

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2006-0459; FRL-8440-4]

#### Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of LaPorte County to Attainment for Ozone

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

**ACTION:** Final rule.

**SUMMARY:** On May 30, 2006, the Indiana Department of Environmental Management (IDEM) submitted a request for EPA approval of redesignation of LaPorte County to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). In this submittal, IDEM also requested EPA approval of an Indiana State Implementation Plan (SIP) revision containing a plan to maintain the ozone standard in LaPorte County through 2020 and established 2020 motor vehicle Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO<sub>x</sub>) emission budgets for LaPorte County. EPA is making a determination that LaPorte County, Indiana has attained the 8-hour ozone NAAQS. This determination is based on three years of complete, quality assured ambient air quality monitoring data for the 2003–2005 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in LaPorte County. Quality assured monitoring data for 2006 show that the area continues to attain the ozone standard. EPA is approving, as a SIP revision, the State's ozone maintenance plan for LaPorte County. As a result, Indiana has satisfied the criteria for redesignation of LaPorte County to attainment of the 8-hour ozone NAAQS, and EPA is approving Indiana's ozone redesignation request for this area. Further, EPA is approving, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for VOC and NO<sub>x</sub> for the year 2020 that are contained in the 8-hour ozone maintenance plan for this area.

**DATES:** This final rule is effective on July 19, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID NO. EPA-R05-OAR-2006-0459. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available,

i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet, and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the 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, Environmental Scientist, 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), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6057, [doty.edward@epa.gov](mailto:doty.edward@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the following, whenever “we,” “us,” or “our” are used, we mean the United States Environmental Protection Agency.

#### Table of Contents

- I. What Is the Background for This Rule?
- II. What Comments Did We Receive on the Proposed Action?
- III. Impacts of Recent Court Decisions
- IV. What Are Our Final Actions?
- IV. Statutory and Executive Order Review

#### I. What Is the Background for This Rule?

The Clean Air Act (CAA) requires EPA to designate as nonattainment any area that is violating the 8-hour ozone NAAQS based on three consecutive years of air quality monitoring data. EPA designated LaPorte County, Indiana as a nonattainment area for the 8-hour ozone NAAQS in a **Federal Register** notice published on April 30, 2004 (69 FR 23857). At the same time, EPA classified LaPorte County as a subpart 2 moderate 8-hour ozone nonattainment area, based on quality assured air quality data for the period of 2001–2003.

On May 30, 2006, Indiana submitted a request for redesignation of LaPorte County to attainment of the 8-hour ozone NAAQS. Additional supporting information was submitted on August 24, 2006. The redesignation request included three years of complete, quality-assured data for the period of 2003–2005, indicating attainment of the 8-hour ozone NAAQS. The ozone data

show attainment of the 8-hour ozone NAAQS when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 parts per million parts of air at all monitoring sites in an area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that an area has attained the standard and if the area meets other redesignation requirements in section 107(d)(3)(E) of the CAA. An April 18, 2007, proposed rule (72 FR 19424) provides a discussion of how LaPorte County and the State of Indiana met these requirements for this area.

#### II. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period on the April 18, 2007, proposed rule. No comments were received by the EPA regarding this proposed rule.

#### III. Impacts of Recent Court Decisions

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 implementation rule for the 8-hour ozone standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in *South Coast Management Dist. v. EPA*, Docket No. 04–1201, 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. Therefore, the Phase 1 rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the CAA as nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour ozone standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour ozone standard and 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 improperly failed to retain four measures required for 1-hour ozone nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment

classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour ozone NAAQS, or for failure to attain that NAAQS; and, (4) certain transportation conformity requirements for certain types of Federal actions. The June 8th decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budget until 8-hour budgets were available for 8-hour conformity determinations.

For the reasons set forth in the proposal, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, 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.

With respect to the 8-hour ozone standard, LaPorte County, which is classified as a marginal nonattainment area under subpart 2, 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 classification for LaPorte County under subpart 2 for the 8-hour ozone standard.

#### IV. What Are Our Final Actions?

EPA is taking several related actions. EPA is making a determination that LaPorte County, Indiana has attained the 8-hour ozone standard. EPA is approving Indiana's ozone maintenance plan as a SIP revision for LaPorte County (such approval being one of the CAA criteria for redesignation to attainment). The maintenance plan is designed to keep LaPorte County in attainment of the 8-hour ozone NAAQS through 2020. Because Indiana has met these and other prerequisites for redesignation to attainment, EPA is approving the State's request to change the legal designation of LaPorte County from nonattainment to attainment of the 8-hour ozone NAAQS. In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2020 VOC and NO<sub>x</sub> MVEBs for LaPorte County for

transportation conformity purposes. The 2020 MVEBs for LaPorte County are 3.40 tons per day for VOC and 6.50 tons per day for NO<sub>x</sub>.

EPA finds that there is good cause for these actions to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of planning requirements for this 8-hour ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

#### IV. Statutory and Executive Order Review

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

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

##### *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

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

##### *Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this 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 approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

##### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

##### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, and does not impose any new requirements on sources, or allows a state to avoid adopting or implementing additional requirements, and does not alter the relationship or distribution of power and responsibilities established in the Clean Air Act.

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

This 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 approves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This 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.).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to force its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

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

Dated: July 5, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (gg) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

\* \* \* \* \*

(gg) Approval—On May 30, 2006, Indiana submitted a request to redesignate LaPorte County to attainment of the 8-hour ozone National Ambient Air Quality Standard. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in eight years as required by the Clean Air Act. The maintenance plan establishes 2020 motor vehicle emission budgets for LaPorte County of 3.40 tons per day for volatile organic compounds (VOC) and 6.50 tons per day for oxides of nitrogen (NOx).

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 81.315 is amended by revising the entries for LaPorte County, Indiana: LaPorte County in the table entitled "Indiana Ozone (8-Hour Standard)" to read as follows:

§ 81.315 Indiana.

\* \* \* \* \*

OHIO OZONE [8-hour standard]

Table with columns: Designated area, Designation a (Date, Type), Classification (Date, Type). Row: LaPorte Co., IN: LaPorte County, 8/20/07, Attainment.

a Includes Indian Country located in each county or area, except as otherwise specified. 1 This date is June 15, 2004, unless otherwise noted.