



# Federal Register

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**Thursday,  
May 31, 2007**

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## **Part II**

# **Environmental Protection Agency**

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**40 CFR Parts 52 and 81**

**Approval and Promulgation of  
Implementation Plans and Designation of  
Areas for Air Quality Planning Purposes;  
Indiana; Redesignation of Lake and  
Porter Counties to Attainment of the 8-  
Hour Ozone Standard and Approval of  
Base Year Emission Inventories; Proposed  
Rule**

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Parts 52 and 81**
**[EPA-R05-OAR-2006-0474; FRL-8317-1]**
**Approval and Promulgation of  
Implementation Plans and Designation  
of Areas for Air Quality Planning  
Purposes; Indiana; Redesignation of  
Lake and Porter Counties to  
Attainment of the 8-Hour Ozone  
Standard and Approval of Base Year  
Emission Inventories**
**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On September 12, 2006, the Indiana Department of Environmental Management (IDEM) submitted a request for EPA approval of a redesignation of Lake and Porter Counties to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) and of an ozone maintenance plan for this area as a revision to the Indiana State Implementation Plan (SIP). EPA is proposing to determine that the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) 8-hour ozone nonattainment area, which includes Lake and Porter Counties, has attained the 8-hour ozone NAAQS. EPA is proposing to approve Indiana's ozone maintenance plan for Lake and Porter Counties as a revision to the SIP. EPA is proposing to approve Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO<sub>x</sub>) Motor Vehicle Emission Budgets (MVEBs) for Lake and Porter Counties as supported by the ozone maintenance plan. EPA is proposing to approve Indiana's 2002 base year VOC and NO<sub>x</sub> emission inventories for Lake and Porter Counties. EPA is proposing to approve into the Indiana SIP the VOC and NO<sub>x</sub> periodic emission inventories for 1999, 2002, and 2004. Finally, EPA is proposing to approve the redesignation of Lake and Porter Counties to attainment of the 8-hour ozone NAAQS.

**DATES:** Comments must be received on or before July 2, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-0474, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).
- *Fax*: (312) 886-5824.
- *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental

Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

- *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. 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's official hours of operation 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-2006-0474. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and should be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](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 hardcopy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hardcopy 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. It is recommended 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), 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:**

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

- I. What Actions Is EPA Proposing To Take?
- II. What Is the Background for These Actions?
- III. What Is the Impact of a December 22, 2006 United States Court of Appeals Decision Regarding EPA's Phase 1 Ozone Implementation Rule on This Proposed Rule?
  - A. Requirements Under the 8-Hour Ozone Standard
  - B. Requirements Under the 1-Hour Ozone Standard
- IV. What Are the Criteria for Redesignations to Attainment of the 8-Hour Ozone NAAQS?
- V. What Are EPA's Analyses of the State's Redesignation Request and Maintenance Plan and What Are the Bases for EPA's Proposed Actions?
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    1. Attainment of the 8-Hour Ozone NAAQS
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  - B. Has the State of Indiana Committed To Maintain the Ozone Monitoring System in Lake and Porter Counties?
  - C. Have Lake and Porter Counties and the State of Indiana Met All of the 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?
    1. Lake and Porter Counties Have Met All Requirements of Section 110 and Part D of the CAA Applicable for Purposes of Redesignation for the 8-Hour NAAQS
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    2. Lake and Porter Counties Have a Fully Approved SIP Under Section 110(k) of the CAA

- D. Have Lake and Porter Counties Met the Part D Nonattainment Area and Section 110 Requirements Under the 1-Hour Ozone Standard?
- E. Are the Air Quality Improvements in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN Nonattainment Area Due to Permanent and Enforceable Emission Reductions Resulting From the Implementation of the Indiana SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Emission Reductions?
- F. Do Lake and Porter Counties Have a Fully Approvable Ozone Maintenance Plan Pursuant to Section 175A of the CAA?
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  4. What Is the Contingency Plan for Lake and Porter Counties?
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  5. Has the State Committed To Update the Ozone Maintenance Plan in Eight Years After the Redesignation of Lake and Porter Counties to Attainment of the 8-Hour Ozone NAAQS?
- VI. Has the State Adopted Acceptable MVEBs for the End Year of the Ozone Maintenance Period Which Can Be Used To Support Transportation Conformity Determinations?
- A. How Are the MVEBs Developed and What Are the MVEBs for Lake and Porter Counties?
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- VII. Modeled Attainment of the Ozone Standard
- A. Regional Ozone Modeling Results
  - B. Temperature—Ozone Exceedance Frequency Study
- VIII. Review of Indiana's 2002 Base Year Emissions Submittal
- IX. What Are EPA's Proposed Actions?
- X. Statutory and Executive Order Reviews

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

We are proposing to take several related actions for Lake and Porter Counties, Indiana. First, we are proposing to determine that the Chicago-Gary-Lake County, IL-IN ozone nonattainment area, including Lake and Porter Counties in Indiana, has attained the 8-hour ozone NAAQS.

Second, we are proposing to approve Indiana's request to redesignate the Indiana portion of the Chicago-Gary-Lake County, IL-IN ozone nonattainment area (Lake and Porter Counties) to attainment of the 8-hour

ozone NAAQS. We have determined that the State of Indiana and Lake and Porter Counties have met the CAA requirements for such a redesignation under section 107(d)(3)(E). EPA is proposing in this notice to approve Indiana's 2002 base year VOC and NO<sub>x</sub> emission inventories for Lake and Porter Counties as meeting the base year emissions inventory requirements of the CAA and as a revision to the Indiana SIP. EPA is also proposing to approve into the Indiana SIP the VOC and NO<sub>x</sub> periodic inventories for 1999, 2002 and 2004, pursuant to section 182(a)(3)(A) of the CAA under the 1-hour standard.

Third, we are proposing to approve Indiana's ozone maintenance plan for Lake and Porter Counties as a revision of the Indiana SIP. The maintenance plan, which meets the requirements of section 175A of the CAA, is designed to keep Lake and Porter Counties and the Chicago-Gary-Lake County ozone nonattainment area in attainment of the 8-hour ozone NAAQS through 2020. As supported by and consistent with the ozone maintenance plan, we are also proposing to approve the 2010 and 2020 VOC and NO<sub>x</sub> MVEBs for Lake and Porter Counties for transportation conformity determination purposes.

Finally, in response to a December 22, 2006, decision of the United States Court of Appeals vacating EPA's Phase 1 ozone implementation rule, we are proposing to find that, if the 1-hour ozone standard is deemed to be reinstated, Lake and Porter Counties would also qualify for a redesignation to attainment of the 1-hour ozone standard.

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

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS (62 FR 38856) of 0.08 parts per million parts of air (0.08 ppm) (80 parts per billion (ppb)).<sup>1</sup> This 8-hour ozone standard replaced a prior 1-hour ozone NAAQS, which was promulgated on February 8, 1979 (44 FR 8202) and which EPA revoked on June 15, 2005 (69 FR 23858).

