

without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: October 26, 2005.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 05–23089 Filed 11–22–05; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[R05–OAR–2005–IN–0010; FRL–8001–5]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Vigo County 8-Hour Ozone Nonattainment Area to Attainment for Ozone

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to make a determination that the Vigo County ozone nonattainment area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This proposed determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2002–2004 seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area.

EPA is proposing to approve a request from the State of Indiana to redesignate Vigo County to attainment of the 8-hour ozone NAAQS. This request was submitted by the Indiana Department of Environmental Management (IDEM) on July 5, 2005 and supplemented on October 20, 2005 and November 4, 2005. In proposing to approve this request, EPA is also proposing to approve the

State's plan for maintaining the 8-hour ozone NAAQS in this area through 2015 as a revision to the Indiana State Implementation Plan (SIP). EPA is also finding adequate and is proposing to approve the State's 2015 Motor Vehicle Emission Budgets (MVEBs) for this area.

**DATES:** Comments must be received on or before December 23, 2005.

**ADDRESSES:** Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–IN–0010, by one of the following methods:

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

2. 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.

3. E-mail: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

4. Fax: (312) 886–5824.

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

6. Hand delivery: Deliver your comments to: John M. Mooney, Chief, Air Programs Branch 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–0010. 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 the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Steve Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Steve Rosenthal, Environmental Engineer, 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, [rosenthal.steven@epa.gov](mailto:rosenthal.steven@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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### I. What Actions Is EPA Proposing to Take?

EPA is proposing to take several related actions. EPA is proposing to make a determination that the Vigo County, Indiana nonattainment area has attained the 8-hour ozone standard and that Vigo County has met the requirements for redesignation under section 107(d)(3)(E). EPA is thus proposing to approve the request to change the legal designation of the Vigo County area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve Indiana's maintenance plan SIP revision for Vigo County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep Vigo County in attainment of the ozone NAAQS for the next 10 years. Additionally, EPA is announcing its action on the Adequacy Process for the newly-established 2015 MVEBs. The Adequacy comment period for the 2015 MVEBs began on July 12, 2005, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (at <http://www.epa.gov/otaq/transp/conform/adequacy.htm>). The Adequacy comment period for these MVEBs ended on August 11, 2005. No requests for this submittal or adverse comments on this submittal were received during the Adequacy comment period. Please see the Adequacy Section of this rulemaking for further explanation on this process. Therefore, we are finding adequate and proposing to approve the State's 2015 MVEBs for transportation conformity purposes.

### II. What Is the Background for These Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO<sub>x</sub> and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Vigo County was designated unclassifiable/attainment under the 1-hour ozone NAAQS, which was revoked on June 15, 2005. On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more

stringent than the previous 1-hour standard.

On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years (2001–2003) of air quality data. The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as “basic” nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as “classified” nonattainment) provides more specific requirements for ozone nonattainment areas. Some ozone nonattainment areas are subject only to the provisions of subpart 1. Other ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, (69 FR 23951) an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour design values. Vigo County was designated as a subpart 1, 8-hour ozone nonattainment area by EPA on April 30, 2004, (69 FR 23857) based on air quality monitoring data from 2001–2003.

Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm) when rounding is considered. 40 CFR 50.10 and Appendix I. See 69 FR 23857 (April 30, 2004) for further information. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of Part 50.

On July 5, 2005, Indiana requested that EPA redesignate Vigo County to attainment for the 8-hour ozone standard. This request was supplemented with submittals dated October 20, 2005 and November 4, 2005.

The redesignation request included three years of complete, quality-assured data for the period of 2002 through 2004, indicating the 8-hour NAAQS for ozone had been attained for Vigo County. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

### III. What Are the Criteria for Redesignation?

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

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 has provided further guidance on processing redesignation requests in the following documents:

“Ozone and Carbon Monoxide Design Value Calculations”, Memorandum from William G. Laxton, Director Technical Support Division, June 18, 1990;

“Maintenance Plans for Redesignation of Ozone and Carbon Monoxide 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 Ozone and Carbon Monoxide (CO) 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, to Air Division Directors, Regions 1–10, dated 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.

**IV. Why Is EPA Proposing To Take These Actions?**

On July 5, 2005, Indiana requested redesignation of Vigo County to attainment for the 8-hour ozone standard. Indiana supplemented this request with submittals dated October 20, 2005 and November 4, 2005. EPA believes that the area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA.

**V. What Would Be the Effect of These Actions?**

Approval of the redesignation request and maintenance plan would change the official designation of the 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 through 2015. The maintenance plan includes contingency measures to remedy future violations of the 8-hour NAAQS, and establishes MVEBs for the year 2015 of 2.48 tons per day (tpd) VOC and 3.67 tpd NO<sub>x</sub> for Vigo County.

**VI. What Is EPA’s Analysis of the Request?**

*A. Attainment Determination and Redesignation*

EPA is proposing to making a determination that the Vigo County nonattainment area has attained the 8-hour ozone standard and that the area has met all other applicable section 107(d)(3)(E) redesignation criteria. The basis for EPA’s determinations is as follows:

1. The Area Has Attained the 8-hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make a determination that Vigo County 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, as determined in accordance with 40 CFR 50.10 and Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR Part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

IDEM submitted ozone monitoring data for the 2002 to 2004 ozone seasons. The State quality assures monitoring data in accordance with 40 CFR 58.10 and the Indiana Quality Assurance Manual and records the data in the AIRS database, thus making the data publicly available. IDEM operates two ozone monitors in Vigo County: Terre Haute and Sandcut. The data for 2002–2004 have been quality assured and are recorded in AIRS. For the Terre Haute monitor, data completeness averaged 98%, 98%, and 100% in 2002, 2003 and 2004, respectively. For the Sandcut monitor, data completeness averaged 96%, 93% and 97% in 2002, 2003 and 2004, respectively. The annual fourth highest 8-hour average ozone concentrations and the three-year average fourth-high 8-hour average ozone concentrations are summarized in Table 1.

TABLE 1.—ANNUAL FOURTH-HIGH 8-HOUR AVERAGE OZONE CONCENTRATION AND THREE-YEAR AVERAGE FOURTH-HIGH 8-HOUR AVERAGE OZONE CONCENTRATIONS IN VIGO COUNTY, INDIANA

Site	Year	4th high 8-hour average (ppm)	3-year average for ending year (ppm)
Terre Haute .....	2002	0.082	NA
Terre Haute .....	2003	0.066	NA
Terre Haute .....	2004	0.057	0.068
Sandcut .....	2002	0.099	NA
Sandcut .....	2003	0.080	NA
Sandcut .....	2004	0.072	0.084

It should be noted that preliminary 2005 monitoring data show that Vigo County continues to attain the 8-hour ozone standard.

In addition, as discussed below with respect to the maintenance plan, IDEM has committed to continue monitoring in these areas in accordance with 40 CFR part 58. In summary, EPA believes

that the data submitted by Indiana provide an adequate demonstration that Vigo County has attained the 8-hour ozone NAAQS. Therefore, we are

proposing to find that Vigo County has attained the 8-hour ozone standard.

2. For Purposes of Redesignation the Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We are proposing to determine Indiana has met all currently applicable SIP requirements for purposes of redesignation for Vigo County under Section 110 of the CAA (general SIP requirements). We are also proposing to determine that the Indiana SIP meets all SIP requirements currently applicable for purposes of redesignation under Part D of Title I of the CAA (requirements specific to Subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, we are proposing to determine that the Indiana SIP is fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, we have ascertained what SIP requirements are applicable to the areas for purposes of redesignation. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

*a. Vigo County has met all requirements applicable for purposes of redesignation under section 110 and part D of the CAA.* The September 4, 1992 Calcagni memorandum (see "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 Michael Shapiro memorandum and 60 FR 12459, 12465-66 (Mar. 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 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. General SIP elements and requirements are delineated in section 110(a)(2). These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; enforceable emission limitations and other control measures, means or techniques; provisions for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring, and reporting; provisions for air quality modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain 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<sub>x</sub> SIP Call,<sup>1</sup> Clean Air Interstate Rule (CAIR)(70 FR 25162)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. 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-Lorain, 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 in the Pittsburgh ozone redesignation (66 FR 50399, October 19, 2001).

We believe that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation requests. Therefore, as discussed above, for purposes of redesignation, they are not considered applicable requirements.

*Part D Requirements.* EPA has determined that the Indiana SIP meets applicable SIP requirements under part D of the CAA since no requirements applicable for purposes of redesignation became due for the 8-hour ozone standard prior to submission of the Vigo County redesignation request. Under part D, an area's classification determines the requirements to which it will be subject. Subpart 1 of part D, found in sections 172-176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Vigo County was classified as subpart 1 nonattainment area, and therefore subpart 2 requirements do not apply.

<sup>1</sup> On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP call, requiring the District of Columbia and 22 states, including Indiana, to reduce their statewide emissions of NO<sub>x</sub> in order to reduce the transport of ozone and ozone. In compliance with EPA's NO<sub>x</sub> SIP call, IDEM has developed rules governing the control of NO<sub>x</sub> emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Indiana's rules as fulfilling Phase I of the NO<sub>x</sub> SIP Call on November 8, 2001 (66 FR 56465). On December 11, 2003 (68 FR 69025) EPA approved revisions to these rules.

*Part D, Subpart 1 applicable SIP requirements.* For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for Vigo County are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

No requirements applicable for purposes of redesignation under part D became due prior to submission of the redesignation request, and, therefore, none is applicable to the area for purposes of redesignation. Since the State of Indiana has submitted a complete ozone redesignation request for Vigo County prior to the deadline for any submissions required for purposes of redesignation, we have determined that these requirements do not apply to the Vigo County area for purposes of redesignation.

Furthermore, EPA has 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 Vigo County 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); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

*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 quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved

under Title 23 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 revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA approved Indiana’s general conformity SIP on January 14, 1998 (63 FR 2146). Indiana does not have a Federally approved transportation conformity SIP. However, conformity analyses are performed pursuant to EPA’s Federal conformity rules. Indiana has submitted on-highway motor vehicle budgets for Vigo County of 2.84 tpd of VOC and 3.67 tpd of NO<sub>x</sub>, based on the area’s 2015 level of emissions. Vigo County must use the motor vehicle emissions budgets from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA’s Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995) (Tampa, Florida). Thus, the area has satisfied all applicable requirements under section 110 and part D of the CAA.

*b. For purposes of redesignation Vigo County has a fully approved applicable SIP under section 110(k) of the CAA.* EPA has fully approved the Indiana SIP for Vigo County under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. 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 Vigo County under the 1-hour ozone standard. No Vigo County 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 also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are, therefore, not applicable requirements for purposes of redesignation.

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

EPA believes that Indiana has demonstrated that the observed air quality improvement in Vigo County 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 calculated the change in emissions between 1999 and 2004, one of the years Vigo County monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Indiana has implemented in recent years.

*a. Permanent and enforceable controls implemented.* The following is a discussion of permanent and enforceable measures that have been implemented in the area:

*Reasonably Available Control Technology (RACT).* Vigo County was not previously required to be covered by RACT regulations for existing sources under the CAA. However, Indiana has implemented statewide RACT controls through the following regulations:

- 326-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; and
- 326-IAC 8-6 Organic Solvent Emission Limitations.

*NO<sub>x</sub> rules.* In compliance with EPA's NO<sub>x</sub> SIP call, Indiana developed rules to control NO<sub>x</sub> emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. These rules required sources to begin reducing NO<sub>x</sub> emissions in 2004, with emission reductions increasing to 31 percent statewide by 2007. It should be noted that statewide NO<sub>x</sub> emissions actually began to decline in 2002 as sources phased in emission controls needed to comply with the State's NO<sub>x</sub> emission control regulations. From 2004 on, NO<sub>x</sub> emissions from EGUs are capped at a statewide total well below pre-2002 levels. It should be noted that NO<sub>x</sub> emissions are expected to further decline as the State meets the requirements of EPA's Phase II NO<sub>x</sub> SIP call (69 FR 21604).

*Federal Emission Control Measures.* Reductions in VOC and NO<sub>x</sub> emissions have occurred statewide as a result of Federal emission control measures, with additional emission reductions expected to occur in the future as additional emission controls are implemented.

Federal emission control measures have included: the National Low Emission Vehicle (NLEV) program, Tier 2 emission standards for vehicles, gasoline sulfur limits, and heavy-duty diesel engine standards. In addition, in 2004, EPA issued the Clean Air Non-road Diesel Rule (69 FR 38958). This rule will reduce off-road diesel emissions through 2010, with emission reductions starting in 2008.

Indiana commits to maintain the implemented emission control measures after redesignation of Vigo County to attainment of the 8-hour ozone NAAQS. Any revisions to emission control regulations and emission limits will be submitted to the EPA for approval as SIP revisions.

*b. Emission reductions.* Indiana is using 1999 for the nonattainment year inventory, emissions from which are used to compare to the 2004 attainment year inventory to demonstrate that emission reductions (from 1999 to 2004) have contributed to the improvement in air quality. Emissions estimates were taken directly from the National Emissions Inventory (NEI), with the following exception. Point source emissions information was compiled from IDEM's 1999 annual emissions statement database.

For comparison, IDEM developed an inventory for 2004, one of the years the area monitored attainment of the 8-hour NAAQS. The point source sector information was compiled from IDEM's

2004 annual emissions statement database and the 2004 EPA Air Markets acid rain database. The area source sector information was taken from the Indiana 2002 periodic inventory submitted to EPA. These projections were made from the U.S. Department of Commerce Bureau of Economic Analysis growth factors with some updated local information. The nonroad sector emission estimates were developed using NONROAD with the following modifications. Emissions were estimated for two nonroad categories not included in NONROAD, commercial marine vessels and railroads. Recreational motorboat population and spatial surrogates (used to assign emissions to each county) were updated. The populations for the construction equipment category were reviewed and updated based upon surveys completed in the Midwest and the temporal allocation for agricultural sources was also updated. The onroad sector emissions were calculated using MOBILE 6.2.

Based on the inventories described above, Indiana's submittal documents changes in VOC and NO<sub>x</sub> emissions from 1999 to 2004 for Vigo County. Indiana also documented the change in emissions for the surrounding Western Indiana Counties of Clay, Parke, Sullivan and Vermillion. Emissions data are shown in Tables 2 and 3 below.

TABLE 2.—COMPARISON OF 1999 AND 2004 VOC AND NO<sub>x</sub> EMISSIONS FOR VIGO COUNTY (TPSD)

Sector	VOC			NO <sub>x</sub>		
	1999	2004	Net change (1999–2004)	1999	2004	Net change (1999–2004)
Point .....	7.36	4.84	– 2.52	26.65	28.67	2.02
Area .....	14.18	6.48	– 7.70	1.45	0.99	– 0.46
Nonroad .....	2.32	2.76	0.44	5.28	3.39	– 1.89
Onroad .....	8.30	6.22	– 2.08	12.29	9.42	– 2.87
Total .....	32.16	20.30	– 11.86	45.67	42.47	– 3.20

TABLE 3.—COMPARISON OF 1999 AND 2004 VOC AND NO<sub>x</sub> EMISSIONS FOR SURROUNDING COUNTIES (TPSD)

Sector	VOC			NO <sub>x</sub>		
	1999	2004	Net change (1999–2004)	1999	2004	Net change (1999–2004)
Point .....	5.52	3.22	– 2.30	82.39	62.90	– 19.49
Area .....	19.18	6.76	– 12.42	0.94	0.54	– 0.40
Nonroad .....	2.70	4.11	1.41	9.17	6.93	– 2.24
Onroad .....	7.20	6.12	– 1.08	9.87	11.56	1.69
Total .....	34.60	20.21	– 14.39	102.37	81.93	– 20.44

Table 2 shows that Vigo County reduced NO<sub>x</sub> emissions by 3.20 tpd and VOC emissions by 11.86 tpd between

1999 and 2004. Table 3 shows emissions in the surrounding counties decreased

by 14.39 tpd for VOC and 20.44 tpd for NO<sub>x</sub>.

Based on the information summarized above, Indiana has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175a of the CAA. (Section 107(d)(3)(E)(iv))

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

a. *What is required in a maintenance plan?* Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a 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 ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS

violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992 John Calcagni memorandum provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following items: The attainment VOC and NO<sub>x</sub> emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. *Attainment Inventory.* The State developed an inventory for 2004, one of the years the area monitored attainment of the 8-hour NAAQS. Inventory methodology is described in section 3 above. The attainment level of emissions is summarized along with the 2010 and 2015 projected emissions for Vigo County in Table 3 below.

c. *Demonstration of Maintenance.* As part of the redesignation request, IDEM submitted revisions to the 8-hour ozone

SIP to include a 10-year maintenance plan as required by section 175A of the CAA. For Vigo County, this demonstration shows maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and NO<sub>x</sub> remain at or below attainment year emission levels. 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), 68 FR 25430–25432 (May 12, 2003).

IDEM developed projected emissions inventories for 2010 and 2015. Onroad mobile source emissions were projected using Mobile 6.2 in accordance with “Procedures for Preparing Emissions Projections,” EPA–45/4–91–019. Emissions for the point, area and nonroad sectors were projected using growth and control files developed by the Midwest Regional Planning Organization. This method was used to ensure that the inventories used for redesignation are consistent with modeling performed in the future. These emission estimates are presented in Tables 4 and 5 below.

TABLE 4.—COMPARISON OF 2004–2015 VOC AND NO<sub>x</sub> EMISSIONS FOR VIGO COUNTY (TPSD)

Sector	VOC				NO <sub>x</sub>			
	2004	2010	2015	Net change 2004–2015	2004	2010	2015	Net change 2004–2015
Point .....	4.84	7.24	8.42	3.58	28.67	12.91	12.93	– 15.74
Area .....	6.48	6.94	7.32	0.84	0.99	1.05	1.08	0.09
Nonroad .....	2.76	1.93	1.60	– 1.16	3.39	2.01	1.53	– 1.86
Onroad .....	6.22	3.84	2.58	– 3.64	9.42	5.76	3.34	– 6.08
Total .....	20.30	19.95	19.92	– 0.38	42.47	21.73	18.88	– 23.59

TABLE 5.—COMPARISON OF 2004–2015 VOC AND NO<sub>x</sub> EMISSIONS FOR SURROUNDING COUNTIES (TPSD)

Sector	VOC				NO <sub>x</sub>			
	2004	2010	2015	Net change 2004–2015	2004	2010	2015	Net change 2004–2015
Point .....	3.22	3.50	3.98	0.76	62.90	36.80	36.97	– 25.93
Area .....	6.76	7.16	7.57	0.81	0.54	0.58	0.59	0.05
Nonroad .....	4.11	2.98	2.54	– 1.57	6.93	3.60	2.98	– 3.95
Onroad .....	6.12	7.40	4.48	– 1.64	11.56	4.31	3.09	– 8.47
Total .....	20.21	21.04	18.57	– 1.64	81.93	45.29	43.63	– 38.30

The emission projections show that in Vigo County emissions are not expected to exceed the level of the 2004 attainment year inventory during the 10-year maintenance period. Vigo County VOC and NO<sub>x</sub> emissions are projected to decrease by 0.38 tpd and 23.59 tpd,

respectively. Surrounding County VOC and NO<sub>x</sub> emissions are projected to decrease by 1.64 tpd and 38.30 tpd, respectively.

IDEM notes that, although ozone modeling is not required to support ozone redesignation requests, a

significant amount of ozone modeling data exist that support the connection between emissions reductions and air quality improvement, including modeling data that support a demonstration of maintenance for Vigo County. IDEM notes that the available

modeling data demonstrate that Vigo is significantly impacted by ozone and ozone precursor transport and that NO<sub>x</sub> emission reductions are significantly beneficial for reducing 8-hour ozone concentrations in Vigo County. IDEM draws the conclusions discussed below from the various ozone modeling analyses that have addressed the Midwest.

EPA modeling analyses for the Heavy Duty Engine rule. EPA conducted ozone modeling for Tier II vehicle and low-sulfur fuels to support the final rulemaking for the Heavy Duty Engine (HDE) and Vehicle Standards and Highway Diesel Fuel Rule. This modeling, in part, addressed ozone levels in Vigo County and the West Central Indiana Counties. A base year of 1996 was modeled, and the impacts of fuel changes and the NO<sub>x</sub> SIP call were addressed for high ozone episodes in 1995. The modeling supports the conclusion that the fuel improvements and the NO<sub>x</sub> SIP call result in significant ozone improvements (lower projected ozone concentrations) in Vigo County and in the West Central Indiana Counties. Using the modeling results to determine Relative Reduction Factors (RRFs)<sup>2</sup> and, considering the 2001–2003 ozone design value at the Terre Haute ozone monitor (76 ppb) and at the Sandcut monitor (87) ppb, IDEM projected the 2007 ozone design value to be 66.1 ppb and 80.4 ppb, at Terre Haute and Sandcut, respectively. Therefore, the NO<sub>x</sub> SIP call and the fuel modifications considered in the ozone modeling were found to significantly improve the ozone levels in Vigo County.

Lake Michigan Air Directors Consortium (LADCO) modeling analysis for the 8-hour ozone standard assessment. LADCO has performed ozone modeling to evaluate the effect of the NO<sub>x</sub> SIP call and Tier II/Low Sulfur Fuel Rule on 2007 ozone levels in the Lake Michigan area, which includes Vigo County and the West Central Indiana Counties. Like the EPA modeling discussed above, this modeling indicates that the 2001–2003 ozone design values for the Vigo County monitoring sites would be reduced to below-standard levels in 2007 as the result of implementing the NO<sub>x</sub> SIP call and the Tier II/Low Sulfur Fuel Rule.

<sup>2</sup> Relative Reduction Factors are fractional changes in peak ozone concentrations projected to occur as the result of assumed changes in precursor emissions resulting from the implementation of emission control strategies. Relative Reduction Factors are derived through ozone modeling and are applied to monitored peak ozone concentrations to project post-control peak ozone levels.

EPA modeling analysis for the Clean Air Interstate Rule (CAIR). EPA conducted modeling in support of the CAIR rulemaking. The modeling was based on 1999–2003 design values. Future year modeling was conducted for Vigo County and future year design values for 2010 and 2015 were evaluated for attainment of the 8-hour ozone NAAQS. Results of the CAIR modeling show that Vigo County should continue to attain the 8-hour ozone NAAQS in 2010. With additional CAIR reductions in 2015, design values continue to decrease.

As part of its maintenance plan, the State elected to include a “safety margin” for the areas. 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 which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. For example, Vigo County attained the 8-hour ozone NAAQS during the 2002–2004 time period. Indiana uses 2004 as the attainment level of emissions for the area. The emissions from point, area, nonroad, and mobile sources in 2004 equaled 20.30 tpd of VOC for Vigo County. Projected VOC emissions out to the year 2015 equaled 19.92 tpd of VOC. The SIP demonstrates that Vigo County will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 0.38 tpd of VOC for 2015. By this same method, 23.59 tpd (*i.e.*, 42.47 tpd less 18.88 tpd) is the safety margin for NO<sub>x</sub> for 2015. The emissions are projected to maintain the area’s air quality consistent with the NAAQS. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

*d. Monitoring Network.* Indiana currently operates two ozone monitors in Vigo County. IDEM has committed to continue operating and maintaining an approved ozone monitor network in accordance with 40 CFR part 58.

*e. Verification of Continued Attainment.* Continued attainment of the ozone NAAQS in Vigo County depends, in part, on the State’s efforts toward tracking indicators of continued attainment during the maintenance period. The State’s plan for verifying continued attainment of the 8-hour standard in Vigo County 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<sub>x</sub> emissions inventories for Vigo County to ensure that emissions growth is not threatening the continued attainment of the 8-hour ozone standard. 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 2004 emissions inventories to assess emission trends and assure continued attainment of the 8-hour ozone standard.

*f. Contingency Plan.* The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that 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 the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Indiana has adopted a contingency plan for Vigo County 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 has occurred 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. A violation of the standard (a 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration of 85 ppb or greater) also triggers an Action Level response. 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. EPA notes that it is construing this provision to require that any non-Federal control measure relied upon in lieu of a contingency measure be

included in the State SIP or be submitted to EPA for approval into the SIP.

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<sub>x</sub> emission offsets for new or modified major sources;

x. VOC or NO<sub>x</sub> emission offsets for new or modified minor sources;

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

xii. VOC or NO<sub>x</sub> emission controls on new minor sources (with VOC or NO<sub>x</sub> 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 Vigo County to cover an additional 10-year period beyond the initial 10-year maintenance period.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a

contingency plan. The maintenance plan SIP revision submitted by Indiana for Vigo County meets the requirements of section 175A of the CAA.

#### *B. Adequacy of Indiana's Motor Vehicle Emissions Budgets (MVEBs)*

##### 1. How Are MVEBs Developed and What Are the MVEBs for Vigo County?

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 SIP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad 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 policy, criteria, and procedures for demonstrating and assuring conformity of such 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 SIP as required by section 176(c) of the Clean Air Act. 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 submission; (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<sub>2.5</sub> 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.

Vigo County's 10-year maintenance plan submission contains new VOC and NO<sub>x</sub> 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 July 12, 2005, at: <http://www.epa.gov/otaq/transp/conform/cursips.htm>. The EPA public comment period on adequacy of the 2015 MVEBs for Vigo County closed on August 11, 2005. No requests for this submittal or adverse comments on this submittal were received during the Adequacy comment period. In an October 25, 2005, letter, EPA informed IDEM 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 Vigo County because EPA has determined that the areas 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 Vigo County to be 2.84 tpd for VOC and 3.67 tpd for NO<sub>x</sub>. It should be noted that these MVEBs exceed the onroad mobile source VOC

and NO<sub>x</sub> emissions projected by IDEM for 2015, as summarized in Table 3 above ("onroad" source sector). IDEM decided to include safety margins (described further below) of 0.26 tpd of VOC and 0.33 tpd for NO<sub>x</sub> in the MVEBs to provide for mobile source growth. Indiana has demonstrated that Vigo County can maintain the 8-hour ozone NAAQS with mobile source emissions of 2.84 tpd of VOC and 3.67 tpd of NO<sub>x</sub> in 2015, including the allocated safety margins, since emissions will still remain under attainment year emission levels.

## 2. What Is the Vigo County Safety Margin?

As noted in Table 4, Vigo County VOC and NO<sub>x</sub> emissions are projected to have safety margins of 0.38 tpd for VOC and 23.59 tpd for NO<sub>x</sub> in 2015 (the difference between the attainment year, 2004, emissions and the 2015 emissions for all sources in Vigo County). Even if emissions reached the full level of the safety margin, the County would still demonstrate maintenance since emission levels would equal those in the attainment year.

The MVEBs requested by IDEM contain safety margins for mobile sources significantly smaller than the allowable safety margins reflected in the total emissions for Vigo County. 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 onroad mobile source emissions for 2015 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

## VII. Proposed Actions

EPA is proposing to make a determination that Vigo County has attained the 8-hour ozone NAAQS, and EPA is proposing to approve the redesignation of Vigo County from nonattainment to attainment for the 8-hour ozone NAAQS. After evaluating Indiana's redesignation request, EPA is proposing to determine that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Any final approval of this redesignation request would change the official designation for Vigo County from nonattainment to attainment for the 8-hour ozone standard.

EPA is also proposing to approve the maintenance plan SIP revision for Vigo County. The proposed approval of the maintenance plan is based on Indiana's demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. Additionally, EPA is finding adequate and proposing to approve the 2015 MVEBs submitted by Indiana in conjunction with the redesignation requests.

## VIII. Statutory and Executive Order Reviews

### *Executive Order 12866; Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed 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 action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. 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 proposed 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). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, 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. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. 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, Volatile organic compounds.

*40 CFR Part 81*

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

Dated: November 15, 2005.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

[FRL-8001-4]

**Michigan: Final Authorization of State Hazardous Waste Management Program Revision**

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

**ACTION:** Proposed rule.

**SUMMARY:** Michigan has applied to the EPA for final authorization of the changes to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is proposing to authorize the state's changes through this proposed final action.

**DATES:** Written comments must be received on or before December 23, 2005.

**ADDRESSES:** Send written comments to Ms. Judy Feigler, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division (DM-7J), 77 W. Jackson Blvd., Chicago, Illinois 60604, phone number: (312) 886-4179. We must receive your comments by December 23, 2005. You can view and copy Michigan's application from 9 a.m. to 4 p.m. at the following addresses: Waste Management Division, Michigan Department of Environmental Quality, Constitution Hall—Atrium North,

Lansing, Michigan (mailing address P.O. Box 30241, Lansing, Michigan 48909), contact Ronda Blayer (517) 353-9548; and EPA Region 5, contact Judy Feigler at the following address.

**FOR FURTHER INFORMATION CONTACT:** Judy Feigler, Michigan Regulatory Specialist, U.S. EPA, DM-7J, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886-4179.

**SUPPLEMENTARY INFORMATION:**

**A. Why Are Revisions to State Programs Necessary?**

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

**B. What Decisions Have We Made in This Rule?**

We conclude that Michigan's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Michigan final authorization to operate its hazardous waste management program with the changes described in the authorization application. Michigan has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Michigan, including issuing permits, until the State is granted authorization to do so.

**C. What Is the Effect of Today's Authorization Decision?**

This decision means that a facility in Michigan subject to RCRA will now have to comply with the authorized state requirements (listed in section F of