWI) Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the May 12, 2005 negative declaration letter submitted by the Maryland Department of the Environment (MDE). The negative declaration certifies that existing CISWI units, subject to Clean Air Act (the Act) requirements of sections 111(d) and 129 and the related emissions guidelines (EG), have been permanently shut down and have been dismantled in the State of Maryland.

In the Final Rules section of this **Federal Register**, EPA is approving the MDE certification as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA