

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2009-0512; FRL-9125-5]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a request from the State of Indiana to redesignate Lake and Porter Counties to attainment of the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS). In proposing to approve this request, EPA also proposes to approve, as a revision of the Indiana State Implementation Plan (SIP), the State's plan for maintaining the eight-hour ozone standard through 2020 in Lake and Porter Counties and in the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) ozone nonattainment area. In addition, EPA proposes to approve Volatile Organic Compound (VOC) and Nitrogen Oxides (NO<sub>x</sub>) emission inventories for Lake and Porter Counties as a revision of the Indiana SIP. Finally, EPA proposes to find adequate and to approve the State's 2010 and 2020 Motor Vehicle Emission Budgets (MVEBs) for Lake and Porter Counties.

**DATES:** Comments must be received on or before April 12, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0512, by one of the following methods:

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

- *E-mail*: [Bortzer.jay@epa.gov](mailto:Bortzer.jay@epa.gov).
- *Fax*: (312) 692-2054.
- *Mail*: Jay Bortzer, Chief, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

- *Hand Delivery*: Jay Bortzer, Chief, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2009-

0512. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <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 and viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

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

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental

Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6057.

#### SUPPLEMENTARY INFORMATION:

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

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

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified in the proposed rule.

### II. What Actions Is EPA Proposing?

EPA is proposing to take several related actions. First, based on a review of a June 5, 2009, ozone redesignation request from the State of Indiana, EPA is proposing to approve the redesignation of Lake and Porter Counties, Indiana from nonattainment to attainment of the 1997 eight-hour ozone NAAQS, in accordance with sections 107(d)(3)(E) and 175A of the Clean Air Act (CAA). Second, EPA is proposing to approve Indiana's 1997 eight-hour ozone maintenance plan for Lake and Porter Counties as a revision of Indiana's SIP. This ozone maintenance plan demonstrates that Lake and Porter Counties (and the Chicago-Gary-Lake County, IL-IN area) should remain in attainment of the 1997 eight-hour ozone NAAQS through 2020, and specifies the measures that will be taken if violation of the ozone standard occurs or is threatened. Third, EPA is proposing to approve 2002 VOC and NO<sub>x</sub> emission inventories for Lake and Porter Counties as a revision of the Indiana SIP, as required by section 182(a)(1) of the CAA. Finally, EPA is proposing to find as adequate and to approve VOC and NO<sub>x</sub> 2010 and 2020 MVEBs for Lake and Porter Counties. The comment period for adequacy of the MVEBs is concurrent with the comment period for this proposed rule.

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

#### A. General Background

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997 (62 FR 38856), EPA promulgated an eight-hour ozone NAAQS of 0.08 parts per million parts of air (ppm) (80 parts per billion (ppb)) (the 1997 eight-hour ozone standard or NAAQS). This standard is violated in an area when any ozone monitor in the

area (or in its impacted downwind environs) records eight-hour ozone concentrations with a three-year average of the annual fourth-highest daily maximum eight-hour ozone concentrations equaling or exceeding 0.085 ppm. This eight-hour ozone standard replaced a prior one-hour ozone NAAQS promulgated on February 8, 1979 (44 FR 8202), and revoked on June 15, 2005.

Ground-level ozone is generally not emitted directly by sources. Rather, emitted NO<sub>x</sub> and VOC react in the presence of sunlight to form ground-level ozone, as a secondary compound, along with other secondary compounds. NO<sub>x</sub> and VOC are referred to as "ozone precursors." Reduction of peak ground-level ozone concentrations is achieved through controlling VOC and NO<sub>x</sub> emissions.

Section 107 of the CAA requires EPA to designate as nonattainment areas that violate the NAAQS. This includes the 1997 eight-hour ozone NAAQS. The **Federal Register** action promulgating the eight-hour ozone designations and classifications was published on April 30, 2004 (69 FR 23857). The designations and classifications became effective on June 15, 2004.

The CAA contains two sets of provisions—subparts 1 and 2—that address planning and emission control requirements for ozone nonattainment areas. Both of these subparts are found in title 1, part D of the CAA. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas of any pollutant governed by a NAAQS. Subpart 2 contains more specific requirements for certain ozone nonattainment areas, and applies to ozone nonattainment areas classified under section 181 of the CAA. In the April 30, 2004, designation rulemaking, EPA divided eight-hour ozone nonattainment areas into the categories of subpart 1 nonattainment ("basic" nonattainment) and subpart 2 nonattainment (nonattainment areas classified using an approach analogous to the approach defined in section 181 of the CAA for the one-hour ozone NAAQS).

Emission control requirements for classified, subpart 2 nonattainment areas are linked to areas' ozone nonattainment classifications. Areas with more serious ozone pollution problems (with higher ozone nonattainment classifications) are subject to more prescribed requirements and later attainment dates. The prescribed emission control requirements are designed to help bring areas into attainment by their specified attainment dates.

In EPA's April 30, 2004 (69 FR 23591) rulemaking, EPA designated Lake and Porter Counties (a portion of the Chicago-Gary-Lake County, IL-IN ozone nonattainment area) as a subpart 2 moderate nonattainment area for the 1997 eight-hour ozone standard. This designation was based on 2001–2003 ozone data collected in the Chicago-Gary-Lake County, IL-IN area and at the Chiwaukee Prairie monitoring site in Wisconsin (located very near the Illinois-Wisconsin border, and considered to be one of the peak ozone impact sites resulting from the VOC and NO<sub>x</sub> emissions in the Chicago-Gary-Lake County, IL-IN area).

On June 5, 2009, the State of Indiana, through the Indiana Department of Environmental Management (IDEM), requested redesignation of Lake and Porter Counties to attainment of the 1997 eight-hour ozone NAAQS based on ozone data from the period of 2006–2008.

On July 20, 2009, IDEM supplemented the June 5, 2009, ozone maintenance demonstration to demonstrate that the 1997 eight-hour ozone standard can be maintained in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN area through 2020 without emission reductions resulting from implementation of EPA's Clean Air Interstate Rule (CAIR). As explained below, some uncertainty currently exists regarding the implementation of the CAIR-based emission control rules in Indiana and in other states whose NO<sub>x</sub> emissions may impact ozone levels in the Chicago-Gary-Lake County, IL-IN area.

*B. What Is the Relationship of This Action to a May 31, 2007 EPA Proposal to Approve the Redesignation of Lake and Porter Counties to Attainment of the 1997 Eight-Hour Ozone Standard?*

On May 31, 2007 (72 FR 30436), EPA published a proposed rule to approve the redesignation of Lake and Porter Counties to attainment of the 1997 eight-hour ozone standard based on a September 12, 2006, request by the State of Indiana. Before the final rulemaking could be completed, however, violations of the 1997 eight-hour ozone standard were monitored at two sites in or associated with the Chicago-Gary-Lake County, IL-IN ozone nonattainment area. Both the Chiwaukee Prairie monitoring site in Wisconsin and the Whiting monitoring site in Lake County, Indiana recorded violations of the 1997 eight-hour ozone standard based on 2005–2007 quality-assured and State-

certified ozone data.<sup>1</sup> Because violations of the 1997 eight-hour ozone standard occurred prior to final rulemaking to approve Indiana's September 12, 2006 ozone redesignation request, EPA could not complete a final rulemaking approving this redesignation request.

The June 5, 2009, ozone redesignation request is based on subsequent complete, quality-assured ozone data for 2006–2008 showing attainment of the 1997 eight-hour ozone NAAQS throughout the entire Chicago-Gary-Lake County, IL-IN ozone nonattainment area, as well as at the Chiwaukee Prairie monitoring site in Wisconsin. Preliminary data from the 2009 ozone monitoring season show that the area continues to attain the 1997 eight-hour ozone NAAQS.

As discussed below, EPA has previously proposed to determine that the Chicago-Gary-Lake County, IL-IN area is attaining the 1997 eight-hour ozone standard based on the 2006–2008 ozone data. See 74 FR 48703 (September 24, 2009). In the same action, EPA also proposed to approve a NO<sub>x</sub> Reasonably Available Control Technology (RACT) waiver request from the State for Lake and Porter Counties that was included in the State's June 5, 2009 submittal. In addition, on September 24, 2009 (74 FR 48662), through an interim final rule, EPA concluded that, contingent on continued monitored attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area, Indiana has met the NO<sub>x</sub> RACT requirement of section 182(f) of the CAA through a waiver of this requirement. EPA did not receive any comments on either the September 24, 2009, proposed rule or the September 24, 2009, interim final rule. In a separate final rulemaking in today's **Federal Register**, EPA finds that the Chicago-Gary-Lake County, IL-IN area has attained the 1997 eight-hour ozone standard based on the 2006–2008 ozone data, and approves Indiana's requested NO<sub>x</sub> RACT waiver for Lake and Porter Counties.

On December 4, 2008, IDEM submitted a draft of a redesignation request based on the 2006–2008 ozone data and requested parallel processing while IDEM completed public review of the redesignation request and associated ozone maintenance plan. Because EPA did not complete the rulemaking on the September 12, 2006 ozone redesignation request and because the December 4, 2008 submittal considered more recent ozone data, IDEM requested EPA to

consider only this later redesignation request, which was finalized and submitted on June 5, 2009 (and supplemented in July, 2009), and to disregard the December 12, 2006, ozone redesignation request. Since the State of Indiana has requested that EPA disregard the September 12, 2006, ozone redesignation request, EPA will not conduct further rulemaking with regard to that submittal. This proposed rule considers only the final June 5, 2009, redesignation request and supporting information, as supplemented in July, 2009.

*C. What Are the Impacts of December 22, 2006 and June 8, 2007 United States Court of Appeals Decisions on EPA's April 15, 2004 Phase 1 Ozone Implementation Rule?*

1. Summary of Court Decisions

On December 22, 2006, in *South Coast Air Quality Management Dist. v. EPA*, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's Phase 1 implementation rule for the 1997 eight-hour ozone standard (69 FR 23591, April 30, 2004). 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 rule was vacated only with regard to those parts of the rule that had been successfully challenged. *Id.*, Docket No. 04–1201. Therefore, the Phase 1 rule provisions for areas currently classified under subpart 2 of title 1, part D of the CAA as eight-hour ozone nonattainment areas, the eight-hour ozone attainment dates, and the timing of emission reductions needed for attainment of the 1997 eight-hour ozone NAAQS remain in effect. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 1997 eight-hour ozone standard in certain nonattainment areas under subpart 1 of the CAA. By limiting the vacatur, the Court let stand EPA's revocation of the one-hour ozone standard and those anti-backsliding provisions of the Phase 1 rule that had not been successfully challenged. The June 8th decision reaffirmed the December 22, 2006, decision that EPA had failed to retain measures required for one-hour ozone nonattainment areas under the anti-backsliding provisions of the CAA, including: (1) Nonattainment area New Source Review (NSR) requirements based on an area's one-hour ozone nonattainment classification; (2) section 185 source penalty fees for one-hour severe and extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or

<sup>1</sup> The 2005, 2006, and 2007 fourth-high daily maximum eight-hour ozone concentrations respectively for each of these monitoring sites were: Chiwaukee Prairie—93, 79, and 85 ppb; and, Whiting—88, 81, and 88 ppb.

182(c)(9) of the CAA as contingencies for areas not making Reasonable Further Progress (RFP) toward attainment of the one-hour ozone NAAQS, or for failure to attain the NAAQS; and, (4) transportation conformity requirements for certain types of Federal actions. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of one-hour motor vehicle emission budgets until eight-hour MVEBs are available for conformity determinations.

For the reasons set forth below, EPA does not believe that the Court's rulings preclude redesignation. EPA believes that the Court's decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

## 2. Requirements Under the Eight-Hour Ozone Standard

For the eight-hour ozone standard, the Chicago-Gary-Lake County, IL-IN ozone nonattainment area is classified as moderate nonattainment under subpart 2 of the CAA. The June 8, 2007, opinion clarifies that the Court did not vacate the Phase 1 Rule's provisions with respect to classifications for areas under subpart 2. The Court's decision, therefore, upholds EPA's classifications for those areas classified under subpart 2 for the eight-hour ozone standard, and all eight-hour ozone requirements for these areas remain in place.

## 3. Requirements Under the One-Hour Ozone Standard

In its June 8, 2007, decision, the Court limited its vacatur so as to uphold those provisions of EPA's anti-backsliding requirements that were not successfully challenged. Therefore, an area must meet the anti-backsliding requirements, see 40 CFR 51.900, *et seq.*; 70 FR 30592, 30604 (May 26, 2005), which apply by virtue of the area's classification for the one-hour ozone NAAQS. As set forth in more detail below, the area must also address several additional anti-backsliding provisions identified by the Court in its decisions.

### *D. What Is the Effect of the 2008 Eight-Hour Ozone Standard?*

On March 27, 2008 (73 FR 16435), EPA adopted a new eight-hour ozone NAAQS (the 2008 eight-hour ozone standard) of 0.075 ppm, three-year average of the annual fourth-highest

daily maximum eight-hour ozone concentrations at each ozone monitoring site. Although this reflects a tightening of the ozone standard, the states and EPA have not completed the designation of areas for this standard. In addition, on September 16, 2009, EPA announced its intention to reconsider the 2008 eight-hour ozone standard, and announced that it was staying the designation of areas for this standard pending the outcome of the reconsideration of the standard. Finally, on January 19, 2010, EPA proposed to revise the eight-hour ozone standard (75 FR 2938), proposing an eight-hour ozone concentration standard in the range of 0.060 to 0.070 ppm.

EPA's future actions with respect to the 2008 eight-hour ozone standard or the newly-proposed standard have no effect on the redesignation of Lake and Porter Counties with regard to the 1997 eight-hour ozone standard. In addition, our final action on the redesignation to attainment of Lake and Porter Counties for the 1997 eight-hour ozone standard will have no bearing on any future action as to the attainment designation of Lake and Porter Counties for the 2008 ozone standard or any subsequently-promulgated ozone standard.

## **IV. What Are the Criteria for Redesignation to Attainment?**

The CAA provides the basic requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA authorizes redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on recent air quality data; (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 emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and, (5) the state has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignations in the General Preamble for the implementation of title I of the CAA on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070).

Two significant policy documents affecting the review of ozone

redesignation requests are the following: (1) "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the September 4, 1992 Calcagni memorandum); and, (2) "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 (the May 10, 1995 Clean Data Policy memorandum). Additional guidance on processing redesignation requests is included in the following documents:

- "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;
- "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 (TSDs) for Redesignation of 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, November 30, 1993;
- "General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498 (April 16, 1992); and,
- "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.

**V. Review of the State’s Ozone Redesignation Request and the Basis for EPA’s Proposed Action**

EPA is proposing to: (1) Approve the ozone maintenance plan for Lake and Porter Counties and the VOC and NO<sub>x</sub> MVEBs supported by the ozone maintenance plan; (2) approve the 2002 VOC and NO<sub>x</sub> emissions inventory for Lake and Porter Counties as meeting the emission inventory requirements of the CAA; and, (3) approve the redesignation of Lake and Porter Counties to attainment of the 1997 eight-hour ozone NAAQS. The bases for our proposed approvals follow.

*A. Has the Chicago-Gary-Lake County, IL-IN Area Attained the 1997 Eight-Hour Ozone NAAQS?*

An area may be considered to be attaining the 1997 eight-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and 40 CFR part 50, appendix I, based on the most recent three complete, consecutive calendar years of quality-assured air quality monitoring data at all ozone monitoring sites in the area and at any nearby ozone monitor outside of the area with ozone concentrations impacted by VOC and NO<sub>x</sub> emissions from the subject area, particularly if the external monitor is used to calculate the area’s ozone design value. To attain this standard, the average of the annual fourth-high daily

maximum eight-hour average ozone concentrations measured and recorded at each monitoring site (the monitoring site’s ozone design value) over the most recent three-year period must not exceed the ozone standard. Based on an ozone data rounding convention described in 40 CFR part 50, appendix I, the eight-hour ozone standard is attained if the area’s ozone design value<sup>2</sup> is 0.084 ppm or less. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA’s Air Quality System (AQS). The ozone monitors generally should have remained at the same locations for the duration of the monitoring period required to demonstrate attainment (for three years or more). The data supporting attainment of the standard must be complete in accordance with 40 CFR part 50, appendix I.

As part of the June 5, 2009, ozone redesignation request, IDEM summarized the annual fourth-high eight-hour ozone concentrations and the three-year eight-hour ozone design values for the period of 2003–2008 for all ozone monitoring sites in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area. This summary also includes ozone concentration data for the Chiwaukee Prairie monitoring site in Wisconsin. IDEM showed that the 2006–2008 ozone design values for all monitoring sites are below the 0.084 ppm ozone attainment level. IDEM has certified that all ozone data for the Indiana Counties covered by the ozone

redesignation request have been quality-assured and submitted to EPA’s AQS. Note that Illinois and Wisconsin have also certified their ozone data through 2008. We have already addressed these data in a September 24, 2009 (74 FR 48703) proposed finding that the Chicago-Gary-Lake County, IL-IN ozone nonattainment area is attaining the 1997 eight-hour ozone standard based on the 2006–2008 ozone data, and the data that show the area continued attaining up to the date of our proposed determination. As noted above, we received no comments on this proposed finding. The final rule addressing this finding of attainment, along with approval of Indiana’s request for a waiver from the requirement for NO<sub>x</sub> RACT in Lake and Porter Counties, is covered in a separate rulemaking in today’s **Federal Register**.

We also note that the Chicago-Gary-Lake County, IL-IN area continues to attain the 1997 eight-hour ozone standard based on 2007–2009 ozone data. Table 1 summarizes the annual fourth-high eight-hour ozone concentrations and three-year (2007–2009) averages of the annual fourth-high eight-hour ozone concentrations for all ozone monitoring sites in the Chicago-Gary-Lake County, IL-IN area and for the Chiwaukee Prairie monitoring site. The 2007–2009 monitoring data cover the most recent three years of quality-assured ozone monitoring data for this area. The data continue to show monitor-specific ozone design values that are well below the 0.084 ppm ozone attainment level.

**TABLE 1—ANNUAL FOURTH-HIGH DAILY MAXIMUM EIGHT-HOUR OZONE CONCENTRATIONS IN PARTS PER MILLION (PPM) AND THREE-YEAR AVERAGES**

| Monitoring site                  | 2007  | 2008  | 2009  | Three-year average |
|----------------------------------|-------|-------|-------|--------------------|
| <b>Indiana Monitoring Sites</b>  |       |       |       |                    |
| Gary .....                       | 0.085 | 0.062 | 0.058 | 0.068              |
| Hammond .....                    | 0.077 | 0.068 | 0.065 | 0.070              |
| Ogden Dunes .....                | 0.084 | 0.069 | 0.067 | 0.073              |
| Valparaiso .....                 | 0.080 | 0.061 | 0.064 | 0.068              |
| Whiting .....                    | 0.088 | 0.062 | 0.062 | 0.071              |
| <b>Illinois Monitoring Sites</b> |       |       |       |                    |
| Alsip .....                      | 0.085 | 0.066 | 0.069 | 0.073              |
| Chicago-Cheltenham .....         | 0.082 | 0.066 | 0.065 | 0.071              |
| Chicago-Adams .....              | 0.084 | 0.058 | 0.076 | 0.073              |
| Chicago-Ellis Avenue .....       | 0.079 | 0.063 | 0.060 | 0.068              |
| Chicago-Ohio Street .....        | 0.075 | 0.063 | 0.062 | 0.067              |
| Chicago-Lawndale .....           | 0.080 | 0.066 | 0.067 | 0.071              |
| Chicago-Hurlbut Street .....     | 0.079 | 0.063 | 0.064 | 0.069              |
| Lemont .....                     | 0.085 | 0.071 | 0.067 | 0.074              |
| Cicero .....                     | 0.068 | 0.060 | 0.067 | 0.065              |
| Northbrook .....                 | 0.076 | 0.063 | 0.069 | 0.069              |

<sup>2</sup> The worst-case monitoring site-specific ozone design value in the area and in its nearby downwind environs.

TABLE 1—ANNUAL FOURTH-HIGH DAILY MAXIMUM EIGHT-HOUR OZONE CONCENTRATIONS IN PARTS PER MILLION (PPM) AND THREE-YEAR AVERAGES—Continued

| Monitoring site                  | 2007  | 2008  | 2009  | Three-year average |
|----------------------------------|-------|-------|-------|--------------------|
| Evanston .....                   | 0.080 | 0.058 | 0.064 | 0.067              |
| Lisle .....                      | 0.072 | 0.057 | 0.059 | 0.063              |
| Elgin .....                      | 0.075 | 0.061 | 0.068 | 0.068              |
| Waukegan .....                   | 0.081 | 0.061 | 0.057 | 0.066              |
| Illinois Beach State Park .....  | 0.080 | 0.067 | 0.075 | 0.074              |
| Cary .....                       | 0.074 | 0.063 | 0.066 | 0.068              |
| Essex Road .....                 | 0.071 | 0.057 | 0.063 | 0.064              |
| <b>Wisconsin Monitoring Site</b> |       |       |       |                    |
| Chiwaukee Prairie .....          | 0.085 | 0.069 | 0.071 | 0.075              |

Indiana commits to continue ozone monitoring at the Indiana monitoring sites addressed in the ozone redesignation request. Indiana will consult with EPA prior to making any changes in the existing ozone monitoring network, should changes become necessary in the future.

*B. Have Lake and Porter Counties and the State of Indiana Met All Requirements of Section 110 and Part D of the CAA Applicable for Purposes of Redesignation, and Do Lake and Porter Counties Have a Fully Approved SIP Under Section 110(k) of the CAA for Purposes of Redesignation to Attainment?*

In April 2004, Lake and Porter Counties were designated as moderate nonattainment for the 1997 eight-hour ozone NAAQS, with a June 15, 2010, attainment deadline. Prior to this, Lake and Porter Counties had been designated as severe nonattainment for the one-hour ozone NAAQS, with a November 15, 2007, attainment deadline. As a result of these nonattainment designations, the State of Indiana was required to submit SIP revisions that meet the ozone standard attainment requirements of the CAA.

The September 4, 1992, Calcagni memorandum describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state with an area seeking redesignation to attainment must meet SIP requirements that come due prior to the state's submittal of a complete redesignation request. See also 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan); 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis); *Sierra Club v. EPA*, 375 F.3d 537, 541 (7th Cir. 2004); and 70 FR 19895, 19900 (April 15, 2005) (redesignation of Cincinnati). Furthermore, requirements of the CAA that come due subsequent to the state's submittal of a complete redesignation

request continue to be applicable to the area until redesignation to attainment is approved, but are not required as a prerequisite for redesignation (see section 175A(c) of the CAA). If the redesignation is disapproved or is not finalized due to a violation of the standard in the nonattainment area prior to final rulemaking approving the redesignation, the state remains obligated to fulfill these requirements.

We are proposing to determine that Lake and Porter Counties and the State of Indiana have met all SIP requirements currently applicable for this area for purposes of redesignation under section 110 and part D of title I of the CAA.

As part of the June 5, 2009, submittal, IDEM included draft VOC RACT rules to cover Control Techniques Guidelines (CTGs) published by EPA in 2006, 2007, and 2008. Along with the draft RACT rules, IDEM also submitted a negative source declaration for the VOC source category of Fiberglass Boat Manufacturing Materials. On September 4, 2009, IDEM submitted final, adopted VOC RACT rules. On October 16, 2009 (74 FR 53193), EPA proposed to approve these VOC RACT rules and negative source declaration, noting that, with the approval of these VOC RACT rules and negative source declaration, Indiana's SIP would meet the CAA requirement for VOC RACT. See section 107(d)(3)(E)(v) of the CAA. On February 24, 2010 (40 FR 8246), EPA published the final rule approving the VOC RACT rules and the negative source declaration.

As discussed further below, EPA is proposing in this rulemaking to approve Indiana's 2002 VOC and NO<sub>x</sub> emission inventories as a revision of the Indiana SIP. See section 107(d)(3)(E)(ii) of the CAA.

Finally, as part of the June 5, 2009, submittal, IDEM requested a waiver of NO<sub>x</sub> RACT requirements under section 182(f) of the CAA based on the

monitoring of attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. On September 24, 2009 (74 FR 48703), we proposed to determine that the area has attained the 1997 eight-hour ozone standard and to approve Indiana's NO<sub>x</sub> RACT waiver request. On the same date, September 24, 2009 (74 FR 48662), through an interim final rule, we also made a finding that Indiana has complied with the NO<sub>x</sub> RACT requirement of section 182(f) of the CAA through the proposed NO<sub>x</sub> RACT waiver, contingent on monitoring showing continued attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. No comments were received on either of these rulemakings. In a separate rulemaking in today's **Federal Register**, we are approving Indiana's requested NO<sub>x</sub> RACT waiver for Lake and Porter Counties, as well as finalizing the determination of attainment of the 1997 eight-hour ozone standard.

We believe that all other SIP requirements applicable for purposes of redesignation are addressed and approved in the Indiana SIP. In making these determinations, we reviewed the CAA SIP requirements applicable to Lake and Porter Counties for purposes of redesignation, and concluded that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA.

1. Lake and Porter Counties Have Met All Applicable Requirements of Section 110 and Part D of the CAA

a. Section 110: General Requirements for Implementation Plans

Section 110(a)(2) of the CAA lists the elements to be included in each SIP after adoption by the state and reasonable notice and public hearing. The SIP elements include, but are not limited to: (a) Provisions for establishment and operation of

appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; (b) implementation of a source permit program; (c) provisions for part C Prevention of Significant Deterioration (PSD) and part D NSR permit programs; (d) criteria for stationary source emission control measures, monitoring, and reporting; (e) provisions for air quality modeling; and, (f) provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain certain measures to prevent sources in the 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 certain air pollutants (NO<sub>x</sub> SIP Call<sup>3</sup> and CAIR (70 FR 25162)). However, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's attainment/nonattainment designation. EPA believes that the SIP requirements linked with a particular area's air quality designation are the relevant measures to evaluate when reviewing a redesignation request. The transport SIP requirements, where applicable, continue to apply to a state regardless of the designation of any area within the state. Thus, we believe that these requirements are not applicable requirements for purposes of redesignation. 65 FR 37890 (June 19, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–25427 (May 13, 2003).

Further, we believe that other section 110 elements described above that are not connected with nonattainment plan submissions and that are not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements regardless of an area's designation and after an area is redesignated to attainment. We conclude that only the section 110 (and part D) requirements that are linked with an area's designation and classification are the relevant measures for evaluating this

<sup>3</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 to reduce emissions of NO<sub>x</sub> in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO<sub>x</sub> SIP Call, IDEM developed rules governing the control of NO<sub>x</sub> emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, turbines, major cement kilns, and internal combustion engines. EPA approved Indiana's rules as fulfilling requirements of Phase I of the NO<sub>x</sub> SIP Call on November 8, 2001 (66 FR 56465) and December 11, 2003 (68 FR 69025), and of Phase II of the NO<sub>x</sub> SIP Call on October 1, 2007 (72 FR 55664).

aspect of a redesignation request. This approach is consistent with EPA's policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport control requirements. See: Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996 and 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, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Indiana's SIP and believe that it meets the general SIP requirements under section 110 of the CAA for purposes of redesignation. EPA has previously approved provisions of the Indiana SIP addressing section 110 elements under the one-hour ozone standard (40 CFR 52.773). In addition, the State has submitted a letter dated December 7, 2007, setting forth its belief that the section 110 SIP approved for the one-hour ozone NAAQS is also sufficient to meet the requirements under the 1997 eight-hour ozone NAAQS. EPA has not yet acted on this submission, but believes that approval is not necessary for purposes of redesignation, as discussed above. We thus propose to find that the State of Indiana has met all section 110 requirements relevant to the State's eight-hour ozone redesignation request.

#### b. Part D Requirements Under the 1997 Eight-Hour Ozone Standard

EPA is proposing that the Indiana SIP meets the SIP requirements applicable for purposes of redesignation under part D of title I of the CAA for Lake and Porter Counties. Under part D of title I of the CAA, an area's ozone nonattainment classification determines the SIP 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. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional requirements depending on the area's ozone nonattainment classification.

Lake and Porter Counties were classified as moderate nonattainment for the 1997 eight-hour ozone NAAQS and were included in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area under subpart 2 of part D. Therefore, Indiana must meet the requirements of

subparts 1 and 2 of part D applicable for purposes of redesignation. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(7), 172(c)(9), and 176 of the CAA. The subpart 2 requirements applicable to Lake and Porter Counties are contained in sections 182(a)–(b) (requirements applicable to moderate ozone nonattainment areas) of the CAA.

#### c. Subpart 1 Section 172 Requirements

A thorough discussion of the requirements contained in section 172 can be found in the General Preamble (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the state plans for all nonattainment areas to provide for the implementation of all Reasonably Available Control Measures (RACM), including RACT at a minimum, as expeditiously as practicable. EPA interprets this requirement to impose a duty on all nonattainment areas and their states to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the areas as components of the areas' attainment demonstrations (the attainment demonstrations must address RACM) and SIPs. Note also that RACT requirements are classification-dependent, and, as such, are addressed as part of the subpart 2 requirements discussed below.

Because attainment of the 1997 eight-hour ozone NAAQS has been reached in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN area, no additional RACM measures, beyond RACT, are needed to provide for attainment. No attainment demonstration is needed as a prerequisite for redesignation to attainment, and, therefore, the SIP does not need to address RACM as a prerequisite for approval of the State's redesignation request. 57 FR 13498, 13564 (April 16, 1992), 40 CFR 51.918.

Section 172(c)(2) requires plans for all nonattainment areas to provide for RFP toward attainment of the NAAQS. This requirement, as well as contingency measures under section 172(c)(9), is not relevant to Lake and Porter Counties because the Chicago-Gary-Lake County, IL-IN area has monitored attainment of the 1997 eight-hour ozone NAAQS. General Preamble, 57 FR 13564. In addition, pursuant to EPA's determination of attainment for the Chicago-Gary-Lake County, IL-IN area, the requirement for RFP under section 172(c)(2), as well as the section 172(c)(9) contingency measure requirement, is suspended pursuant to 40 CFR 51.918.

Section 172(c)(3) requires submission and EPA approval of a comprehensive, accurate, and current inventory of actual emissions. This requirement is superseded by the emission inventory requirement in section 182(a)(1) of the CAA. The 2002 VOC and NO<sub>x</sub> emission inventories for Lake and Porter Counties are further discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources allowed in a nonattainment area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources in the nonattainment area (NSR requirements). EPA has determined that, since PSD requirements<sup>4</sup> will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that states demonstrate maintenance of the NAAQS in the areas without implementation of part D NSR. 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, titled "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Indiana has demonstrated that Lake and Porter Counties will be able to maintain the 1997 eight-hour ozone standard without the continued implementation of part D NSR. Therefore, EPA concludes that the State need not have a fully approved part D NSR program as an applicable requirement for approval of the State's ozone redesignation request. The State's PSD program will become effective in Lake and Porter Counties upon redesignation to attainment. See redesignation 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). Nonetheless, and as discussed further below, we note that, in any event, Indiana has a NSR program that EPA has approved as part of the Indiana SIP.

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached in the Chicago-Gary-Lake County, IL-IN area, no additional control measures are needed to provide for attainment of the

ozone NAAQS. This does not relieve the State from compliance with CAA requirements for certain minimum emission control measures applicable to Lake and Porter Counties as discussed below.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Indiana SIP meets the applicable requirements of section 110(a)(2).

#### d. 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 of the SIPs. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under Title 23 of the U.S. Code 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 relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

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, because they 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, 62749–62750 (December 7, 1995) (Tampa, Florida).

#### e. Subpart 2 Section 182(a) Requirements

As set forth in the September 4, 1992, and September 17, 1993, EPA guidance

memoranda, only those CAA/EPA requirements which come due prior to Indiana's submittal of a complete redesignation request for Lake and Porter Counties must be fully approved into the SIP by the time EPA approves the redesignation of Lake and Porter Counties to attainment. The section 182(a) requirements are discussed below.

Section 182(a)(1) requires the submission of a comprehensive, accurate, current emissions inventory as a revision of the SIP. As part of Indiana's redesignation request, the State submitted 2002 VOC and NO<sub>x</sub> emission inventories for Lake and Porter Counties. As noted later in this proposed rule, EPA is proposing to approve the 2002 emission inventories as meeting the section 182(a)(1) emission inventory requirement.

Section 182(a)(2)(C) requires states to adopt a NSR permit program and to correct the existing NSR permit programs to meet EPA NSR guidelines issued prior to 1990. EPA approved Indiana's NSR permit program, including the requirements in sections 182(c)(6), (c)(7) and (c)(8), and the new source offset requirements in section 182(d)(2), in rulemakings on October 7, 1994 (59 FR 51108), August 18, 1995 (60 FR 43008), and July 21, 1997 (62 FR 38919). Therefore, Indiana has met the NSR requirements of section 182(a)(2)(C). Moreover, as noted above, we believe that this is not an applicable requirement for purposes of evaluating a redesignation request, for the reasons set forth there.

Section 182(a)(3)(B) requires a state to adopt provisions in the SIP to require the owners or operators of stationary sources of VOC or NO<sub>x</sub> to provide the state with annual statements of actual emissions from the sources. EPA approved Indiana's emission statement SIP revisions for Lake and Porter Counties through rulemakings on August 9, 1994 (59 FR 29956), and October 29, 2004 (69 FR 63069). Indiana revised its State rule for emission statements under the 1997 eight-hour ozone standard, and we approved this rule on March 29, 2007 (72 FR 14678).

All other SIP requirements of section 182(a) have been superseded by CAA requirements specific to moderate ozone nonattainment areas (addressed below) or were covered in Indiana's SIP to meet requirements for the one-hour ozone standard (also addressed below) and remain in effect as required under EPA's anti-backsliding policies and as committed to by the State.

<sup>4</sup>PSD requirements control the growth of new source emissions in areas designated as attainment for a NAAQS.



f. Subpart 2 Section 182(b) Requirements

As in the case of the section 182(a) requirements, as a condition for approval of the ozone redesignation request, Indiana was required only to have adopted those SIP provisions under section 182(b) of the CAA that came due prior to the State's submittal of the complete redesignation request. The applicable requirements of section 182(b) are addressed below.

Section 182(b)(1)(A) establishes a Rate-Of-Progress (ROP)/RFP requirement for ozone nonattainment areas.

We proposed, on September 24, 2009 (74 FR 48703), to find that the Chicago-Gary-Lake County, IL-IN area has attained the 1997 eight-hour ozone standard. As noted above, in a separate rulemaking in today's **Federal Register**, we are finalizing this finding of attainment for the Chicago-Gary-Lake County, IL-IN area. This determination results in a suspension of the requirements under section 182(b)(1)(A) for additional RFP VOC and NO<sub>x</sub> emission reductions in this area. In addition, as set forth above, in accordance with the General Preamble, in the context of a redesignation request, where an area is attaining the standard, requirements for RFP have no meaning. Although Indiana submitted a RFP plan as part of the June 5, 2009, submittal to demonstrate progress toward attainment of the 1997 eight-hour ozone standard, EPA need not approve this plan as a condition for approval of the State's ozone redesignation request.

Section 182(b)(2) requires that the SIP include rules requiring the implementation of RACT for all VOC source categories covered by CTGs published prior to the date of attainment<sup>5</sup> and for all major non-CTG VOC sources. Indiana has adopted and submitted VOC RACT rules and negative source declarations to cover all applicable CTGs, and major non-CTG sources. In a final rulemaking published on February 24, 2010 (40 FR 8246), and covering Indiana's latest submittals of VOC RACT rules, we conclude that

<sup>5</sup> States are required to have adopted RACT rules and EPA must have approved those RACT rules for source categories with CTGs published one or more years prior to the State's submittal of a complete ozone redesignation request. The submittal of RACT rules for a source category covered by a CTG is due one year after the publication of the CTG. In keeping with the September 4, 1992, and September 17, 1993, EPA guidance memoranda, only those RACT rules which came due prior to Indiana's submittal of the final request to redesignate Lake and Porter Counties (i.e., prior to June 5, 2009) must be fully approved into the SIP before or at the time EPA approves the redesignation of the area to attainment.

Indiana has complied with all applicable VOC RACT requirements.

Section 182(b)(3) requires the SIP to provide for the installation and operation of gasoline vapor control systems for the refueling of vehicles at gasoline service stations (Stage II gasoline vapor recovery). On November 3, 1999 (64 FR 59642), EPA approved Indiana's Stage II gasoline vapor recovery program as required by section 182(b)(3) for Lake and Porter Counties, as well as for other areas in Indiana.

Section 182(b)(4) requires the SIP to provide for vehicle Inspection and Maintenance (I/M) in moderate and above ozone nonattainment areas. Through rulemakings on March 19, 1996 (61 FR 11142), and September 27, 2001 (66 FR 49297), EPA fully approved Indiana's vehicle I/M program. Therefore, Lake and Porter Counties meet the vehicle I/M requirement of section 182(b)(4).

g. Subpart 2 Section 182(f) Requirements

Section 182(f)(1) generally requires major sources of NO<sub>x</sub> to be covered by the same plan provisions as required for major sources of VOC. Since moderate ozone nonattainment areas are required to be covered by RACT rules for major sources of VOC, these ozone nonattainment areas are also required to have NO<sub>x</sub> RACT rules. Section 182(f)(1), however, also provides that the requirement for such NO<sub>x</sub> emission controls does not apply in an area if the Administrator determines that net air quality benefits are greater in the absence of the reduction of the NO<sub>x</sub> emissions. The NO<sub>x</sub> emission control requirement would also not apply if the Administrator determines that additional reductions of NO<sub>x</sub> emissions would not contribute to attainment of the ozone NAAQS.

In its June 5, 2009, submittal, IDEM requested a waiver from the NO<sub>x</sub> RACT requirement based on the fact that the 1997 eight-hour ozone standard has been attained in the Chicago-Gary-Lake County, IL-IN area and additional NO<sub>x</sub> emission reductions in Lake and Porter Counties are not needed to attain the 1997 eight-hour ozone standard in that area. On September 24, 2009 (74 FR 48703), we proposed to approve Indiana's NO<sub>x</sub> RACT waiver request based on a finding that the Chicago-Gary-Lake County, IL-IN area has attained the 1997 eight-hour ozone standard without the implementation of NO<sub>x</sub> RACT regulations in Lake and Porter Counties. In addition, on September 24, 2009 (74 FR 48662), through an interim final rule, we made a finding that Indiana has met the

section 182(f) requirement for NO<sub>x</sub> RACT in Lake and Porter Counties through the proposed NO<sub>x</sub> RACT waiver, contingent on continued attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. We requested but received no comments on both of these rulemakings.

In a separate rulemaking in today's **Federal Register**, we are finalizing our approval of Indiana's requested NO<sub>x</sub> RACT waiver. This NO<sub>x</sub> RACT waiver is contingent upon continued monitored attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. If and when we finalize the approval of the redesignation of Lake and Porter Counties to attainment of the 1997 eight-hour ozone standard, the NO<sub>x</sub> RACT waiver for Lake and Porter Counties will become permanent.

2. Lake and Porter Counties Have a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

EPA has fully approved the Indiana SIP for Lake and Porter Counties 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), and *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 25413, 25426 (May 12, 2003). Since the passage of the CAA in 1970, Indiana has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to Lake and Porter Counties under the one-hour ozone standard as noted below.

3. Lake and Porter Counties Have a Fully Approved SIP and Meet Anti-Backsliding Requirements Under the One-Hour Ozone Standard

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe one-hour ozone NAAQS requirements that continue to apply after revocation of the one-hour ozone NAAQS for former one-hour ozone nonattainment areas. 40 CFR 51.905(a)(1) provides that:

The area remains subject to the obligations to adopt and implement the applicable requirements defined in 40 CFR 51.900(f), except as provided in paragraph (a)(1)(iii) of this section and except as provided in paragraph (b) of this section.

40 CFR 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), provides that:

Applicable requirements means that for an area that the following requirements, to the extent such requirements applied to the area for the area's classification under section 181(a)(1) of the CAA for the one-hour NAAQS at the time of designation for the eight-hour NAAQS, remain in effect:

- (1) Reasonably available control technology (RACT).
- (2) Inspection and maintenance programs (I/M).
- (3) Major source applicability cut-offs for purposes of RACT.
- (4) Rate of Progress (ROP) reductions.
- (5) Stage II vapor recovery.
- (6) Clean fuels fleet program under section 182(c)(4) of the CAA.
- (7) Clean fuels for boilers under section 182(e)(3) of the CAA.
- (8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA.
- (9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.
- (10) TCMs under section 182(c)(5) of the CAA.
- (11) Vehicle Miles Travelled (VMT) provisions of section 182(d)(1) of the CAA.
- (12) NO<sub>x</sub> requirements under section 182(f) of the CAA.
- (13) Attainment demonstration or alternative as provided under 40 CFR 51.905(a)(1)(ii).

In addition to applicable requirements listed under 40 CFR 51.900(f) and as discussed above, the State must also comply with the one-hour anti-backsliding requirements discussed in the Court's decisions in *South Coast Air Quality Management Dist. v. EPA*: (1) NSR requirements based on the area's one-hour ozone nonattainment classification; (2) section 185 source penalty fees; (3) contingency measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA for areas not making reasonable further progress toward attainment of the one-hour ozone NAAQS, or for failure to attain the NAAQS; and, (4) transportation conformity requirements for certain types of Federal actions.

Pursuant to 40 CFR 51.905(c), the area is subject to the obligations set forth in 40 CFR 51.905(a) and 40 CFR 51.900(f). The following paragraphs address the one-hour ozone SIP requirements applicable to Lake and Porter Counties pursuant to these anti-backsliding requirements and those discussed in the Court's decision in *South Coast Air Quality Management Dist. v. EPA*. Note that the State commits to continue to comply with these requirements unless revised through SIP revisions approved by EPA.

Prior to the revocation of the one-hour ozone standard on June 15, 2005, the

Chicago-Gary-Lake County, IL-IN area was classified as a severe nonattainment area for the one-hour ozone standard with a compliance date of November 15, 2007. Lake and Porter Counties, as part of the Chicago-Gary-Lake County, IL-IN area, were subject to ozone SIP requirements for severe one-hour ozone nonattainment areas pursuant to sections 182(a) through 182(d) of the CAA. In reviewing the State of Indiana's ozone redesignation request for Lake and Porter Counties, we assessed whether the area satisfied the CAA requirements under the one-hour ozone standard. We conclude that Lake and Porter Counties and the State of Indiana have satisfied all anti-backsliding CAA requirements applicable to a severe one-hour ozone nonattainment area. The following discusses how the applicable CAA requirements have been met in Lake and Porter Counties.

#### 40 CFR 51.900(f)(1) RACT

Section 182(a)(2)(A) of the CAA requires RACT corrections. Section 182(b)(2) requires RACT for each category of VOC sources covered by a CTG and for all other major sources of VOC within an ozone nonattainment area. Section 182(d) specifies requirements for severe ozone nonattainment areas, including a major source emissions cut-off of 25 tons per year. Section 182(f) requires major sources of NO<sub>x</sub> in an ozone nonattainment area to be covered by the same emission control requirements as applicable to major sources of VOC, unless EPA waives the NO<sub>x</sub> emission control requirements as provided in section 182(f). The section 182(f) NO<sub>x</sub> emission control requirements includes NO<sub>x</sub> RACT in ozone nonattainment areas required to implement VOC RACT, in one-hour ozone nonattainment areas classified as moderate or above.

Under the one-hour ozone standard, EPA fully approved Indiana's VOC RACT regulations as SIP revisions for CTG sources and for major non-CTG sources through rulemakings on the following dates: March 6, 1992 (57 FR 8082); May 4, 1995 (60 FR 22240); July 5, 1995 (60 FR 34856); January 17, 1997 (62 FR 2591 and 62 FR 2593); October 30, 1996 (61 FR 55889); June 29, 1998 (63 FR 35141); and, June 8, 2000 (65 FR 36343). On January 26, 1996 (61 FR 2428), EPA approved a NO<sub>x</sub> emission control waiver requested by the State of Indiana under section 182(f) of the CAA, exempting Lake and Porter Counties from the NO<sub>x</sub> RACT requirements of section 182(f) as it applied for the one-hour ozone NAAQS. We conclude that Lake and Porter Counties and the State

of Indiana meet all RACT requirements under the one-hour ozone standard.

#### 40 CFR 51.900(f)(2) Vehicle I/M

Through rulemakings on March 19, 1996 (61 FR 11142) and September 27, 2001 (66 FR 49297), EPA fully approved Indiana's vehicle I/M program as meeting the enhanced I/M requirements of section 182(c)(3) of the CAA. Therefore, Lake and Porter Counties meet the I/M requirements for severe one-hour ozone nonattainment areas.

#### 40 CFR 51.900(f)(3) Major Source Cut-Off for RACT

We have determined that Indiana's VOC RACT rules for CTG sources covered source size cut-offs that are well below CTG-recommended major source cut-off for severe ozone nonattainment areas. In addition, Indiana's major non-CTG source RACT rule covers all sources with the potential to emit VOC at or in excess 25 tons per year. Therefore, Indiana's RACT rules meet the major source size cut-off requirement of section 182(d) of the CAA, and Indiana and Lake and Porter Counties meet this CAA requirement.

#### 40 CFR 51.900(f)(4) ROP

Sections 182(b)(1)(A) and 182(c)(2)(B) of the CAA establish the ROP requirements for ozone nonattainment areas. EPA has fully approved Indiana's SIP revisions that demonstrate that Indiana would achieve ROP in Lake and Porter Counties. On July 18, 1997 (62 FR 38457), EPA approved Indiana's plan to achieve a 15 percent reduction in VOC emissions in Lake and Porter Counties, as required in section 182(b) of the CAA. On January 26, 2000 (65 FR 4126), EPA approved Indiana's plan to achieve ROP between 1996 and 1999 in Lake and Porter Counties, meeting the ROP requirements of section 182(c) of the CAA. Finally, on November 13, 2001 (66 FR 56944), EPA approved Indiana's plan to achieve ROP emission reductions for the period of 1999 through 2007. Therefore, Indiana has met all one-hour ozone ROP requirements of Lake and Porter Counties.

#### 40 CFR 51.900(f)(5) Stage II Gasoline Vapor Recovery

On November 3, 1999 (64 FR 59642), EPA approved Indiana's Stage II gasoline vapor recovery rules for Lake and Porter Counties as required by section 182(b)(2) of the CAA.

#### 40 CFR 51.900(f)(6) Clean Fuel Fleet Program

On March 21, 1996 (61 FR 11552), EPA approved Indiana's clean fuel fleet program rules as required by section

182(c)(4) of the CAA. Therefore, the State of Indiana has met this CAA requirement under the one-hour ozone standard.

40 CFR 51.900(f)(7) Clean Fuels for Boilers

As noted above, section 182(e)(3) of the CAA does not apply to Lake and Porter Counties. This CAA requirement only applies to extreme ozone nonattainment areas.

40 CFR 51.900(f)(8) TCMs During Heavy Traffic Hours

This requirement applies to areas subject to section 182(e)(4) of the CAA. This CAA requirement only applies to extreme ozone nonattainment areas.

40 CFR 51.900(f)(9) Enhanced Ambient Monitoring

On March 16, 1994 (59 FR 12168), EPA fully approved Indiana's SIP revision establishing an enhanced monitoring program in Lake and Porter Counties. Therefore, Indiana has complied with the enhanced monitoring requirement of section 182(c)(1) of the CAA.

40 CFR 51.900(f)(10) Transportation Control Measures

Within six months of November 15, 1990, and every three years thereafter, section 182(c)(5) of the CAA requires states to submit a demonstration that current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant traffic-related and vehicle emissions-related factors (collectively "relevant parameters") are consistent with those used for the area's ozone attainment demonstration for serious and above one-hour ozone nonattainment areas. If the levels of relevant parameters that are projected in the attainment demonstration are exceeded, a state has 18 months to develop and submit a revision to the SIP to include TCMs to reduce mobile source emissions to levels consistent with the emission levels in the attainment demonstration.

On April 30, 1998, Indiana submitted an ozone attainment demonstration based on a range of possible emission control measures reflecting various emission control alternatives and did not specify a single set of emission control measures that were judged to be adequate to achieve attainment of the one-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. On December 16, 1999 (64 FR 70514), EPA proposed to conditionally approve the State's one-hour ozone demonstration for Lake and Porter Counties. On December 21, 2000, Indiana submitted a

SIP revision request consisting of a demonstration that the Chicago-Gary-Lake County, IL-IN area would attain the one-hour ozone standard by November 15, 2007, the statutory attainment deadline for the area. EPA approved this requested SIP revision on November 31, 2001 (66 FR 56944). EPA, therefore, concludes that Indiana has complied with section 182(c)(5) of the CAA, has no currently due section 182(c)(5) obligations, and, by virtue of EPA's approval of the one-hour ozone attainment demonstration, has never triggered an obligation under section 182(c)(5) to include additional TCMs in the one-hour ozone SIP for Lake and Porter Counties.

In addition, the section 182(c)(5) requirements are also included in those measures subject to EPA's interpretation under EPA's May 10, 1995, Clean Data Policy memorandum. EPA, therefore, concludes that, since Lake and Porter Counties are attaining the one-hour ozone standard,<sup>6</sup> any requirement for submitting the section 182(c)(5) measures is suspended. See also 40 CFR 51.918.

40 CFR 51.900(f)(11) Vehicle Miles Travelled

Section 182(d)(1)(A) of the CAA requires severe ozone nonattainment areas to offset the growth in emissions attributed to growth in VMT; to select and implement TCMs necessary to comply with the periodic emission reduction requirements of sections 182(b) and (c); and, to consider TCMs specified in section 108(f) of the CAA, and implement TCMs as necessary to demonstrate attainment with the ozone standard. Through rulemakings on July 28, 1995 (60 FR 38718) and August 3, 2001 (66 FR 40829), EPA approved Indiana's TCMs as meeting these requirements of the CAA.

40 CFR 51.900(f)(12) NO<sub>x</sub> Requirements Under Section 182(f)

With respect to NO<sub>x</sub> requirements under section 182(f) of the CAA, as discussed above, EPA approved a NO<sub>x</sub> emissions control waiver for Lake and Porter Counties for the one-hour ozone standard. See 61 FR 2428 (January 26, 1996). In addition, we have approved Indiana's NO<sub>x</sub> emission control regulations adopted in response to EPA's NO<sub>x</sub> SIP call. See 66 FR 56465 (November 8, 2001) and 68 FR 69025 (December 11, 2003).

40 CFR 51.900(f)(13) Ozone Attainment Demonstration

On November 13, 2001 (66 FR 56944), EPA fully approved Indiana's one-hour ozone attainment demonstration SIP revision for Lake and Porter Counties (demonstrating attainment of the one-hour ozone standard in the entire Chicago-Gary-Lake County, IL-IN ozone nonattainment area). Therefore, Indiana has met the ozone attainment demonstration requirements of sections 182(b)(1)(A) and 182(c)(2)(A) of the CAA for the one-hour ozone standard.

New Source Review

As discussed above, the Court's decision in *South Coast Air Management Dist. v. EPA* preserved one-hour NSR as an anti-backsliding requirement. Section 182(a)(2)(C) of the CAA requires states to adopt a NSR permit program and to correct the existing NSR permit programs to meet EPA NSR guidelines issued prior to 1990. EPA approved Indiana's NSR permit program as meeting EPA's guidelines and CAA NSR requirements for the one-hour ozone standard, including the requirements in sections 182(c)(6), (c)(7) and (c)(8), and the source offset requirements in section 182(d)(2), through rulemakings on the following dates: October 7, 1994 (59 FR 51108); August 18, 1995 (60 FR 43008); and, July 21, 1997 (62 FR 38919).

As noted elsewhere in this proposed rule, EPA believes that NSR is not an applicable requirement for purposes of evaluating an ozone redesignation request. EPA has determined that areas being redesignated to attainment need not have an approved nonattainment NSR program, provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation dated October 14, 1994, titled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." If a state has demonstrated that an area will be able to maintain the standard without part D NSR in effect, the state need not have a fully approved part D NSR program prior to approval of a redesignation request for the area.<sup>7</sup> The state's PSD program will become effective in the area immediately upon redesignation to attainment. Consequently, EPA concludes that an approved NSR program is not an applicable requirement for purposes of

<sup>7</sup> Nonetheless, Indiana's NSR program has been approved into the Indiana SIP, as noted elsewhere in this proposed rule.

<sup>6</sup> See 73 FR 79652 (December 30, 2008).

redesignation. See the more detailed explanations of this issue in the following rulemakings: 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, 53669, October 23, 2001); Grand Rapids, Michigan (61 FR 31831, 31836–31837, June 21, 1996).

#### Section 185 Source Emission Penalty Fees

On December 30, 2008 (73 FR 79652), EPA published a final rule finding that the Chicago-Gary-Lake County, IL-IN area has attained the one-hour ozone standard prior to its November 15, 2007 attainment deadline. In this final rule, EPA concluded that the finding of attainment for the one-hour ozone standard relieved Indiana of the obligation to adopt section 185 source emission fee regulations for Lake and Porter Counties under the one-hour ozone standard. Thus, the section 185 fee requirements no longer apply to Lake and Porter Counties and to the State of Indiana for these counties.

#### Contingency Measures

Sections 172(c)(9) and 182(c)(9) of the CAA require ozone control plans to contain measures to be implemented in the event that any milestone in the ozone control plan is missed. EPA approved Indiana's contingency measures for attainment of the one-hour ozone standard in Lake and Porter Counties in our approval of the State's one-hour ozone attainment plan. See 66 FR 56944 (November 13, 2001).

#### Transportation Conformity

The transportation conformity portion of the Court's ruling in *South Coast Air Quality Management District v. EPA* does not impact the redesignation request for Lake and Porter Counties because there are no transportation conformity requirements that are relevant to redesignation requests for any standard, including the requirement for a state to submit a transportation conformity SIP.<sup>8</sup> Under longstanding EPA policy, EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal

conformity rules apply where state rules have not been approved. See 40 CFR 51.390. Also see *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation, and 60 FR 62748 (December 7, 1995) (Tampa, Florida ozone redesignation).

#### Conclusions

For the above reasons, EPA believes that Indiana has met all applicable part D SIP requirements for the one-hour ozone standard as addressed in the Court's and EPA's anti-backsliding requirements for the purposes of redesignation. It is again noted that the State of Indiana has committed to maintain the VOC and NO<sub>x</sub> emission controls already in place and included in Indiana's ozone SIP, as approved by EPA. As noted later in this proposed rule, Indiana has committed to retain and implement all VOC and NO<sub>x</sub> emission control measures under the one-hour ozone RFP and attainment plans for Lake and Porter Counties. EPA concludes that the anti-backsliding requirements have been met by Indiana for Lake and Porter Counties for the purposes of redesignation.

#### *C. Are the Air Quality Improvements in the Chicago-Gary-Lake County, IL-IN Area Due to Permanent and Enforceable Emission Reductions?*

EPA proposes to find that Indiana has demonstrated that the observed ozone air quality improvement in the Chicago-Gary-Lake County, IL-IN 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 presented several sets of data. First, the State analyzed the changes in VOC and NO<sub>x</sub> emissions in Lake and Porter Counties and statewide between the ozone standard violation years, 2000, 2002, and 2004, and one of the years in the period during which the area attained the standard, 2006. Second, the State documented the VOC and NO<sub>x</sub> emission control measures that have been implemented in Lake and Porter Counties and statewide between 2000 and the present. Finally, the State considered ozone modeling data that support the case that the implementation of emission controls in the Lake Michigan area, including in Indiana, have led to reductions in peak ozone levels and to attainment of the 1997 eight-hour ozone standard in Northwestern Indiana.

To assess the impact of emission control implementation, IDEM determined the VOC and NO<sub>x</sub> emission

trends during the period of 1996 through 2006. This included determining or projecting the VOC emissions for all even years in this time period, 1996, 1998, etc. During this period, IDEM determined that the Lake and Porter Counties' VOC and NO<sub>x</sub> emissions peaked in 1998 or 2000 and declined to significantly lower levels by 2006 (an attainment year). The reduction in emissions and the corresponding improvement in ozone air quality over the assessed period can be attributed to the implementation of a number of emission control measures. The improvement in air quality can also be attributed to the implementation of emission control measures throughout Indiana and in upwind states. Air quality in Lake and Porter Counties is impacted by the transport of ozone and ozone precursors from upwind states. Therefore, local controls, as well as regional emission controls, have contributed to the ozone air quality improvement in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN area as a whole.

#### 1. Permanent and Enforceable Controls Implemented

The following is a discussion of the permanent and enforceable emission controls that have been implemented in Lake and Porter Counties or in other upwind areas. In Indiana's ozone redesignation request, the State documented all of the emission control rules or programs that have impacted VOC or NO<sub>x</sub> emissions during the period of 2000–2006.

##### a. Reasonably Available Control Technology

IDEM notes that a number of VOC RACT rules developed in prior years have continued to provide additional VOC emission reductions during the more recent years. With the exception of the source categories covered by the most recently published CTGs, Indiana has implemented VOC RACT rules for source categories covered by older (prior to 2006) CTGs and for major non-CTG sources in Lake and Porter Counties. All VOC RACT rules are contained in chapter 8 of volume 326 of the Indiana Administrative Code (326 IAC 8). All of these VOC RACT rules have been approved by EPA as revisions of the Indiana SIP.

In addition to the implementation of RACT in Lake and Porter Counties, IDEM confirms that Best Available Control Technology (BACT) is required for all major new VOC sources throughout the State of Indiana. The rule requiring this BACT

<sup>8</sup> CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from MVEBs that are established in control strategy SIPs and maintenance plans.

implementation is contained in 326 IAC 8–1–6.

b. ROP Plans and Attainment Demonstration Plan

IDEM states that Lake and Porter Counties have met all of the one-hour ozone SIP obligations, including implementation of the VOC emission control programs and rules needed to comply with Indiana's one-hour ozone attainment demonstration for Lake and Porter Counties and implementation of all emission control measures contained in the various ROP plans applicable to Lake and Porter Counties. The emission controls included in the ROP plans are listed below.

i. 1996 Fifteen Percent ROP Plan

- Enhanced Vehicle Inspection and Maintenance, 326 IAC 13–1.1.
- Gasoline Vapor Recovery, 326 IAC 8–11–2.
- Reformulated Gasoline, Federal control program.
- Architectural Coating, Federal Rule at 40 CFR part 59.
- Open Burning Ban, 326 IAC 4–1.
- Non-CTG RACT, 326 IAC 8.

ii. 1999 Nine Percent ROP Plan

- National Emission Standard for Hazardous Air Pollutant (NESHAP) for Benzene Emissions from Coke Oven By-Product Recovery Plants, Federal Rule at 40 CFR part 61 subpart L.
- NESHAP for Coke Oven Batteries, Federal Rule at 40 CFR part 63 subpart L.
- Federal Phase I Reformulated Gasoline for Small Non-Road Engines.
- Federal Controls on Small Spark-Ignited Engines at 40 CFR part 90.
- Commercial/Consumer Solvent Reformulation Rule.
- Volatile Organic Liquid Storage RACT, 326 IAC 8–9.

iii. 2002 Nine Percent ROP Plan

- Additional Emission Reductions from Federal Controls on Small Spark-Ignited Engines, 40 CFR part 90.
- Sinter Plant Rule, 326 IAC 8–13.
- Municipal Solid Waste Landfill Rule, 326 IAC 8–8.

iv. 2005 Nine Percent ROP Plan

- Additional Emission Reductions from Federal Controls on Small Spark-Ignited Engines, 40 CFR part 90.

v. 2007 Six Percent ROP Plan

- Additional Emission Reductions from Federal Controls on Small Spark-Ignited Engines, 40 CFR part 90.
- Commercial/Consumer Solvent Reformulation Rule, 60 FR 15264.
- Petroleum Refinery NESHAP, 40 CFR part 63, subpart CC.

- United States Steel—Gary Works Agreed Order

(Halts Use of Untreated Water for Quenching), 2005.

- Volatile Organic Liquid Storage RACT, 326 IAC 8–9.
- Cold Cleaner Rule, 326 IAC 8–3–8.

c. NO<sub>x</sub> Control Rules

IDEM developed emission control rules for Electric Generating Units (EGUs), major non-EGU industrial boilers, and cement kilns in compliance with EPA's Phase I NO<sub>x</sub> SIP call. These rules were adopted in 2001. Emission reductions resulted from these rules beginning in 2004.

EPA published Phase II of the NO<sub>x</sub> SIP call to require NO<sub>x</sub> emission reductions from large stationary internal combustion engines. Indiana developed the Phase II NO<sub>x</sub> control rules and committed to maintain a statewide NO<sub>x</sub> emission cap. The Phase II NO<sub>x</sub> control rules became effective on February 26, 2006, with implementation beginning in 2007.

d. Federal Emission Control Measures

Besides the Federal emission control considered in the ROP plans, IDEM notes that other Federal emission control measures have had significant impacts on Lake and Porter Counties' and regional upwind VOC and NO<sub>x</sub> emissions. These Federal measures include the following.

*Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards.* 40 CFR part 86, subpart S. These emission control requirements result in lower VOC and NO<sub>x</sub> emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. EPA has estimated that, by the end of the phase-in period, the following vehicle NO<sub>x</sub> emission reductions will occur nationwide: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sport utility vehicles (86 percent); and larger sport utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Although some of these emission reductions occurred by the attainment years (2006–2008) in the Chicago-Gary-Lake County, IL-IN area, additional emission reductions will occur during the maintenance period for Lake and Porter Counties. For example, note that the Tier 2 emission standards for passenger vehicles weighing over 8,500 pounds were not implemented until 2008 or later.

*Heavy-Duty Diesel Engine Rule.* EPA issued this rule in January 2001 (66 FR 5002). This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which further reduced the highway diesel fuel sulfur content to 15 parts per million, leading to additional reductions in combustion NO<sub>x</sub> and VOC emissions. This rule is expected to achieve a 95 percent reduction in NO<sub>x</sub> emissions from diesel trucks and buses.

*Non-Road Diesel Rule.* EPA issued this rule in June 2004 (69 FR 38958). This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO<sub>x</sub> emissions from non-road diesel engines by up to 90 percent. This rule is currently achieving emission reductions, but will not be fully implemented until 2010.

e. Additional Local Emission Reductions

Several local permanent and enforceable emission reductions have occurred through various mechanisms other than through the State's RACT rules or through Federal emission control rules/programs. These emission reductions have occurred through permanent and enforceable source closures, agreed orders, or consent decrees.

According to IDEM, the NIPSCO Mitchell electric generating facility was permanently closed in 2001. The closure of this facility reduced NO<sub>x</sub> emissions by 3,000 tons per year and VOC emissions by 40 tons per year. IDEM has stated that this facility cannot be restarted or replaced without the source being subject to PSD and/or NSR requirements. Therefore, IDEM considers the emission reductions resulting from the source closure to be permanent and enforceable.

USS Gary Works, through an agreed order with IDEM, shut down Coke Battery No. 3 in 2005. This resulted in emission reductions of 650 tons per year for VOC and 500 tons per year for NO<sub>x</sub>.

In 2000, EPA and British Petroleum entered into a consent decree with the BP Exploration & Oil Company, which included the Whiting Refinery. This consent decree required the installation of NO<sub>x</sub> emission control systems and fuel changes for several units at the refinery. According to IDEM, NO<sub>x</sub> emissions at the refinery were reduced by over 6,000 tons per year by 2007. The source modifications leading to this emission reduction have been included in the Federally enforceable Title V source permit for this facility.

f. Controls to Remain in Effect

Indiana commits to maintain all of the current emission control measures for VOC and NO<sub>x</sub> after Lake and Porter Counties are redesignated to attainment. Indiana, through IDEM's Office of Air Quality (OAQ) and the Office of Enforcement, has the legal authority and necessary resources to actively enforce against any violations of the State's air pollution emission control rules. After Lake and Porter Counties are redesignated to attainment, OAQ will implement NSR for major sources through the PSD program.

2. Emission Reductions

Indiana chose 2006 as the attainment year, and compared 1996, 1998, 2002, and 2004 VOC and NO<sub>x</sub> emissions to the attainment year emissions to show that emission reductions have occurred in the area, explaining the ozone air quality improvement in the area. The emissions for all years were derived from periodic VOC and NO<sub>x</sub> emission inventories, which were prepared every three years. Based on the estimated emissions, IDEM has documented several emission trends to show that permanent and enforceable emission

controls in various source sectors are responsible for significant downward trends in VOC and NO<sub>x</sub> emission totals in Lake and Porter Counties and in upwind areas. For a discussion of emission inventory preparation methods, see the discussion of the preparation of the 2002 base year emission inventories below.

To demonstrate that VOC and NO<sub>x</sub> emissions have decreased between standard violation years and the attainment year, IDEM has documented the VOC and NO<sub>x</sub> emissions in Lake and Porter Counties. Table 2 gives the total VOC and NO<sub>x</sub> emissions in Lake and Porter Counties for anthropogenic (man-made) sources.

TABLE 2—TOTAL ANTHROPOGENIC VOC AND NO<sub>x</sub> EMISSIONS IN LAKE AND PORTER COUNTIES  
[Tons per Summer Day]

| Year | VOC    | NO <sub>x</sub> |
|------|--------|-----------------|
| 1996 | 130.80 | 321.00          |
| 1998 | 131.70 | 323.92          |
| 2002 | 111.94 | 285.77          |
| 2004 | 107.00 | 261.00          |
| 2006 | 83.57  | 223.86          |

To demonstrate that permanent and enforceable emission controls have reduced VOC and NO<sub>x</sub> emissions, IDEM also documented the trends in point source emissions in Lake and Porter Counties (point sources are the source sector most impacted by the implementation of the State's emission control regulations). Table 3 gives the Lake and Porter Counties' total point source VOC and NO<sub>x</sub> emissions for the documented years.

TABLE 3—TOTAL POINT SOURCE VOC AND NO<sub>x</sub> EMISSIONS IN LAKE AND PORTER COUNTIES  
[Tons per Summer Day]

| Year | VOC | NO <sub>x</sub> |
|------|-----|-----------------|
| 1996 | 29  | 204             |
| 1998 | 33  | 233             |
| 2002 | 25  | 186             |
| 2004 | 25  | 148             |
| 2006 | 19  | 126             |

IDEM has also documented the Lake and Porter Counties VOC and NO<sub>x</sub> emissions by year for all anthropogenic source sectors. Table 4 lists these emissions.

TABLE 4—VOC AND NO<sub>x</sub> EMISSIONS IN LAKE AND PORTER COUNTIES BY SOURCE SECTOR  
[Tons per Summer Day]

| Sector                | VOC 1996             | VOC 1999             | VOC 2002             | VOC 2004             | VOC 2006             |
|-----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
|                       | Area .....           | 45.19                | 49.59                | 32.37                | 31.34                |
| Non-Road Mobile ..... | 16.23                | 19.98                | 35.09                | 31.63                | 17.14                |
| On-Road Mobile .....  | 40.05                | 33.29                | 20.00                | 18.90                | 14.92                |
| Point .....           | 29.33                | 28.84                | 24.58                | 25.43                | 19.04                |
| <b>Total .....</b>    | <b>130.80</b>        | <b>131.70</b>        | <b>111.94</b>        | <b>107.30</b>        | <b>83.57</b>         |
| Sector                | NO <sub>x</sub> 1996 | NO <sub>x</sub> 1999 | NO <sub>x</sub> 2002 | NO <sub>x</sub> 2004 | NO <sub>x</sub> 2006 |
|                       | Area .....           | 8.02                 | 10.36                | 5.72                 | 5.76                 |
| Non-Road Mobile ..... | 45.7                 | 49.07                | 38.61                | 40.64                | 31.17                |
| On-Road Mobile .....  | 63.14                | 49.92                | 55.00                | 65.95                | 60.09                |
| Point .....           | 204.22               | 214.58               | 186.44               | 148.22               | 126.15               |
| <b>Total .....</b>    | <b>321.08</b>        | <b>323.93</b>        | <b>285.77</b>        | <b>260.57</b>        | <b>223.86</b>        |

IDEM notes that statewide NO<sub>x</sub> emissions from EGUs have been significantly reduced as a result of the State's NO<sub>x</sub> control rules. Table 5 lists the statewide ozone season (April–September) NO<sub>x</sub> emissions from EGUs.

TABLE 5—STATEWIDE EGU NO<sub>x</sub> EMISSIONS  
[Tons per Ozone Season]

| Year | NO <sub>x</sub> Emissions |
|------|---------------------------|
| 2000 | 133,882                   |
| 2001 | 136,052                   |
| 2002 | 113,996                   |
| 2003 | 99,283                    |
| 2004 | 66,568                    |
| 2005 | 55,486                    |
| 2006 | 53,768                    |

TABLE 5—STATEWIDE EGU NO<sub>x</sub> EMISSIONS—Continued  
[Tons per Ozone Season]

| Year | NO <sub>x</sub> Emissions |
|------|---------------------------|
| 2007 | 54,816                    |

All of these emission trends show that Lake and Porter Counties' and Indiana statewide NO<sub>x</sub> emissions have significantly declined between 2002 and 2006. In addition, Lake and Porter

Counties' VOC emissions have also declined between 2002 and 2006. IDEM concludes that the local VOC emission reduction coupled with the region-wide NO<sub>x</sub> emission reduction explains the observed improvement area ozone concentrations.

To assess the VOC and NO<sub>x</sub> changes between the 2002 base year and the 2006 attainment year for the entire Chicago-Gary-Lake County, IL-IN ozone nonattainment year, we have combined the VOC and NO<sub>x</sub> emissions documented in Indiana's ozone redesignation request with those documented by the Illinois Environmental Protection Agency for the Illinois portion of the ozone nonattainment area in an ozone redesignation request submitted on April 8, 2009. The VOC and NO<sub>x</sub> emission totals for 2002 and 2006 for each State's portion of the Chicago-Gary-Lake County, IL-IN ozone nonattainment area are given in Table 6.

TABLE 6—VOC AND NO<sub>x</sub> EMISSIONS BY STATE PORTION OF THE CHICAGO-GARY-LAKE COUNTY, IL-IN EIGHT-HOUR OZONE NONATTAINMENT AREA  
(Tons per Summer Day)

| Year              | Illinois | Indiana | Total  |
|-------------------|----------|---------|--------|
| VOC:              |          |         |        |
| 2002              | 752.4    | 111.9   | 864.3  |
| 2006              | 625.6    | 83.6    | 709.2  |
| NO <sub>x</sub> : |          |         |        |
| 2002              | 1,086.3  | 285.8   | 1372.0 |
| 2006              | 812.0    | 223.9   | 1035.9 |

Based on the 2002 and 2006 nonattainment area total emissions, we conclude that VOC and NO<sub>x</sub> emission totals have significantly declined in the nonattainment area during the 2002–2006 period. These emission reductions have contributed to attainment of the 1997 eight-hour ozone standard in this area.

Ozone modeling results, some of which are discussed in the next subsection, support the conclusion that local VOC reductions coupled with regional NO<sub>x</sub> emission reductions have led to lowered local ozone levels and attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. This supports Indiana's conclusions regarding the impacts of the VOC and NO<sub>x</sub> emissions reductions. We concur with Indiana's conclusions that the emission trends and ozone modeling results support the conclusion that attainment in the area is due to permanent and enforceable emission reductions.

### 3. Ozone Modeling Results and Temperature Analysis

To further support the conclusion that the observed ozone air quality improvements in the Chicago-Gary-Lake County, IL-IN area are due to the implementation of emission controls, IDEM reviewed several ozone modeling results covering the subject area, and also compared the observed trend in peak ozone concentrations to the trend (and deviations from normal) in monthly maximum temperatures. Both of these analyses, as discussed below, showed that reductions in ozone precursor emissions rather than trends in peak temperatures are the primary explanation of the observed improvement in local peak ozone concentrations.

#### Ozone Modeling

Ozone modeling results contained in various documents allowed IDEM to estimate current and future ozone design values for Lake and Porter Counties. Ozone modeling results from the following studies and EPA rulemaking analyses were considered: (1) EPA modeling analysis for the Heavy Duty Engine final rulemaking; (2) Lake Michigan Air Directors Consortium (LADCO) modeling analysis for the eight-hour ozone standard attainment assessment; (3) EPA modeling for CAIR;<sup>9</sup> and, (4) LADCO Round 5 modeling for the eight-hour ozone standard. IDEM concludes, and EPA agrees, that these modeling results show that existing national emission control measures have brought Lake and Porter Counties into attainment of the 1997 eight-hour ozone standard. In addition, emission controls to be implemented in the next few years will provide additional reductions in peak ozone levels in Lake and Porter Counties, resulting in maintenance of the 1997 eight-hour ozone standard in Lake and Porter Counties.

#### Temperature Analysis

Recognizing that certain meteorological conditions are very

<sup>9</sup> Even though EPA conducted this modeling to support CAIR, IDEM considered the modeling results to estimate the future ozone impacts of NO<sub>x</sub> reductions that do not factor in NO<sub>x</sub> emission reductions from CAIR. IDEM accounted for the fact that, on July 11, 2008, the District of Columbia Circuit Court of Appeals vacated CAIR. *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). On December 23, 2008, the same Court of Appeals remanded CAIR without vacatur, directing EPA to revise the CAIR. 550 F.3d 1176. Considering CAIR and non-CAIR ozone modeling, IDEM determined that CAIR would have contributed only 1 ppb of ozone reduction in Lake and Porter Counties in 2018/2020, far less than the modeled margin of attainment for the 1997 eight-hour ozone standard in this area.

important factors in the formation of high ozone levels and that, among the contributing meteorological conditions, high temperatures are the most significant contributor to high ozone concentrations, IDEM analyzed trends in peak monthly temperatures and the annual numbers of days with peak temperatures over 90 degrees Fahrenheit for the period of 1999 through 2008 versus the trends of peak ozone concentrations during this period. This analysis showed a downward trend in the annual number of ozone standard exceedance days without accompanying downward trends in peak monthly temperatures or annual number of high temperature days. IDEM concluded that the downward trend in emissions is a more likely cause of the observed downward trend in peak ozone concentrations than is a downward trend in conducive meteorological conditions.

IDEM concluded that all of the VOC and NO<sub>x</sub> emission controls implemented in Northwest Indiana and statewide, as discussed above, which are permanent and enforceable, are responsible for the observed ozone air quality improvement in Lake and Porter Counties and have contributed significantly to attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. We agree with this conclusion.

As noted above, Indiana has committed to retaining all existing emission control measures that affect ozone levels in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN area after Lake and Porter Counties are redesignated to attainment of the 1997 eight-hour ozone NAAQS. All changes in existing rules subsequently determined to be necessary will be submitted to EPA for approval as SIP revisions.

Based on the above, EPA proposes to determine that Lake and Porter Counties and the State of Indiana have met the requirement of section 107(d)(3)(E)(iii) of the CAA, and have demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions.

#### D. Does Indiana Have a Fully Approvable Ozone Maintenance Plan Pursuant to Section 175A of the CAA for Lake and Porter Counties?

##### 1. What Is Required in an Ozone Maintenance Plan?

Section 175A of the CAA sets forth the required elements of air quality maintenance plans for areas seeking redesignation from nonattainment to attainment of a NAAQS. Under section

175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves the redesignation to attainment. The state must commit to submit a revised maintenance plan within eight years after the redesignation. This revised maintenance plan must provide for maintenance of the ozone standard for an additional ten years beyond the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule of implementation, as EPA deems necessary, to assure prompt correction of any future NAAQS violation. The September 4, 1992, Calcagni memorandum provides additional guidance on the content of maintenance plans.

An ozone maintenance plan should, at minimum, address the following: (1) The attainment VOC and NO<sub>x</sub> emission inventories; (2) a maintenance demonstration showing maintenance for the 10 years of the maintenance period; (3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment; and, (5) a contingency plan to prevent and/or correct a future violation of the NAAQS.

## 2. How Did the State Estimate the Attainment Year VOC and NO<sub>x</sub> Emissions?

As noted above in the discussion of the emission reductions leading up to the attainment of the 1997 eight-hour ozone standard, IDEM selected 2006 as the attainment year, one of the three years (2006–2008) in which monitored attainment of the 1997 eight-hour ozone standard was recorded throughout the Chicago-Gary-Lake County, IL-IN area. The 2006 emissions for Lake and Porter Counties were determined using the following procedures.

### a. Area Sources

Area source emissions were extrapolated from Indiana's 2005 periodic emissions inventory using projections of the same surrogates, such as population, number of households, acres under cultivation, etc., used to calculate the area source emissions for the periodic emission inventory.

### b. Point Sources

Point source VOC and NO<sub>x</sub> emissions were compiled from IDEM's 2006 annual emission statement database and the 2007 EPA Clean Air Markets acid rain emissions database.

### c. On-Road Mobile Source Emissions

Mobile source emissions were calculated using EPA's MOBILE6.2 emission factor model and traffic data taken from the Northwestern Indiana travel-demand model. IDEM has provided detailed model input data summaries to document the calculation of on-road mobile source VOC and NO<sub>x</sub> emission for 2006, as well as for the projection years of 2010 and 2020.

### d. Non-Road Mobile Source Emissions

Non-road emissions for 2006 were projected from the 2005 National Emissions Inventory (NEI) non-road emissions developed by EPA. IDEM used the NEI emissions along with surrogate data growth factors to project the non-road mobile source emissions for 2006.

### e. Emissions From the Illinois Portion of the Chicago-Gary-Lake County, IL-IN Ozone Nonattainment Area

To demonstrate that emission reductions contributed to attainment of the eight-hour ozone standard in the entire ozone nonattainment area and to demonstrate maintenance of the eight-hour ozone standard in the entire ozone nonattainment area, IDEM considered the VOC and NO<sub>x</sub> emissions from the Illinois portion of the eight-hour ozone nonattainment area. The emissions data for the Illinois portion of the nonattainment area were provided by LADCO. The Illinois emissions inventory was prepared by the use of techniques and assumptions similar to those used by IDEM. To support ozone modeling in the Lake Michigan area, LADCO oversaw the development of VOC and NO<sub>x</sub> emissions of the LADCO member States, which insured consistency in emission inventory preparation techniques by the States.

### 3. Has the State Demonstrated Maintenance of the Ozone Standard in Lake and Porter Counties?

As part of the redesignation request, IDEM included a request for revision of its SIP to incorporate a maintenance plan as required under section 175A of the CAA. The maintenance plan includes a demonstration based on a comparison of emissions in the attainment year (2006) and projected emissions to demonstrate maintenance of the standard for at least ten years after the anticipated redesignation year. To demonstrate maintenance of the eight-hour ozone standard, IDEM projected VOC and NO<sub>x</sub> emissions to 2020 and to an interim year, 2010. These emissions were compared to the 2006 attainment year emissions to show that VOC and NO<sub>x</sub> emissions remain below the

attainment levels for the entire demonstrated maintenance period. This demonstration was performed considering Lake and Porter Counties' emissions only, and separately considering the VOC and NO<sub>x</sub> emissions for the entire Chicago-Gary-Lake County, IL-IN ozone nonattainment area.

In the June 5, 2009, ozone redesignation request, IDEM graphically represented and compared the VOC and NO<sub>x</sub> emissions for 2006, 2010, and 2020 for all major source sectors, and in total for Lake and Porter Counties and for the entire ozone nonattainment area. In the July 20, 2009, supplement to the ozone maintenance demonstration, IDEM presented the 2020 NO<sub>x</sub> and VOC emission totals for Lake and Porter Counties without the impacts of CAIR.<sup>10</sup> IDEM's maintenance demonstration shows that in 2010 and 2020, without the impacts of Indiana's CAIR rules, VOC and NO<sub>x</sub> emission totals for Lake and Porter Counties are projected to be below the 2006 VOC and NO<sub>x</sub> emission totals for these Counties.

VOC emissions in Lake and Porter Counties are projected to decline by more than 16 percent between 2006 and 2020, and VOC emissions in the entire nonattainment area are projected to decline by more than 25 percent between 2006 and 2020. NO<sub>x</sub> emissions in Lake and Porter Counties are projected to decline by more than 25 percent between 2006 and 2020, and NO<sub>x</sub> emissions in the entire ozone nonattainment area are projected to decline by more than 49 percent between 2006 and 2020. (Note that the projected NO<sub>x</sub> emission reduction for 2020 did not include NO<sub>x</sub> emission reductions resulting from CAIR, but did include NO<sub>x</sub> emission reductions resulting from Indiana's existing NO<sub>x</sub> emission control rules, adopted as a result of EPA's NO<sub>x</sub> SIP call.)

The December 23, 2008, remand of EPA's CAIR by the U.S. Court of Appeals led to both the State and EPA further considering the impact of this remand on Indiana's ozone maintenance demonstration for Lake and Porter Counties. The CAIR was remanded to EPA, and the process of developing a

<sup>10</sup> As discussed in footnote 9, the U.S. Court of Appeals, for the District of Columbia Circuit has remanded CAIR without vacatur, directing EPA to revise the CAIR. This raises questions about the future emission impacts of States' CAIR-based emission control rules. As a conservative approach to this problem, EPA requested IDEM to supplement the ozone maintenance demonstration with projected emissions removing the impacts of the States' (Indiana's and all nearby States', whose emissions impact ozone levels in the Chicago-Gary-Lake County, IL-IN area) CAIR NO<sub>x</sub> emission control rules.



replacement rule is ongoing. However, the remand of CAIR does not alter the requirements of the NO<sub>x</sub> SIP call, and Indiana has demonstrated that Lake and Porter Counties can maintain the 1997 eight-hour ozone standard without any additional NO<sub>x</sub> emission reduction requirements (beyond those required by the NO<sub>x</sub> SIP call). Therefore, EPA believes that Indiana's demonstration of maintenance under sections 175A and 107(d)(3)(E) of the CAA remains valid.

The NO<sub>x</sub> SIP call requires states to make significant, specific emission reductions. It also provided a mechanism, the NO<sub>x</sub> Budget Trading Program, which states could use to achieve those emission reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO<sub>x</sub> Budget Trading Program, 40 CFR 51.121(r), but created another mechanism, the CAIR ozone season trading program, which states could use to meet their SIP call obligations, 70 FR 25289–25290. EPA notes that a number of states, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that

required sources to participate in the NO<sub>x</sub> Budget Trading Program. In addition, because the provisions of CAIR, including the ozone season NO<sub>x</sub> trading program remain in place during the remand, EPA is not currently administering the NO<sub>x</sub> Budget Trading Program. Nonetheless, all states, regardless of the current status of their regulations that previously required participation in the NO<sub>x</sub> Budget Trading Program, will remain subject to all of the requirements in the NO<sub>x</sub> SIP call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO<sub>x</sub> SIP call, including the statewide NO<sub>x</sub> emission budgets, continue to apply after revocation of the one-hour ozone standard and, therefore, currently remain in effect.

All NO<sub>x</sub> SIP call states have SIPs that currently satisfy their obligations under the NO<sub>x</sub> SIP call. The NO<sub>x</sub> SIP call emission reduction requirements are being met, and EPA will continue to enforce the requirements of the NO<sub>x</sub> SIP call even after any response to the CAIR

remand. For these reasons, EPA believes that regardless of the status of the CAIR program, the NO<sub>x</sub> SIP call requirements can be relied upon in demonstrating maintenance of the 1997 eight-hour ozone standard. Here, the State has demonstrated maintenance based, in part, on these emission reduction requirements.

Indiana has successfully demonstrated maintenance of the 1997 eight-hour ozone standard between 2006 and 2020. In addition, VOC and NO<sub>x</sub> emissions in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN area are projected to decline between 2006 and 2010. EPA and Indiana do not anticipate an increase in VOC or NO<sub>x</sub> emissions in Lake and Porter Counties between 2010 and 2020 given the emission growth and source control factors used to project emissions.

Table 7 provides the maintenance period VOC and NO<sub>x</sub> emissions for Lake and Porter Counties only, and Table 8 provides the maintenance period VOC and NO<sub>x</sub> emissions for the entire Chicago-Gary-Lake County, IL-IN ozone nonattainment area.

TABLE 7—PROJECTED VOC AND NO<sub>x</sub> EMISSIONS IN LAKE AND PORTER COUNTIES  
[Tons per Summer Day]

| Source sector         | VOC 2006             | VOC 2010             | VOC 2020 with CAIR             | VOC 2020 without CAIR             |
|-----------------------|----------------------|----------------------|--------------------------------|-----------------------------------|
| Point .....           | 19.04                | 18.18                | 22.25                          | .....                             |
| Area .....            | 32.47                | 28.8                 | 29.24                          | .....                             |
| On-Road Mobile .....  | 14.92                | 9.93                 | 5.71                           | .....                             |
| Non-Road Mobile ..... | 17.14                | 14.11                | 12.22                          | .....                             |
| Total .....           | 83.57                | 71.02                | 69.42                          | 69.93                             |
|                       | NO <sub>x</sub> 2006 | NO <sub>x</sub> 2010 | NO <sub>x</sub> 2020 with CAIR | NO <sub>x</sub> 2020 without CAIR |
| Point .....           | 126.15               | 110.49               | 114.75                         | .....                             |
| Area .....            | 6.45                 | 6.59                 | 6.77                           | .....                             |
| On-Road Mobile .....  | 60.09                | 38.65                | 11.97                          | .....                             |
| Non-Road Mobile ..... | 31.17                | 28.50                | 21.37                          | .....                             |
| Total .....           | 223.86               | 184.23               | 154.86                         | 165.91                            |

TABLE 8—PROJECTED VOC AND NO<sub>x</sub> EMISSIONS IN THE CHICAGO-GARY-LAKE COUNTY, IL-IN AREA  
[Tons per Summer Day]

| Source sector         | VOC 2006             | VOC 2010             | VOC 2020 without CAIR             |
|-----------------------|----------------------|----------------------|-----------------------------------|
| Point .....           | 89.00                | 93.00                | 113.00                            |
| Area .....            | 313.40               | 254.00               | 254.00                            |
| On-Road Mobile .....  | 153.92               | 104.00               | 55.00                             |
| Non-Road Mobile ..... | 222.00               | 174.09               | 150.00                            |
| Total .....           | 778.32               | 625.09               | 572.00                            |
|                       | NO <sub>x</sub> 2006 | NO <sub>x</sub> 2010 | NO <sub>x</sub> 2020 without CAIR |
| Point .....           | 302.00               | 247.00               | 262.00                            |
| Area .....            | 38.50                | 41.00                | 41.00                             |

TABLE 8—PROJECTED VOC AND NO<sub>x</sub> EMISSIONS IN THE CHICAGO-GARY-LAKE COUNTY, IL-IN AREA—Continued  
[Tons per Summer Day]

| Source sector         | VOC 2006             | VOC 2010             | VOC 2020<br>without CAIR             |
|-----------------------|----------------------|----------------------|--------------------------------------|
|                       | NO <sub>x</sub> 2006 | NO <sub>x</sub> 2010 | NO <sub>x</sub> 2020<br>without CAIR |
| On-Road Mobile .....  | 419.00               | 254.00               | 84.86                                |
| Non-Road Mobile ..... | 290.00               | 243.00               | 150.00                               |
| Total .....           | 1049.50              | 785.00               | 537.86                               |

We propose to conclude that IDEM has demonstrated maintenance of the ozone standard during the 10-plus year maintenance period both within Lake and Porter Counties and throughout the Chicago-Gary-Lake County, IL-IN area through projections of VOC and NO<sub>x</sub> emissions that show that the emissions will remain below the 2006 attainment levels during the maintenance period. This is demonstrated with and without the emission reductions from CAIR.

#### 4. What Is the Contingency Plan for Lake and Porter Counties?

Section 175A of the CAA requires the maintenance plan to 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 must identify the contingency measures to be considered for possible adoption, a schedule and procedure for adoption and implementation of the selected 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 controlled through the SIP before the 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 to address possible future ozone air quality problems. The contingency plan has two levels of actions/responses depending on whether a violation of the 1997 eight-hour ozone standard is only threatened (Warning Level Response) or has actually occurred (Action Level Response).

A Warning Level Response will be prompted whenever an annual (one-year) fourth-high daily maximum eight-hour ozone concentration of 0.089 ppm

is monitored in a single ozone season, or a two-year average fourth-high daily maximum eight-hour ozone concentration of 0.085 ppm or greater is monitored at any site within the maintenance area. A Warning Level Response will consist of a study to determine whether the high ozone level indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue. If the trend is likely to continue, the emission control measures necessary to reverse the trend, taking into consideration the ease and timing for implementation along with economic and social impacts and issues, will be determined. Implementation of selected emission controls will take place as expeditiously as possible, but in no event later than 12 months from the end of the most recent ozone season (September 30). If new emission controls are needed to reverse the adverse ozone/emissions trend, the procedures for emission control selection under the Action Level Response will be followed.

An Action Level Response will be triggered when a violation of the 1997 eight-hour ozone standard is monitored within the maintenance area. In the event that the ozone standard violation is not found to be due to an exceptional event, malfunction, or noncompliance of a source with a permit condition or rule requirement, IDEM will determine the additional emission controls needed to assure future attainment of the eight-hour ozone NAAQS. In this case, emission control measures that can be implemented in a short time will be selected and will be adopted and implemented within 18 months from the close of the ozone season in which the violation of the ozone NAAQS is monitored.

Adoption of any additional emission control measures prompted by either of the two response levels will be subject to the necessary administrative and legal processes dictated by State law. This process will include publication of

public notices, an opportunity for public hearings, and other measures required by Indiana law for rulemaking by State environmental boards. If a new emission control measure is already promulgated and scheduled for implementation at the Federal or State level, and if that emission control measure is determined to be sufficient to address the air quality problem or adverse trend, additional local emission control measures may be determined to be unnecessary. Indiana will submit to EPA an analysis to demonstrate that the proposed emission control measures are adequate to return the area to attainment of the ozone NAAQS. EPA understands that Indiana will submit any such State-proposed or existing emissions control measure (if not already included in the SIP) to EPA as a requested SIP revision.

Contingency measures contained in the maintenance plan are those emission controls or other measures that the State chooses to adopt and implement in response to either an Action Level or a Warning Level trigger. Possible contingency measures include, but are not limited to, the following:

- a. Vehicle emission testing program enhancements, including increased vehicle weight limits, addition of diesel vehicles, etc.;
- b. Asphalt paving (lower VOC formulation requirements);
- c. Diesel exhaust retrofits;
- d. Traffic flow improvements;
- e. Idle reduction programs;
- f. Portable fuel container regulation (statewide);
- g. Park and ride facilities;
- h. Rideshare/carpool programs;
- i. VOC cap-and-trade program for major stationary sources;
- j. Commercial/consumer solvent VOC content limits (statewide); and,
- k. NO<sub>x</sub> RACT.

Several aspects of the contingency plan merit further discussion. First, the plan does not require the adoption and implementation of new emission controls in the event of a future ozone standard violation if it can be shown that the ozone standard violation is due

to an exceptional event, source malfunction, or source noncompliance. If a monitored exceedance is determined to be due to an "exceptional event" (March 22, 2007, 72 FR 13560), it will not be considered in determining whether a violation has occurred. Since exceptional event exceedances are not counted against ozone standard violations, EPA accepts this approach in Indiana's ozone maintenance plan.

Second, with regard to source malfunctions or source noncompliance, we note that the Indiana SIP contains provisions for ensuring that sources take actions to correct malfunctions, as well as provisions for the State to take enforcement actions against noncompliant sources. See 326 IAC 1–6. EPA believes that this provides a mechanism for the State to take prompt corrective actions, including expeditious and effective enforcement actions, to achieve compliance. See an analogous discussion in the General Preamble, 57 FR 13547 (April 16, 1992). In the context of section 172(c)(9) contingency measures for sulfur dioxide (SO<sub>2</sub>), EPA has interpreted "contingency measures" to mean that the State agency has a comprehensive program to identify sources of violations of the NAAQS and to undertake an aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of revised SIPs. This type of source-specific noncompliance and correction by enforcement action in the ozone context is similar to source-specific SO<sub>2</sub> noncompliance and enforcement, and, therefore, it is appropriate to apply the SO<sub>2</sub> guidance in this circumstance.

5. Has the State Committed To Update the Ozone Maintenance Plan Within Eight Years After the Redesignation of Lake and Porter Counties To Attainment of the Eight-Hour Ozone NAAQS?

As required by section 175A(b) of the CAA, Indiana commits to review its ozone maintenance plan eight years after redesignation of Lake and Porter Counties to attainment of the 1997 eight-hour ozone standard and to provide for maintenance of the ozone standard for an additional 10 years.

6. How Is Indiana's Ozone Maintenance Plan Affected by the Future of NO<sub>x</sub> Emission Control Rules in Indiana and in Upwind Areas Under CAIR and Under the NO<sub>x</sub> SIP Call?

EPA has considered the relationship of Indiana's ozone maintenance plan for Lake and Porter Counties to the emission reductions currently required pursuant to CAIR. This rule was remanded to EPA,<sup>11</sup> and the process of developing a replacement rule is ongoing. However, the remand of CAIR does not alter the requirements of the NO<sub>x</sub> SIP call and the State has now demonstrated, as noted above, that the area can maintain attainment of the eight-hour ozone standard without any additional requirements (beyond those required by the NO<sub>x</sub> SIP call). In addition, in the July 20, 2009, ozone maintenance plan supplement, IDEM has confirmed that the State's NO<sub>x</sub> SIP call rules remain in effect regardless of the future of EPA's CAIR replacement rule. Therefore, EPA believes that the State's demonstration of maintenance under sections 175A and 107(d)(3)(E) remains valid.

The NO<sub>x</sub> SIP call requires states to make significant, specific emissions reductions. It also provided a mechanism, the NO<sub>x</sub> Budget Trading Program, which states could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO<sub>x</sub> Budget Trading Program, 40 CFR 51.121(r), but created another mechanism—the CAIR ozone season trading program—which states could use to meet their SIP call obligations. EPA notes that a number of states, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that required sources to participate in the NO<sub>x</sub> Budget Trading Program. In addition, because the provisions of CAIR, including the ozone season NO<sub>x</sub> trading program, remain in place during the remand, EPA is not currently administering the NO<sub>x</sub> Budget Trading Program. Nonetheless, all states, regardless of the current status of their regulations that previously required participation in the NO<sub>x</sub> Budget Trading Program, will remain subject to all of the requirements in the NO<sub>x</sub> SIP call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO<sub>x</sub> SIP call, including the

statewide NO<sub>x</sub> emission budgets, continue to apply after revocation of the one-hour ozone standard.

All NO<sub>x</sub> SIP call states have SIPs that currently satisfy their obligations under the SIP call, the SIP call reduction requirements are being met, and EPA will continue to enforce the requirements of the NO<sub>x</sub> SIP call even after any response to the CAIR remand. For these reasons, EPA believes that, regardless of the status of the CAIR program, the NO<sub>x</sub> SIP call requirements can be relied upon in demonstrating maintenance. Here, the State has demonstrated maintenance based in part on those requirements.

In addition, LADCO performed a regional modeling analysis to address the Court's remand of CAIR. This analysis is documented in LADCO's "Regional Air Quality Analysis for Ozone, PM<sub>2.5</sub>, and Regional Haze: Final Technical Support Document (Supplement), September 12, 2008," attached to Indiana's June 20, 2009, submittal. LADCO produced a base year emissions inventory for 2005 and future year emissions inventories for 2009, 2012, and 2018. To estimate EGU NO<sub>x</sub> emissions without implementation of CAIR, LADCO projected EGU NO<sub>x</sub> emissions for all states in the modeling domain based on Energy Information Administration growth rates by state (North American Electric Reliability Corporation (NERC)) and fuel type for the years 2009, 2012, and 2018. The assumed 2007–2018 growth rates were 8.8 percent for Illinois, Iowa, Missouri and Wisconsin; 13.5 percent for Indiana, Kentucky, Michigan and Ohio; and 15.1 percent for Minnesota. Emissions were adjusted by applying existing, legally enforceable control requirements, e.g., consent decrees or state rules.

EGU NO<sub>x</sub> emission projections for the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin are shown below in Table 9. The emission projections used for the modeling analysis do not account for certain relevant factors, such as emission allowance trading and potential changes in operation of existing emission control devices. The NO<sub>x</sub> emission projections indicate that, due to the NO<sub>x</sub> SIP call, certain state rules, consent decrees resulting from enforcement cases, and ongoing implementation of a number of mobile source control rules, EGU NO<sub>x</sub> emissions are expected to remain relatively constant in Indiana or in any of the states in the immediate region, and overall NO<sub>x</sub> emissions in Indiana

<sup>11</sup> See footnote 8.

<sup>12</sup> There is more uncertainty about the use of SO<sub>2</sub> allowances and future projections for SO<sub>2</sub>

emissions. Thus, further review and discussion will be needed regarding the appropriateness of using these emission projections for future fine

particulate SIP approvals and redesignation requests.

and the nearby region are expected to decrease substantially between 2005 and 2018.<sup>12</sup> Base year and projected

total NO<sub>x</sub> emissions are shown in Table 10 below.

TABLE 9—EGU NO<sub>x</sub> EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO, AND WISCONSIN  
[Tons per Day]

| Source category | 2007  | 2009  | 2012  | 2018  |
|-----------------|-------|-------|-------|-------|
| EGU .....       | 1,582 | 1,552 | 1,516 | 1,524 |

TABLE 10—TOTAL NO<sub>x</sub> EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO, AND WISCONSIN  
[Tons per Day]

| Source category         | 2005  | 2009  | 2012  | 2018  |
|-------------------------|-------|-------|-------|-------|
| All Source Totals ..... | 8,260 | 6,778 | 6,076 | 4,759 |

Given that 2007 is one of the years Indiana used to demonstrate that the 1997 eight-hour ozone NAAQS has been attained in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area, Table 9 shows that EGU emissions will remain below attainment levels through 2018. Assuming that EGU NO<sub>x</sub> emissions will not significantly increase between 2018 and 2020, we conclude that EGU NO<sub>x</sub> will remain below attainment levels through 2020. Furthermore, as shown in Table 10, total NO<sub>x</sub> emissions in Indiana and in nearby states are expected to decrease throughout the maintenance period, through 2020.

Ozone modeling performed by LADCO using these NO<sub>x</sub> emissions and maintenance period VOC emissions supports the conclusion that the Chicago-Gary-Lake County, IL-IN area will maintain the 1997 eight-hour ozone standard throughout the maintenance period. Peak modeled ozone levels in the area for 2009, 2012, and 2018 are 82.2, 80.8, and 77.2 ppb, respectively. These projected ozone levels were modeled applying only legally enforceable emission controls, e.g., source consent decrees, state emission control rules, the NO<sub>x</sub> SIP call, Federal Motor Vehicle Emission Control Program (FMVCP), etc. Because these emission control programs will remain in place, emission levels, and, therefore, ozone levels, would not be expected to increase significantly between 2018 and 2020. Given that projected emissions and modeled ozone levels are expected to decrease substantively through 2018, it is reasonable to infer that a 2020 ozone modeling run would also show levels well below the 1997 eight-hour ozone standard.

**VI. Has the State Adopted Acceptable MVEBs for the End Year of the Ozone Maintenance Period?**

*A. How Were the MVEBS Developed, and What Are the MVEBS for Lake and Porter Counties?*

Under the CAA, states are required to submit, at various times, SIP revisions and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignation to attainment of the ozone standard or revising existing ozone maintenance plans). These emission control SIP revisions (e.g., RFP and attainment demonstration SIP revisions), including ozone maintenance plans, must create and document MVEBs based on on-road mobile source emissions allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance of the ozone NAAQS.

Under 40 CFR part 93, MVEBs for an area seeking a redesignation to attainment of the NAAQS are required to be established for the last year of the maintenance plan. In addition, MVEBs can be established for interim years to provide a quantitative benchmark. If earlier MVEBs are not established in a SIP, then 40 CFR 93.118(b)(2)(i) provides that a qualitative finding must be made by the metropolitan planning organization that there are no factors that would cause or contribute to a new violation or increase an existing violation in the years before the last year of the maintenance plan. In this case, Indiana has submitted emission budgets for both 2010 (an interim year) and 2020 (the last year of the maintenance plan). The MVEBs serve as ceilings on mobile source 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 MVEBs in the SIP and how to revise the MVEBs if needed.

Under section 176(c) of the CAA, transportation plans, transportation improvement programs, and new transportation projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause or contribute to new air quality standard violations, increase the frequency or severity of existing violations, or delay timely attainment of the NAAQS. CAA section 176(c)(1). 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, ROP plans, and maintenance plans, EPA must find that the MVEBs are "adequate" for use in determining transportation conformity. Once EPA finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by the state and Federal agencies in determining whether proposed transportation plans and transportation improvement programs conform to the SIP as required by section 176(c) of the CAA. EPA's criteria for determining the adequacy of MVEBs are specified in 40 CFR 93.118(e)(4).

<sup>12</sup> There is more uncertainty about the use of SO<sub>2</sub> allowances and future projections for SO<sub>2</sub> emissions. Thus, further review and discussion will

be needed regarding the appropriateness of using these emission projections for future fine

particulate SIP approvals and redesignation requests.

EPA's process for determining adequacy of MVEBs consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEBs during a public comment period; and, (3) making a finding of adequacy. The Transportation Conformity Rule, in 40 CFR 93.118(f), provides for MVEB adequacy finding through two mechanisms. First, 40 CFR 93.118(f)(1) provides for posting a notice to the EPA conformity Web site (<http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>) and providing a 30-day public comment period. Second, a mechanism is described in 40 CFR 93.118(f)(2) which provides that EPA can review the adequacy of an implementation plan MVEB simultaneously with its review of the implementation plan itself. In this action, EPA is using the second mechanism in 40 CFR 93.118(f)(2), and is taking comment on both the adequacy and approvability of the submitted MVEBs.

The Lake and Porter Counties' ozone maintenance plan contains VOC and NO<sub>x</sub> MVEBs for 2020 and 2010. The State has the option of setting budgets for earlier years in the maintenance plan in addition to the last year of the maintenance plan. EPA is taking comment on both the adequacy and the approvability of the submitted VOC and NO<sub>x</sub> MVEBs for Lake and Porter Counties. Any and all comments on the adequacy and approvability of the MVEBs should be submitted during the comment period stated in the **DATES** section of this notice.

EPA intends to make its determination of the adequacy of the 2010 and 2020 MVEBs for Lake and Porter Counties for transportation conformity purposes in the final rulemaking on the eight-hour ozone redesignation. If EPA finds the 2010 and 2020 MVEBs adequate and approves the MVEBs in the final rulemaking action, the new MVEBs must be used for future transportation conformity determinations. The new MVEBs, if found adequate and approved in the final rulemaking, will be effective the date of publication of EPA's final rulemaking in the **Federal Register**. For required regional emissions analysis years that involve 2010 or beyond, the applicable budgets are defined in the table below.

TABLE 11—LAKE AND PORTER COUNTY AREA MVEBS

[Tons per Day]

| Year       | VOC  | NO <sub>x</sub> |
|------------|------|-----------------|
| 2010 ..... | 10.5 | 40.6            |
| 2020 ..... | 6.0  | 12.6            |

These MVEBs are the on-road mobile source VOC and NO<sub>x</sub> emissions for Lake and Porter Counties for 2010 and 2020. The on-road mobile source emissions were derived using the Northwestern Indiana Regional Planning Commission (NIRPC) travel demand model and EPA's MOBILE6.2 mobile source emission factor model, with source growth estimates provided in NIRPC's 2030 Long Range Plan, adopted by NIRPC on June 21, 2007.

EPA is proposing to approve the MVEBs for both 2020 and 2010, as part of the eight-hour ozone maintenance plan. EPA has determined that the emission budgets are consistent with the control measures in the SIP and that Lake and Porter Counties can maintain attainment of the 1997 eight-hour ozone NAAQS (projected VOC and NO<sub>x</sub> emissions in total for 2010 and 2020 remain below the attainment year, 2006, levels with or without CAIR) for the required 10-year maintenance period with mobile source emissions at the levels of the MVEBs. EPA has reviewed these MVEBs in light of the remand of CAIR and concluded that the budgets meet the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4). In particular, EPA has concluded that the MVEBs satisfy the requirements of 40 CFR 93.118(e)(4)(iv), which requires that MVEBs, when considered together with all other emissions, is consistent with applicable requirements for maintenance. EPA bases this conclusion on the overall reduction in VOC and NO<sub>x</sub> emissions from all sources which are documented as part of the ozone maintenance plan.

It should be noted that the one-hour ozone MVEBs, which were approved as part of the one-hour ozone attainment demonstration, will continue to be used for transportation conformity purposes until these budgets are found adequate and approved. The current one-hour ozone emission budgets that are being used for transportation conformity purposes are for 2007, and cap emissions at 12.37 tons per day for VOC and 63.33 tons per day for NO<sub>x</sub>. When the eight-hour ozone maintenance plan MVEBs are approved and found adequate, the new 2010 and 2020 emission budgets will provide lower caps on mobile source emissions in Lake and Porter Counties because the

new emission budgets are lower than the current 2007 MVEBs.

It should finally be noted that the 2010 and 2020 MVEBs exceed the on-road mobile source VOC and NO<sub>x</sub> emissions projected by IDEM for 2010 and 2020 as summarized above. Through discussions with all organizations involved in transportation planning for Lake and Porter Counties, IDEM decided to include safety margins of five percent in the MVEBs to provide for mobile source growth not anticipated in the projected 2010 and 2020 emissions, allowing for a margin of error in the calculation of future mobile source emissions. Indiana has demonstrated that Lake and Porter Counties can maintain the 1997 eight-hour ozone NAAQS with these mobile source emissions since total 2010 and 2020 VOC and NO<sub>x</sub> emissions in Lake and Porter Counties, including the increased mobile source emissions, will remain under the attainment year emission levels.

*B. Are the MVEBs Adequate and Approvable for Use in Conformity Determinations?*

The submitted MVEBs will meet the criteria for adequacy when EPA addresses the ozone maintenance plan through a final rule. EPA has reviewed the submitted MVEBs and the SIP and is proposing to approve the budgets because, in part, the budgets meet the adequacy criteria in 40 CFR 93.118(e)(4) as discussed below. Additionally, EPA has reviewed the entire maintenance plan and has concluded that the maintenance plan is approvable.

The MVEBs are clearly identified and precisely quantified in the submitted SIP revision. The MVEBs, when considered together with all emissions from other sources in Lake and Porter Counties, are consistent with applicable requirements for maintenance. The MVEBs are consistent with and clearly related to the emissions inventory and the control measures in the submitted ozone maintenance plan; and the established safety margins are within the allowable emission limits.

The 2010 and 2020 VOC and NO<sub>x</sub> MVEBs for Lake and Porter Counties are approvable because the MVEBs will meet all of the above criteria and maintain the total VOC and NO<sub>x</sub> emissions for Lake and Porter Counties at or below the attainment year emission levels, as required by the transportation conformity regulations. We are proposing to find these MVEBs to be adequate and to approve these MVEBs for transportation conformity purposes.

## VII. What Is the Base Year Emissions Inventory, and Is Indiana's Approvable?

The CAA gives the states the responsibility to inventory emissions contributing to the violation of a NAAQS, to track these emissions over time, and to ensure that emission control strategies have been implemented and have achieved planned emission targets. States containing ozone nonattainment areas are required, under section 182(a)(1) of the CAA, to submit comprehensive, accurate, and current inventories of actual ozone precursor emissions (emissions of VOC and NO<sub>x</sub>) for each ozone nonattainment area. These emission inventories must include emissions from point, area, on-road mobile, and non-road mobile man-made (anthropogenic) and biogenic (natural or plant-generated) sources in the ozone nonattainment areas. The emission inventories must specify emissions for typical summer weekdays.

Two EPA guidance documents have been developed to cover the emissions reviewed here. First, a November 18, 2002 memorandum ("2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, PM<sub>2.5</sub> and Regional Haze Programs," memorandum from Lydia N. Wegman, Director, Air Quality Strategies and Standards Division, and Peter Tsirigotis, Director, Emissions, Monitoring, and Analysis Division) established 2002 as the base year to be used in the current round of ozone, fine particulates (PM<sub>2.5</sub>), and haze control planning. Second, SIP emissions inventory guidance, including guidance specific to the base year emissions, is given in an August 2005 EPA guidance document, ("Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations," EPA-454/R-05-001).

On March 26, 2007, IDEM submitted documentation of 2002 statewide emissions of VOC, NO<sub>x</sub>, and CO in response to an EPA request for the documentation of the base year emissions. The 2002 statewide emissions, documented by county, were prepared to comply with EPA's Consolidated Emissions Reporting Rule (CERR), published on June 10, 2002 (67 FR 39602) (40 CFR part 51 subparts A and Q). Also included with the March 26, 2007, submittal was a compact disk

containing detailed emissions data, including input data used to calculate the emissions.

Emissions contained in the March 26, 2007, submittal cover the general source categories of point sources, area sources, on-road mobile sources, non-road mobile sources, and biogenic sources. All emission summaries were accompanied by source-specific descriptions of emission calculation procedures and sources of input data, along with sample calculations for various counties in the State.

To determine point source emissions, the State relied on data collected from source facilities complying with the State's annual emissions reporting requirements, 326 IAC 2-6. Major sources of any criteria pollutant located anywhere in the State of Indiana are required to annually submit to the State data specifying their annual emissions of criteria pollutants along with seasonal source activity information to allow the calculation of seasonal emissions. Emissions for any particular year are to be reported by April 15th of the following year. In Elkhart, Floyd, Lake, Marion, Porter, St. Joseph, and Vanderburgh Counties, sources with the potential to emit more than 10 tons per year of VOC or NO<sub>x</sub> must report annually. In other portions of the State, the reporting source size emissions cutoff is 100 tons per year.

Point source emissions reporting submittals are checked by IDEM to assure completeness. If the data are determined to be complete, the emissions data are loaded into the State's emissions database. IDEM also reviews the data for quality assurance, and, if needed, sources are requested to correct the data. After completing data quality assurance, the point source data are submitted to EPA for incorporation into the NEI, as required by the CERR.

The March 26, 2007, submittal includes VOC, NO<sub>x</sub>, and CO emissions for each reporting facility statewide. The supplied data files document a number of source-specific data used to determine the emissions.

Area source emissions were calculated using a variety of information sources and guidance from EPA. A primary source of calculation procedures and applied guidance was EPA's Emission Inventory Improvement Program. Where appropriate, point source emissions were subtracted from the calculated area source emissions to account for source coverage overlap

with the reported point source emissions and to avoid double counting of emissions in the emissions totals. The documentation supplied in the March 26, 2007, submittal shows how the county-specific emissions were calculated for each area source category. County-specific source surrogates and associated emission factors were generally used to calculate county-specific emissions. Samples of area source emission calculations were provided for selected Counties. Area source emissions for all 92 Indiana Counties were documented in the March 26, 2007, submittal and in the data files included in the accompanying data disk.

The base year emission inventory documentation included a detailed description of the procedures and input data used to determine the mobile source emissions for Lake and Porter Counties for 2002. The emissions submittal documents the mobile source VOC, CO, and NO<sub>x</sub> emissions for each of the counties in the State. The March 26, 2007, submittal notes that the mobile source emissions for Lake and Porter Counties were derived by the Northwest Indiana Regional Planning Commission, whereas, the mobile source emissions for all other counties were obtained from EPA's NEI.

Non-road mobile source VOC, NO<sub>x</sub>, and CO emissions for 2002 were generated by the National Mobile Inventory Model. To update and quality assure the emissions for locomotives, commercial and recreational marine sources, and off-road mobile equipment sources, LADCO contracted with several consultants to update source population and distribution levels. Summaries of the consultants' results and recommended emissions changes were included in the March 26, 2007, submittal. This submittal documented non-road mobile VOC, NO<sub>x</sub>, and CO emissions by county for all 92 Counties in Indiana.

Biogenic VOC, NO<sub>x</sub>, and CO emissions for 2002 were taken directly from the NEI for each county in Indiana.

The March 26, 2007, submittal documents 2002 VOC, CO, and NO<sub>x</sub> emissions for each Indiana county in units of tons per year and tons per summer day. The 2002 summer day emissions of VOC, NO<sub>x</sub>, and CO for Lake and Porter Counties are summarized in Table 12.

TABLE 12—2002 OZONE PRECURSOR EMISSIONS IN LAKE AND PORTER COUNTIES, INDIANA  
[Tons per Summer Day]

| Source category       | VOC          | NO <sub>x</sub> | CO            |
|-----------------------|--------------|-----------------|---------------|
| <b>Lake County:</b>   |              |                 |               |
| Point .....           | 19.88        | 106.33          | 466.11        |
| Area .....            | 24.78        | 4.37            | 3.93          |
| On-Road Mobile .....  | 15.35        | 40.15           | 186.39        |
| Non-Road Mobile ..... | 20.18        | 28.82           | 176.98        |
| Biogenic .....        | 18.59        | 0.79            | 1.91          |
| <b>Total .....</b>    | <b>98.78</b> | <b>180.46</b>   | <b>835.32</b> |
| <b>Porter County:</b> |              |                 |               |
| Point .....           | 4.70         | 80.11           | 405.01        |
| Area .....            | 7.49         | 1.35            | 1.35          |
| On-Road Mobile .....  | 4.85         | 14.95           | 63.66         |
| Non-Road Mobile ..... | 12.80        | 11.37           | 73.19         |
| Biogenic .....        | 15.15        | 0.63            | 1.63          |
| <b>Total .....</b>    | <b>44.99</b> | <b>108.41</b>   | <b>544.84</b> |

The 2002 emissions for Lake and Porter Counties were the primary source of emissions data used to project the attainment year (2006) and maintenance period (2010 and 2020) VOC and NO<sub>x</sub> emissions discussed in the State's June 5, 2009, ozone redesignation request, which was subject to public hearing. Since this ozone redesignation request and ozone maintenance plan, including the 2002 VOC and NO<sub>x</sub> emission totals for Lake and Porter Counties, were discussed during a public hearing, we believe that the 2002 base year VOC and NO<sub>x</sub> emissions for Lake and Porter Counties have been addressed by a public hearing. The March 26, 2007, documentation of the 2002 VOC and NO<sub>x</sub> emissions inventory was included as an appendix of the June 5, 2009, ozone redesignation request documentation.

We find the documentation of the 2002 VOC, NO<sub>x</sub>, and CO emissions to be acceptable, and we are proposing here to approve the 2002 VOC and NO<sub>x</sub> emissions inventories for Lake and Porter Counties as a revision of the Indiana SIP.<sup>13</sup>

### VIII. What Are EPA's Proposed Actions?

The State of Indiana has submitted acceptable 2002 VOC and NO<sub>x</sub> emission inventories for Lake and Porter Counties. Therefore, EPA is proposing to approve these emission inventories as a revision of Indiana's ozone SIP

pursuant to section 182(a)(1) of the CAA.

EPA has evaluated Indiana's ozone redesignation request and has determined that it meets the redesignation criteria of section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve Indiana's ozone redesignation request for Lake and Porter Counties for the 1997 eight-hour ozone NAAQS. Final approval of the redesignation request would change the official designation of Lake and Porter Counties for the 1997 eight-hour ozone NAAQS, found at 40 CFR part 81, from nonattainment to attainment.

Finally, EPA is proposing to approve Indiana's ozone maintenance plan for Lake and Porter Counties as a revision of the Indiana ozone SIP because it meets the requirements of section 175A of the CAA. Final approval would thus incorporate into the Indiana SIP a plan for maintaining the 1997 eight-hour ozone NAAQS through 2020. The maintenance plan includes contingency measures to remedy possible future violations of the 1997 eight-hour ozone NAAQS, and establishes MVEBs of 10.5 tons per day for VOC and 40.6 tons per day for NO<sub>x</sub> for 2010 and 6.0 tons per day for VOC and 12.6 tons per day for NO<sub>x</sub> for 2020. EPA is proposing to find adequate and approve these MVEBs.

### IX. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

#### *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.*).

#### *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. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA 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 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 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

<sup>13</sup> Although CO emissions were included in the 2002 emissions documentation submitted on March 26, 2007, CO emissions play a minimal role in the formation of ground-level ozone. As such, we are not including CO emissions in the 2002 emissions inventory proposed for approval as a revision of the Indiana SIP.

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 CAA.

*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 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.

*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).

*National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet

the criteria of the CAA. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the CAA. 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.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 25, 2010.

**Walter W. Kovalick, Jr.,**

*Acting Regional Administrator, Region 5.*

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