Ground-level ozone is not emitted directly by emission sources. Rather, emitted NO<sub>x</sub> and VOC react in the presence of sunlight to form ground-level ozone along with other secondary compounds. NO<sub>x</sub> and VOC are referred

to as "ozone precursors."<sup>2</sup> Control of ground-level ozone concentrations is achieved through controlling VOC and NO<sub>x</sub> emissions.

Section 107 of the CAA required EPA to designate as nonattainment any area that violated the 8-hour ozone NAAQS. The **Federal Register** notice promulgating the 8-hour ozone designations and classifications was published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and emission control requirements for nonattainment areas. Both are found in title I, part D of the CAA. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas of pollutants governed by 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 8-hour ozone nonattainment areas into the categories of subpart 1 nonattainment ("basic" nonattainment) and subpart 2 nonattainment ("classified" nonattainment). EPA based this division on the areas' 8-hour ozone design values (i.e., on the three-year averages of the annual fourth-highest daily maximum 8-hour ozone concentrations at the worst-case monitoring sites in the designated areas) and on their 1-hour ozone design values (i.e., on the fourth-highest daily maximum 1-hour ozone concentrations over the three-year period at the worst-case monitoring sites in the designated areas).<sup>3</sup> EPA classified 8-hour ozone nonattainment areas with 1-hour ozone design values equaling or exceeding 121 ppb as subpart 2, classified nonattainment areas. EPA classified all other 8-hour nonattainment areas as subpart 1, basic nonattainment areas. The basis for area classification was defined in a separate April 30, 2004 final rule (the Phase 1 implementation rule) (69 FR 23951).<sup>4</sup>

<sup>2</sup> Carbon Monoxide (CO) is also a minor precursor in the formation of ozone.

<sup>3</sup> The 8-hour ozone design value and the 1-hour ozone design value for each area were not necessarily recorded at the same monitoring site. The worst-case monitoring site for each ozone concentration averaging time was considered for each area.

<sup>4</sup> It should be noted that the United States Court of Appeals for the District of Columbia Circuit recently vacated EPA's April 30, 2004 "Final Rule to Implement the 8-Hour Ozone National Ambient Standard" (the Phase 1 implementation rule). *South Coast Air Quality Management District v. EPA*, 472 F.3d 882(D.C. Cir. 2006). EPA explains its views of the potential impact of this decision in section III, below.

<sup>1</sup> This standard is violated in an area when any ozone monitor in the area records 8-hour ozone concentrations with a three-year average of the annual fourth-highest daily maximum 8-hour ozone concentrations equaling or exceeding 85 ppb. See 40 CFR 50.10.

Emission control requirements for classified nonattainment areas are linked to area classifications. Areas with more serious ozone pollution problems are subject to more prescribed requirements and later attainment deadlines. The prescribed emission control requirements are designed to bring areas into attainment by their specified attainment dates.

In the April 30, 2004 ozone designation/classification rulemaking, EPA designated Lake and Porter Counties, as part of the Chicago-Gary-Lake County, IL-IN area, as a subpart 2 moderate nonattainment area for the 8-hour ozone NAAQS. This designation was based on ozone data collected during the 2001–2003 period.

On September 12, 2006, the State of Indiana requested redesignation of Lake and Porter Counties to attainment of the 8-hour ozone NAAQS. This redesignation request was submitted by the State subsequent to conducting a public review process for the redesignation request and ozone maintenance plan and subsequent to the State's adoption of the ozone maintenance plan.

### III. What Is the Impact of a December 22, 2006 United States Court of Appeals Decision Regarding EPA's Phase 1 Ozone Implementation Rule on This Proposed Rule?

On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit (the Court) vacated EPA's Phase 1 implementation rule (Phase 1 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). The Court held that certain provisions of EPA's Phase 1 Rule were inconsistent with the requirements of the CAA. The Court rejected EPA's reasons for implementing the 8-hour ozone standard in nonattainment areas under subpart 1 in lieu of subpart 2 of Title I, part D of the CAA. The Court also held that EPA 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 ozone 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 failing to attain that NAAQS; and, (4) conformity requirements for certain

types of Federal actions. The Court upheld EPA's authority to revoke the 1-hour ozone standard provided that there were adequate anti-backsliding provisions.

This section sets forth EPA's views on the potential effect of the Court's ruling on this redesignation action. For the reasons set forth below, EPA does not believe that the Court's ruling alters any requirements relevant to this redesignation action so as to preclude redesignation, and does not prevent EPA from finalizing this redesignation. EPA believes that the Court's decision, as it currently stands or as it may be modified based on any petition for rehearing that has been filed, imposes no impediment to moving forward with redesignation of this area to attainment, because in either circumstance redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

#### A. Requirements Under the 8-Hour Ozone Standard

With respect to the 8-hour ozone standard, the Chicago-Gary-Lake County, IL-IN ozone nonattainment area, which includes Lake and Porter Counties, is classified as moderate nonattainment under subpart 2. We do not believe that any part of the Court's opinion would require that this subpart 2 classification be changed upon remand to EPA. However, even assuming for present purposes that the Chicago-Gary-Lake County, IL-IN area would become subject to a different classification scheme created in a future rule responding to the Court's decision, that would not prevent EPA from finalizing the redesignation for this area. For the reasons set forth below, we believe that any additional requirements that might apply based on a different classification would not be applicable for purposes of evaluating the 8-hour ozone redesignation request now before us. This belief is based on: (1) EPA's longstanding policy of evaluating redesignation requests in accordance only with the requirements due at the time the redesignation request was submitted; and (2) consideration of the inequity of applying retroactively any requirements that might be applied in the future.

First, at the time the redesignation request was submitted, the area was classified under subpart 2 and was required to meet the subpart 2 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, a state requesting a redesignation to attainment must meet

only the relevant SIP requirements that came due for the subject area prior to the submittal of a complete redesignation request. See the September 4, 1992 Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). See also the September 17, 1993 Shapiro memorandum ("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, Air and Radiation), 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation; 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis). At the time the Lake and Porter County redesignation request was submitted, September 12, 2006, the Chicago-Gary-Lake County, IL-IN area was not classified under subpart 1 and no subpart 1 requirements were applicable for purposes of redesignation.

Second, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the redesignation request was submitted, but which might later become applicable. The D.C. Circuit has recognized the inequity in such retroactive rulemaking. See *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002), in which the D.C. Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: "Although EPA failed to make the nonattainment determination within the statutory timeframe, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly, here it would be unfair to penalize the area by applying to it for purposes of redesignation any additional requirements under subpart 1 that were not in effect at the time it submitted its redesignation request, but that might apply in the future.

### *B. Requirements Under the 1-Hour Ozone Standard*

In its December 22, 2006 decision in *South Coast Air Quality Management Dist. v. EPA*, the Court also addressed EPA's revocation of the 1-hour ozone standard. The current status of the revocation and associated anti-backsliding rules is dependent on whether the Court's decision stands as originally issued or is modified in response to any petition for rehearing or request for clarification that has been filed. As described more fully below, EPA believes that the Chicago-Gary-Lake County, IL-IN area has attained the 1-hour ozone standard and that the State of Indiana and Lake and Porter Counties have met all of the requirements applicable for redesignation under the 1-hour ozone standard that would apply even if the 1-hour ozone standard is deemed to be reinstated and those requirements are viewed as applying under the statute itself. Thus, the Court's decision, as it currently stands, imposes no impediment to moving forward with redesignation of Lake and Porter Counties to attainment based on the status of the 1-hour ozone standard. Furthermore, if the 1-hour ozone standard is deemed to be reinstated, EPA would construe the State's redesignation request under the 8-hour ozone standard as also constituting a redesignation request under the 1-hour ozone standard. EPA proposes that, if the 1-hour standard is deemed to be reinstated, EPA would redesignate Lake and Porter Counties to attainment of the 1-hour ozone standard because EPA believes that the area has satisfied all of the 1-hour requirements for such redesignation, as explained in the analysis below. Further, even if the Court's decision were modified based on any petition for rehearing that has been filed such that the ultimate decision requires something less than compliance with all applicable 1-hour ozone requirements, this would not pose an impediment to redesignating the area to attainment of the 1-hour ozone standard. Since the area meets all current 1-hour ozone requirements as explained below, it would certainly meet any lesser requirements and, thus similarly, redesignation could proceed.

### **IV. What Are the Criteria for Redesignation to Attainment of the 8-Hour Ozone NAAQS?**

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 current air quality data; (2) the Administrator has fully approved an applicable state implementation plan 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 containing the area 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 Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). Two significant policy guidance documents affecting the review of ozone redesignation requests are the following: "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, "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). For additional policy guidance used in the review of ozone redesignation requests, see our proposed rule for the redesignation of the Evansville, Indiana ozone nonattainment area at 70 FR 53606 (September 9, 2005).

### **V. What Are EPA's Analyses of the State's Redesignation Request and Maintenance Plan and What Are the Bases for EPA's Proposed Action?**

EPA is proposing to: (1) Determine that Lake and Porter Counties and the Chicago-Gary-Lake County, IL-IN area have attained the 8-hour ozone standard and the 1-hour ozone standard; (2) approve the ozone maintenance plan for Lake and Porter Counties and the VOC and NO<sub>x</sub> MVEBs supported by the maintenance plan; and, (3) approve the redesignation of Lake and Porter Counties to attainment of the 8-hour

ozone NAAQS and to attainment of the 1-hour ozone NAAQS, if it is deemed to be reinstated. The bases for our proposed determination and approvals follow.

### *A. Have Lake and Porter Counties and the Entire Chicago-Gary-Lake County, IL-IN Nonattainment Area Attained the 8-Hour Ozone NAAQS and the 1-Hour Ozone NAAQS?*

#### 1. Attainment of the 8-Hour Ozone NAAQS

For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and appendix I, based on the most recent three complete, consecutive calendar years of quality-assured air quality monitoring data at all ozone monitoring sites in the area and at any monitor used to calculate its design value. To attain this standard, the average of the annual fourth-high daily maximum 8-hour average ozone concentrations measured and recorded at each monitor (the monitoring site's ozone design value) within the area and used to calculate its 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 50, appendix I, the 8-hour ozone standard is attained if the area's ozone design value<sup>5</sup> is 0.084 ppm (84 ppb) or less. The data must be collected and quality-assured in accordance with 40 CFR 58, and is 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 50, appendix I.

At the time of the September 12, 2006 ozone redesignation request, preliminary 8-hour ozone monitoring data for Lake and Porter Counties and for the Illinois portion of the Chicago-Gary-Lake County, IL-IN nonattainment area showed that the area was attaining the standard for 2004–2006, and that the 2006 4th high 8-hour daily average concentration was 0.081 ppm. Since the submittal of the redesignation request, Indiana and other States in the Lake Michigan area have submitted quality-assured data for 2006 to the AQS. Table 1 summarizes the annual fourth-high 8-hour ozone concentrations during the

<sup>5</sup> The worst-case monitoring site-specific ozone design value in the area and in its nearby downwind environs.

period of 2004–2006, the most recent three years of available quality-assured ozone data, for all monitors in the

Chicago-Gary-Lake County, IL-IN area and for the Chiwaukee Prairie monitoring site in Wisconsin, the

critical ozone design value site for the Chicago-Gary-Lake County, IL-IN ozone nonattainment area.

TABLE 1.—ANNUAL FOURTH-HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS IN PARTS PER MILLION (PPM) AND THREE-YEAR AVERAGES

Site ID	County	Address/site	Year	Percent observations ozone season	Fourth-high daily maximum concentration	Three-year average
<b>INDIANA MONITORING SITES</b>						
18-089-002	Lake	Gary	2004	100	0.064	NA
		Gary	2005	96	0.089	NA
		Gary	2006	98	0.073	0.075
18-089-2008	Lake	Hammond	2004	100	0.067	NA
		Hammond	2005	99	0.087	NA
		Hammond	2006	100	0.075	0.076
18-127-0024	Porter	Ogden Dunes	2004	100	0.069	NA
		Ogden Dunes	2005	99	0.090	NA
		Ogden Dunes	2006	100	0.070	0.076
18-127-0026	Porter	Valparaiso	2004	100	0.072	NA
		Valparaiso	2005	100	0.078	NA
		Valparaiso	2006	99	0.071	0.073
<b>ILLINOIS MONITORING SITES</b>						
17-031-0001	Cook	Alsip	2004	100	0.065	NA
		Alsip	2005	100	0.084	NA
		Alsip	2006	100	0.078	0.075
17-031-0032	Cook	Chicago-Cheltenham	2004	100	0.067	NA
		Chicago-Cheltenham	2005	100	0.076	NA
		Chicago-Cheltenham	2006	100	0.075	0.072
17-031-0042	Cook	Wacker at Adams	2004	64	0.069	NA
		Wacker at Adams	2005	51	0.080	NA
		Wacker at Adams	2006	85	0.072	0.073
17-031-0064	Cook	Chicago-Ellis Ave.	2004	100	0.054	NA
		Chicago-Ellis Ave.	2005	100	0.084	NA
		Chicago-Ellis Ave.	2006	99	0.070	0.069
17-031-0072	Cook	Chicago-Ohio Street	2004	98	0.060	NA
		Chicago-Ohio Street	2005	99	0.081	NA
		Chicago-Ohio Street	2006	100	0.065	0.068
17-031-0076	Cook	Chicago-Lawndale	2004	100	0.068	NA
		Chicago-Lawndale	2005	100	0.084	NA
		Chicago-Lawndale	2006	100	0.075	0.075
17-031-1003	Cook	Chicago-Hurlbut St.	2004	99	0.067	NA
		Chicago-Hurlbut St.	2005	99	0.083	NA
		Chicago-Hurlbut St.	2006	95	0.075	0.075
17-031-1601	Cook	Lemont	2004	94	0.067	NA
		Lemont	2005	100	0.086	NA
		Lemont	2006	96	0.070	0.074
17-031-4002	Cook	Cicero	2004	100	0.059	NA
		Cicero	2005	100	0.075	NA
		Cicero	2006	100	0.060	0.064
17-031-4007	Cook	Des Plaines	2004	94	0.064	NA
		Des Plaines	2005	99	0.079	NA
		Des Plaines	2006	100	0.065	0.069
17-031-4201	Cook	Northbrook	2004	97	0.067	NA
		Northbrook	2005	100	0.081	NA
		Northbrook	2006	100	0.068	0.072
17-031-7002	Cook	Evanston	2004	100	0.074	NA
		Evanston	2005	98	0.082	NA
		Evanston	2006	97	0.072	0.076
17-043-6001	DuPage	Lisle	2004	99	0.065	NA
		Lisle	2005	97	0.078	NA
		Lisle	2006	100	0.062	0.068
17-089-0005	Kane	Elgin	2004	99	0.067	NA
		Elgin	2005	100	0.086	NA
		Elgin	2006	84	0.062	0.071
17-097-1002	Lake	Waukegan	2004	100	0.067	NA
		Waukegan	2005	99	0.087	NA
		Waukegan	2006	100	0.071	0.075
17-097-1007	Lake	IL Beach State Park	2004	99	0.071	NA
		IL Beach State Park	2005	98	0.090	NA
		IL Beach State Park	2006	100	0.068	0.076

TABLE 1.—ANNUAL FOURTH-HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS IN PARTS PER MILLION (PPM) AND THREE-YEAR AVERAGES—Continued

Site ID	County	Address/site	Year	Percent observations ozone season	Fourth-high daily maximum concentration	Three-year average
17-111-0001 ....	McHenry .....	Cary .....	2004	100	0.068	NA
		Cary .....	2005	98	0.087	NA
		Cary .....	2006	100	0.057	0.070
17-197-1011 ....	Will .....	Essex Road .....	2004	99	0.067	NA
		Essex Road .....	2005	100	0.077	NA
		Essex Road .....	2006	94	0.068	0.070
<b>WISCONSIN MONITORING SITE</b>						
55-059-0019 ....	Kenosha .....	Chiwaukee Prairie .....	2004	100	0.078	NA
		Chiwaukee Prairie .....	2005	98	0.093	NA
		Chiwaukee Prairie .....	2006	99	0.079	0.083

Please note that site 17-031-0042 is located on the top of the Sears Tower, in excess of 1,000 feet above ground-level. This is a special purpose monitor that is not intended to measure ambient air concentrations (concentrations collected near nose levels of adults in areas where the public generally has access). As such, the lack of data during the ozone seasons for this site does not constitute a data completeness problem.

Review of the 2004-2006 ozone concentrations summarized in Table 1 shows that all of the ozone monitoring sites in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area, as well as the Chiwaukee Prairie ozone monitoring site, attained the 8-hour ozone standard during this period. Therefore, based on the most recent three years of quality-assured ozone monitoring data, the 8-hour ozone

NAAQS has been attained in the Chicago-Gary-Lake County, IL-IN area.

#### 2. Attainment of the 1-Hour Ozone NAAQS

Prior to the revocation of the 1-hour ozone standard, the Chicago-Gary-Lake County IL-IN area was designated a severe nonattainment area under the 1-hour standard. If the 1-hour NAAQS is deemed reinstated, EPA would construe the State's request for redesignation under the 8-hour standard as also constituting a request under the 1-hour standard. To support a possible redesignation to attainment for Lake and Porter Counties to attainment of the 1-hour ozone NAAQS, if the 1-hour NAAQS is deemed reinstated, it must be shown that the Chicago-Gary-Lake County, IL-IN area is attaining the 1-hour ozone NAAQS. An area is

considered attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with the regulation codified at 40 CFR 50.9, based on three consecutive calendar years of complete, quality-assured monitoring data. A violation occurs when the ozone air quality monitoring data show greater than one (1.0) average expected exceedance per year at any site in the area. An exceedance occurs when the maximum hourly ozone concentration exceeds 0.124 parts per million (ppm). The data should be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the AQS so that it is available to the public for review.

The Indiana request is based on an analysis of ozone air quality data from 2004-2006. Table 2 below summarizes this air quality data.

TABLE 2.—1-HOUR OZONE EXCEEDANCES AT MONITORING SITES IN THE CHICAGO-GARY-LAKE COUNTY, IL-IN AREA INCLUDING THE CHIWAUKEE PRAIRIE MONITORING SITE (2004-2006)

Site code	County	Site	No. 2004 exceedances	No. 2005 exceedances	No. 2006 exceedances	3-year avg. exceedances
<b>ILLINOIS</b>						
17-031-0001 ....	Cook .....	Alsip .....	0.0	1.0	0.0	0.3
17-031-0076 ....	Cook .....	Chicago-Com Ed .....	0.0	0.0	0.0	0.0
17-031-0072 ....	Cook .....	Chicago-Jardine .....	0.0	0.0	0.0	0.0
17-031-0032 ....	Cook .....	Chicago-SWFP .....	0.0	1.0	0.0	0.3
17-031-1003 ....	Cook .....	Chicago-Taft .....	0.0	0.0	0.0	0.0
17-031-0064 ....	Cook .....	Chicago-University .....	0.0	0.0	0.0	0.0
17-031-4002 ....	Cook .....	Cicero .....	0.0	0.0	0.0	0.0
17-031-4007 ....	Cook .....	Des Plaines .....	0.0	0.0	0.0	0.0
17-031-7002 ....	Cook .....	Evanston .....	0.0	0.0	0.0	0.0
17-031-1601 ....	Cook .....	Lemont .....	0.0	0.0	0.0	0.0
17-031-4201 ....	Cook .....	Northbrook .....	0.0	0.0	0.0	0.0
17-043-6001 ....	DuPage .....	Lisle .....	0.0	0.0	0.0	0.0
17-089-0005 ....	Kane .....	Elgin .....	0.0	0.0	0.0	0.0
17-097-1002 ....	Lake .....	Waukegan .....	0.0	0.0	0.0	0.0
17-097-1007 ....	Lake .....	Zion .....	0.0	0.0	0.0	0.0
17-111-0001 ....	McHenry .....	Cary .....	0.0	0.0	0.0	0.0
17-197-1011 ....	Will .....	Braidwood .....	0.0	0.0	0.0	0.0
<b>INDIANA</b>						
18-089-0022 ....	Lake .....	Gary .....	0.0	1.0	0.0	0.3

TABLE 2.—1-HOUR OZONE EXCEEDANCES AT MONITORING SITES IN THE CHICAGO-GARY-LAKE COUNTY, IL-IN AREA INCLUDING THE CHIWAUKEE PRAIRIE MONITORING SITE (2004–2006)—Continued

Site code	County	Site	No. 2004 exceedances	No. 2005 exceedances	No. 2006 exceedances	3-year avg. exceedances
18-089-2008 ....	Lake .....	Hammond .....	0.0	0.0	0.0	0.0
18-089-0030 ....	Lake .....	Whiting .....	0.0	0.0	0.0	0.0
18-127-0024 ....	Porter .....	Ogden Dunes .....	0.0	1.0	0.0	0.3
18-127-0026 ....	Porter .....	Valparaiso .....	0.0	0.0	0.0	0.0
<b>WISCONSIN</b>						
55-059-0019 ....	Kenosha .....	Chiwaukee Prairie .....	0.0	0.0	0.0	0.0

From Table 2, it can be seen that the Chicago-Gary-Lake County, IL-IN area is attaining the 1-hour ozone standard for the 2004–2006 period because there were no average expected exceedances greater than 1.0.

*B. Has the State of Indiana Committed To Maintain the Ozone Monitoring System in Lake and Porter Counties?*

IDEM commits to maintain the ozone monitoring system in Lake and Porter Counties during the maintenance period. Any necessary changes in the ozone monitoring system will be discussed in advance with the EPA. Therefore, the State of Indiana meets a redesignation condition that we normally require of States seeking redesignation of areas to attainment of the ozone standard.

*C. Have Lake and Porter Counties and the State of Indiana Met All of the 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?*

We have determined that Lake and Porter Counties and the State of Indiana have met all SIP requirements currently applicable for purposes of redesignation to attainment of the 8-hour NAAQS for this area under section 110 of the CAA (general SIP requirements). We have also determined that Indiana has met the SIP requirements applicable for purposes of redesignation under subpart 2 part D of title I of the CAA (requirements specific to ozone nonattainment areas classified under subpart 2. See section 107(d)(3)(E)(v) of the CAA. In addition, we have determined that all applicable requirements, with the exception of the base year emissions inventory, are approved in the Indiana SIP. As discussed in section VIII, below, as part of today's action, EPA is proposing to approve Indiana's 2002 base year

emissions inventory. See section 107(d)(3)(E)(ii) of the CAA. In making these determinations, we reviewed the CAA requirements which are 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. We note that SIPs must be fully approved only with respect to currently applicable requirements of the CAA, which in this case are those CAA requirements applicable to Lake and Porter Counties at the time the State submitted a complete ozone redesignation request for this area, on September 12, 2006.

**1. Lake and Porter Counties Have Met All Requirements of Section 110 and Part D of the CAA Applicable for Purposes of Redesignation for the 8-Hour NAAQS**

The September 4, 1992 Calcagni memorandum describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, to qualify for redesignation of an area to attainment, the State and the area must meet the relevant CAA requirements that come due prior to the State's submittal of a complete redesignation request for the area. See also a September 17, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation, subject "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" and 66 FR 12459, 12465–12466 (March 7, 1995) redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS. Applicable requirements of the CAA that come due subsequent to the State's submittal of a complete redesignation request remain applicable until a redesignation to attainment of an area is approved, but are not required as

a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

**a. Section 110 and General SIP Requirements**

Section 110(a) of title I of the CAA contains the general requirements for a SIP, which include: Enforceable emission limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the emission limitations. General SIP elements and requirements are specified in section 110(a)(2) of title I, part A of the CAA. These requirements and SIP elements include, but are not limited to, the following: (i) Submittal of a SIP that has been adopted by the State after reasonable public notice and a public hearing; (ii) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (iii) provisions for implementation of a source permit program; (iv) provisions for implementation of new source part C requirements (Prevention of Significant Deterioration (PSD)) and new source part D requirements (NSR); (v) criteria for stationary source emission control measures, monitoring, and reporting; (vi) provisions for air quality modeling; and, (vii) provision for public and local agency participation.

SIP requirements and elements are discussed in the following EPA documents: The September 4, 1992 Calcagni memorandum; and, the September 17, 1993 Shapiro memorandum. See also other guidance documents discussed above.

Section 110(a)(2)(D) of the CAA requires SIPs to contain certain measures to prevent sources in one state from significantly contributing to air



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

We believe that these requirements should not be construed to be applicable requirements for purposes of redesignation. 65 FR 37890 (June 19, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003). Further, we believe that the 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 after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with an area's designation and classification are the relevant measures for evaluating this 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-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We believe that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as noted below, the only Part D requirements applicable for purposes of redesignation under the 8-hour standard that have become due are the emissions inventory and emissions statement. Therefore EPA concludes that Indiana has satisfied the criterion of

section 107(d)(3)(E) regarding section 110 of the Act.

Nonetheless, we also note that the EPA has previously approved provisions in the Indiana SIP addressing section 110 elements under the 1-hour ozone standard.

#### b. Part D SIP Requirements Under the 8-Hour Ozone Standard

EPA has determined that the Indiana SIP, with the approval of the base year emissions inventory, will meet applicable SIP requirements under part D of the CAA as they apply to redesignation to attainment of the 8-hour ozone NAAQS. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D, which includes sections 172–176 of the CAA, sets forth the basic nonattainment area plan requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional, specific requirements for ozone nonattainment areas dependent on an area's nonattainment classification.

The subpart 1 requirements for all nonattainment areas are contained in sections 172(c)(1–9) and section 176. A thorough discussion of the requirements of section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

The SIP requirements of subpart 2 which are relevant to the review of Indiana's ozone redesignation request are contained in sections 182(a) (marginal nonattainment area requirements) and 182(b) (moderate nonattainment area requirements) of the CAA.<sup>6</sup> As noted in our discussion of 1-hour nonattainment requirements, below, as part of a severe 1-hour ozone nonattainment area, the State of Indiana and Lake and Porter Counties had previously been subject to the requirements of sections 182(a), 182(b), and 182(c) and 182(d) of the CAA.<sup>7</sup>

As a moderate nonattainment area under the 8-hour ozone NAAQS, the Chicago-Gary-Lake County nonattainment area was subject to subpart 2 requirements for moderate nonattainment areas. Only two “new”

<sup>6</sup> As a part of a moderate nonattainment area for the 8-hour ozone NAAQS, Lake and Porter Counties are subject to requirements for both moderate nonattainment areas and marginal nonattainment areas because the requirements of section 182 are cumulative. Under this section, nonattainment areas are subject to all requirements at their classification level and all requirements for areas of lower classification.

<sup>7</sup> As a severe nonattainment area under the 1-hour ozone NAAQS, Lake and Porter Counties had to comply with requirements for severe ozone nonattainment areas.

requirements for moderate nonattainment areas under the 8-hour ozone NAAQS came due prior to Indiana's September 12, 2006 submittal of the complete redesignation request for Lake and Porter Counties. One such requirement is that the State submit a 2002 base year comprehensive, accurate inventory of actual emissions of VOC and NO<sub>x</sub> in Lake and Porter Counties in compliance with section 182(a)(1) of the CAA. This requirement came due on June 15, 2006, prior to submission of the area's redesignation request. 70 FR 71612, 71664 (November 29, 2005) 40 CFR section 5.915. On March 26, 2007, IDEM submitted documentation of 2002 base year VOC and NO<sub>x</sub> emissions in every county in the State. The base year emissions documentation for Lake and Porter Counties is reviewed below in section VIII of this proposed rule. EPA proposes to conclude that Indiana has complied with this requirement.

A second requirement which came due on June 15, 2006 is a requirement under section 182(a)(3)(B) of the CAA for State rules requiring major stationary sources to annually report facility emissions of VOC and NO<sub>x</sub> (annual emission statements). Indiana revised its State rule regarding emission statements under the 8-hour ozone standard, and we approved this rule on March 29, 2007 (72 FR 14678).

We believe that other requirements under subparts 1 and 2 that apply to Lake and Porter Counties did not come due prior to the State's submittal of a complete ozone redesignation request for this area and thus do not apply to an evaluation of the redesignation request. Under EPA's longstanding policy these requirements are not applicable for purposes of redesignation. See September 4, 1992 Calcagni memorandum, Detroit-Ann Arbor redesignation, 60 FR 12459, 12465–66 (March 7, 1995), and *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

For example, the requirement for submission of an ozone attainment demonstration as contained in section 172(c)(1) was not yet applicable for this area, nor was the requirement for contingency measures under section 172(c)(9) and 182(c)(9), both of which were not due until June 15, 2007.

In addition, no section 172(c)(1) and 182(b)(2) RACT requirement submission under the 8-hour standard is applicable for purposes of redesignation, since the State submitted a redesignation request on September 12, 2006, prior to the due date of the RACT requirements. Thus because the RACT requirements did not become due until after September 15, 2006, under EPA's longstanding policy

these requirements are not applicable for purposes of redesignation. Preliminary monitoring data through the time of submittal of the redesignation request showed that the area was attaining the standard, and quality-assured data subsequently showed that the area continued to attain the standard through the end of the ozone season. In addition, the fourth-high concentration for all monitoring sites had occurred by mid-July, 2006. The State of Indiana was tracking peak ozone concentrations in 2006, and through the near-realtime AIRNOW public information system; so was EPA. EPA and the State were aware of the fact that the likely high ozone concentrations in 2006 had occurred prior to the State's submittal of the redesignation request. After reviewing the peak 8-hour ozone concentrations in 2006, we found that the top four 8-hour ozone concentrations for all monitoring sites in the Chicago-Gary-Lake County, IL-IN area and the Chiwaukee Prairie site during 2006 occurred well prior to September 12. In recent previous years as well, no fourth high concentration in excess of the standard had occurred after September 12, and values monitored in late September were below the standard. In 2004–2006, no values above 85 ppm were recorded after September 12. Given the fact that peak ozone concentrations in this area usually occur in June, July, and August, it was highly unlikely at the time of submittal that any additional exceedances would occur after submittal of the redesignation request, and quality-assured data showed that none did in fact occur.

Moreover, with respect to conformity and NSR requirements, EPA believes that these are not applicable requirements for purposes of evaluating a redesignation request.

Under Section 176(c), the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity SIP revisions must be consistent with Federal conformity regulations that EPA issued pursuant to the CAA. EPA's longstanding interpretation is that conformity requirements are not applicable requirements for purposes of evaluating redesignation requests. State conformity

rules are still required after redesignation of areas to attainment of a NAAQS, and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001). See also 60 FR 62748 (December 7, 1995) (Tampa, Florida).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation (although Indiana does have an approved NSR program), provided that the states demonstrate maintenance of the standard without part D NSR. PSD requirements will apply after redesignations to attainment. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Indiana has demonstrated that Lake and Porter Counties and the Chicago-Gary-Lake County, IL-IN area will be able to maintain the 8-hour ozone standard without part D NSR in effect, and therefore, we conclude that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in Lake and Porter Counties upon redesignation to attainment. See rulemakings for: Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and, Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

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

Except as noted above with respect to emissions inventories, 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 25426 (May 12, 2003). Indiana has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-

hour required SIP elements applicable to Lake and Porter Counties for purposes of redesignation, as well as the emissions statement provision for the 8-hour standard. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of reviewing the State's redesignation request. EPA also believes that since the part D 8-hour requirements, (with the exception of the requirements for submittal of the emissions statement, and the requirement for submittal of a base year emissions inventory, which we address here, including documentation of the base year emissions supplied by the State subsequent to the submittal of the ozone redesignation request), did not become due prior to Indiana's submission of a final, complete redesignation request for Lake and Porter Counties, they also are not applicable requirements for purposes of redesignation.

## D. Have Lake and Porter Counties Met the Part D Nonattainment Area and Section 110 Requirements Under the 1-Hour Ozone Standard?

In this section of the proposed rule, we discuss the 1-hour ozone SIP emission control requirements of the CAA applicable to Lake and Porter Counties. As noted above, prior to the revocation of the 1-hour ozone standard, the Chicago-Gary-Lake County, IL-IN area was a severe nonattainment area under the 1-hour ozone standard. In reviewing the State of Indiana's ozone redesignation request for Lake and Porter Counties, we assessed the compliance of this area with the CAA requirements under the 1-hour ozone standard. If the 1-hour standard is deemed to be reinstated, EPA would construe the State's request for redesignation under the 8-hour standard as also constituting a request under the 1-hour standard. We conclude that Lake and Porter Counties and the State have met all CAA requirements applicable to a severe 1-hour ozone nonattainment area.

Lake and Porter Counties, as part of the Chicago-Gary-Lake County, IL-IN area, were subject to ozone requirements for severe 1-hour ozone nonattainment areas pursuant to sections 182(a) through 182(d) of the CAA.

The following paragraphs discuss how the applicable requirements have been met, if the 1-hour standard is deemed to be reinstated.

## RACT

Section 182(a)(2)(A) requires RACT corrections, Section 182(b)(2) of the CAA requires RACT for each category of VOC sources covered by a Control Technique Guideline (CTG) and for all other major sources of VOC within an ozone nonattainment area, and Section 182(d) specifies requirements for severe areas, including a major source cutoff of 25 tons per year. Section 182(f) of the CAA requires major sources of NO<sub>x</sub> in an ozone nonattainment area to be covered by the same types of emission controls required for sources of VOC, or, in other words, it requires NO<sub>x</sub> RACT. Through rulemakings on: 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), EPA fully approved Indiana's VOC RACT regulation SIP revisions for Control Technique Guideline (CTG) sources and for non-CTG sources which have an applicability threshold of 25 tons per year (tpy) or more. On January 26, 1996 (61 FR 2428), EPA approved a NO<sub>x</sub> control waiver request under section 182(f) of the CAA, exempting Lake and Porter Counties from the NO<sub>x</sub> RACT requirement of section 182(f) as it applied to the 1-hour ozone NAAQS.

## NSR

Section 182(a)(2)(C) requires States to adopt an 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 section 182(c)(6), (c)(7) and (c)(8), and the offset requirements in section 182(d)(2) through rulemakings on October 7, 1994 (59 FR 51108), August 18, 1995 (60 FR 43008), and July 21, 1997 (62 FR 38919). Moreover, as noted above, EPA believes that these are not applicable requirements for purposes of evaluating a redesignation request.

## Major Source Emission Statements

Section 182(a)(3)(B) of the CAA requires States to adopt rules requiring major sources of VOC and NO<sub>x</sub> in an ozone nonattainment area to submit annual emissions statements regarding their emissions for the prior years. Through rulemakings on August 9, 1994 (59 FR 29956) and October 29, 2004 (69 FR 63069), EPA approved Indiana's emissions statements regulations for 1-hour ozone nonattainment areas.

## 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 program requirements of section 182(c)(3) of the CAA. Therefore, Lake and Porter Counties meet the I/M requirements for a severe 1-hour ozone nonattainment area.

## 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 has achieved 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 that was 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 from 1999 through 2007.

## Stage II Gasoline Vapor Recovery

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

## 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.

## Conformity

The 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 conformity requirements that are relevant to redesignation requests for any standard, including the requirement 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

<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 motor vehicle emissions budgets that are established in control strategy SIPs and maintenance plans.

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).

## Section 185 Fee Provisions

Although the fees provision under section 185(a) of the CAA was not specifically identified in the May 10, 1995 Clean Data Policy memorandum as one of the requirements subject to EPA's Clean Data Policy interpretation, EPA's statutory interpretation extends to this provision. Under section 185(a), the fees provision is expressly a component of the attainment demonstration and, since the requirement for an attainment demonstration is suspended, the requirement for its components is also suspended when an area is monitoring attainment of the standard. See 40 CFR section 51.918. EPA has taken the same position with respect to the Reasonably Available Control Measures (RACM) requirement, which is also a component of the attainment demonstration. 70 FR 71645-71646 (November 29, 2005). EPA proposes to find that Lake and Porter Counties are attaining the 1-hour ozone standard, and, thus, the requirement for submitting a fee provision as a component of the 1-hour attainment demonstration is suspended for so long as the area is attaining the standard and until it is redesignated to attainment.

## Section 182(g) Milestones

The Section 182(g) Milestones requirements are included in those measures subject to EPA's interpretation in its Clean Data Policy memorandum of May 10, 1995, and because EPA has determined that the area has attained the 1-hour standard, the requirement of section 182(g) is not applicable for so long as the area attains the standard and until it is redesignated to attainment. See also 40 CFR section 51.918.

## 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 as required by section 182(c)(1) of the CAA.

## Transportation Control Measures

Within six years of November 15, 1990, and every three years thereafter, section 182(c)(5) of the CAA requires states to submit a demonstration of whether 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 demonstration of attainment for serious and above 1-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 of the applicable state implementation plan to include TCMs to reduce emissions to a level consistent with emissions levels in the attainment demonstration for an area.

Alternatively, EPA has determined that nonattainment areas are not permanently locked into the estimates of future emissions given in the initial SIP submittal, nor locked into those in any subsequently approved amendment thereto. As we stated in the General Preamble, once approved, the amended SIP revision would have the effect of increasing the allowable motor vehicle emissions (including those due to changes in the relevant parameters). See 57 FR 13498 at 13520 (April 16, 1992). Thus, if actual emissions exceed those projected in an area's attainment demonstration, a state may at any time before the area reaches attainment, amend an area's SIP to demonstrate attainment while altering the mix of emissions reductions in the SIP from various kinds of sources (motor vehicle versus non-motor vehicle), rather than include TCMs in the SIP.

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. On December 16, 1999 (64 FR 70514), the EPA proposed to conditionally approve the 1-hour ozone attainment 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 1-hour ozone nonattainment area would attain the 1-hour ozone NAAQS by November 15, 2007, the statutory attainment deadline for the area. The requested SIP revision was fully approved on November 13, 2001 (66 FR 56944). EPA, therefore, concludes that Indiana has complied with the substance of section 182(c)(5) of the CAA, has no currently due section 182(c)(5) obligations, and, by the virtue of EPA's approval of the 1-hour ozone attainment demonstration, has never triggered an obligation under section 182(c)(5) to include additional TCMs in the 1-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 proposes in the alternative to find that since Lake and Porter Counties are attaining the 1-hour ozone standard, any requirement for submitting the section 182(c)(5) measures is suspended for so long as the area is attaining the standard and until it is redesignated to attainment. See also 40 CFR 51.918.

#### Vehicle Miles Traveled

Section 182(d)(1)(A) of the CAA requires severe ozone nonattainment areas to offset the growth in emissions attributable to growth in Vehicle Miles Traveled (VMT); to select and implement TCMs necessary to comply with the periodic emission reduction requirements of section 182(b) and (c); and, to consider TCMs specified in section 108(f), and implement such 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.

#### NO<sub>x</sub> Requirements

With respect to NO<sub>x</sub> requirements under section 182(f) of the CAA, as discussed above, EPA has approved a NO<sub>x</sub> control waiver for Lake and Porter Counties. See 61 FR 2428 (January 26, 1996). In addition, we have approved Indiana 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).

#### Emission Inventories

Section 182(a)(1) requires that States submit comprehensive, accurate, current inventories of actual emissions from all sources, within 2 years of enactment of the CAA amendments of 1990. This inventory requirement was approved on January 4, 1995 (60 FR 375). Periodic VOC and NO<sub>x</sub> emission inventories were required to be submitted every three years, beginning in November 15, 1995. NO<sub>x</sub> and VOC emission inventory updates for 1999, 2002, and 2004 are contained in Indiana's September 12, 2006 submittal. EPA is proposing to approve these emission inventory updates as meeting the section 182(a)(3)(A) requirement of the CAA for periodic emission inventory submissions under the 1-hour standard.

#### Ozone Attainment Demonstration

As noted above, on November 13, 2001 (66 FR 56944), EPA fully approved Indiana's 1-hour ozone attainment demonstration SIP revision for the Chicago-Gary-Lake County, IL-IN 1-hour ozone nonattainment area.

#### 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 1-hour ozone standard in Lake and Porter Counties in our approval of the State's ozone attainment plan. See 66 FR 56944 (November 13, 2001).

For the above reasons EPA believes that Indiana has met all applicable part D requirements under the 1-hour ozone standard for purposes of redesignation. It is noted that the State has committed to maintain the VOC and NO<sub>x</sub> emission controls already in place.

In addition, EPA has previously approved provisions in the Indiana SIP addressing section 110 elements under the 1-hour standard. We have analyzed the Indiana SIP as codified in 40 CFR part 52, subpart P, and have determined that it is consistent with the requirements of section 110(a)(2) of the CAA.

Therefore, with regard to compliance with the requirements for the 1-hour ozone standard, the State has met all applicable requirements for purpose of redesignation under the 1-hour standard, were that standard to be deemed reinstated. In addition, as discussed below, the State's maintenance plan for the 8-hour standard also provides for maintenance of the 1-hour standard (the area has an approvable ozone maintenance plan and the State is committed to revise this plan within 8 years after the redesignation of the area to attainment). We also find that, as set forth below, the area has achieved the ozone standard due to the implementation of permanent, enforceable emission controls; and the EPA has fully approved an ozone SIP meeting all requirements applicable for purposes of redesignation. As noted below, the State of Indiana and Lake and Porter Counties meet these requirements for the 8-hour ozone NAAQS. We propose to find that Lake and Porter Counties would also qualify for redesignation to attainment of the 1-hour ozone NAAQS if this standard is deemed to be reinstated.

*E. Are the Air Quality Improvements in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN Nonattainment Area Due to Permanent and Enforceable Emission Reductions Resulting From the Implementation of the Indiana SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Emission Reductions?*

To make the demonstration that the improvement in air quality is due to permanent and enforceable emissions reductions, the State of Indiana has

documented changes in VOC and NO<sub>x</sub> emissions from all anthropogenic (man-made or man-based) sources in Lake and Porter Counties between 1999 and 2004, including 2002, an ozone standard violation year, and 2004, one of the years in which the Chicago-Gary-Lake County, IL-IN area attained the 8-hour ozone standard. The State has also discussed the permanent and enforceable emission controls that have been implemented in Lake and Porter Counties, in the State of Indiana, and in other upwind areas that have

contributed to the air quality improvement in Lake and Porter Counties.

Table 3 summarizes the VOC and NO<sub>x</sub> emissions totals from the anthropogenic sources in Lake and Porter Counties for 1999 through 2004. From the table, it can be seen that both VOC and NO<sub>x</sub> emissions in Lake and Porter Counties decreased between 1999 and 2004 and, most importantly, between 2002, an ozone standard violation year, and 2004, an ozone standard attainment year.

TABLE 3.—VOC AND NO<sub>x</sub> EMISSIONS FROM ANTHROPOGENIC SOURCES IN LAKE AND PORTER COUNTIES IN TONS PER SUMMER DAY

Source sector	1999	2002	2004
VOC Emissions:			
Point .....	28.84	24.58	25.62
Area .....	49.59	32.27	31.33
On-Road Mobile .....	33.29	20.00	18.90
Non-Road Mobile .....	19.98	35.09	31.63
Total .....	131.70	111.94	107.48
NO <sub>x</sub> Emissions:			
Point .....	214.58	186.44	148.20
Area .....	10.36	5.72	5.77
On-Road Mobile .....	49.92	55.00	65.95
Non-Road Mobile .....	49.07	38.61	40.64
Total .....	323.93	285.77	260.56

Table 4 summarizes the NO<sub>x</sub> emission trends for Electric Generating Units (EGUs) in Northwest Indiana (Jasper,

Lake, LaPorte, and Porter Counties) and statewide for 1999 through 2005.

TABLE 4.—NO<sub>x</sub> EMISSION TRENDS FOR ELECTRIC GENERATING UNITS IN NORTHWEST INDIANA AND STATEWIDE—EMISSIONS IN THOUSANDS OF TONS PER OZONE SEASON (APRIL–SEPTEMBER)

Area	1999	2000	2001	2002	2003	2004	2005
Northwest Indiana .....	31.8	25.0	27.4	22.7	18.0	11.8	10.6
Statewide .....	149.8	133.9	136.1	114.0	99.3	66.6	55.5

As noted in Tables 3 and 4, the total VOC emissions in Lake and Porter Counties and the EGU NO<sub>x</sub> emissions in Northwest Indiana and statewide have declined between 1999 and 2004. IDEM notes that these emission decreases have resulted from the implementation of permanent and enforceable emission controls, such as implementation of RACT rules, tighter Federal standards for new vehicles, Title IV of the CAA, and NO<sub>x</sub> controls required by the Indiana NO<sub>x</sub> SIP. Specifically in Lake and Porter Counties, the following emission control measures were implemented: RACT rules found in volume 326 of the Indiana Administrative Code (IAC) chapter 8 (326 IAC 8), including IAC 8–1 (best available control technology for new source facilities), IAC 8–2 (surface

coating emission limitations), IAC 8–3 (solvent degreasing controls), IAC 8–4 (petroleum source controls), IAC 8–5 (miscellaneous operation controls), and IAC 8–6 (organic solvent emission limitations); VOC emission controls implemented to meet Rate-Of-Progress (ROP) requirements, including the following:

1. Enhanced Vehicle Inspection and Maintenance
2. Stage II Vapor Recovery on Gasoline Marketing Sources
3. Reformulated Gasoline
4. National VOC Emission Standards for Architectural Coatings
5. Residential Open Burning Ban
6. Non-Control Technology Guideline Source RACT

7. National Emission Standards for Benzene from Coke Oven By-Product Recovery Plants
8. National Emission Standards for Coke Oven Batteries
9. Federal Phase I Reformulated Gasoline for Small Non-Road Engines
10. Federal Controls on Small Spark-Ignited Engines
11. Commercial/Consumer Solvent Reformulation Rule
12. Volatile Organic Liquid Storage RACT
13. Sinter Plant Rule
14. Municipal Solid Waste Landfill Rule
15. Petroleum Refineries National Emission Standard for Hazardous Air Pollutants
16. Banning of the Use of Untreated Water for Quenching, and,

17. Cold Cleaner Degreaser RACT (an extension of 326 IAC 8-3). NO<sub>x</sub> emission controls in Lake and Porter County resulted from the implementation of the NO<sub>x</sub> emission control requirements and emission caps included in the State's NO<sub>x</sub> SIP. Beginning in 2004, this set of NO<sub>x</sub> control rules accounted for a reduction of approximately 33 percent statewide from 2003 EGU emissions. IDEM also notes that other states have also implemented similar NO<sub>x</sub> emission controls, resulting in reduced ozone and ozone precursor transport into Lake and Porter Counties and into the Chicago-Gary-Lake County, IL-IN ozone nonattainment area.

IDEM is convinced that all of these VOC and NO<sub>x</sub> emission controls, which are permanent and enforceable, are responsible for the observed ozone air quality improvement in Lake and Porter Counties and have contributed significantly to the attainment of the 8-hour ozone NAAQS in the Chicago-Gary-Lake County, IL-IN area. See also the discussion of Temperature Ozone Exceedance Frequency Study in section VII B. of this proposal.

Besides the State's VOC RACT, ROP, and NO<sub>x</sub> emission control requirements, other Federal emission control requirements have recently resulted in VOC and NO<sub>x</sub> emission reductions or will shortly further reduce VOC and NO<sub>x</sub> emissions in Northwest Indiana and throughout the Chicago-Gary-Lake County, IL-IN area. These emission reduction requirements include the following:

*Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards.* These emission control requirements result in lower emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules are being phased in between 2004 and 2009. The 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 sports utility vehicles (86 percent; and larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are also expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Although some of these emission reductions have already occurred by the 2004-2006 attainment years, most of these emission reductions will occur during the maintenance period for Lake and Porter Counties.

*Heavy-Duty Diesel Engines.* In July 2000, EPA issued a final rule to control

the emissions from highway heavy duty diesel engines, including low-sulfur diesel fuel standards. These emission reductions are being phased in between 2004 and 2007. This rule is expected to result in a 40 percent decrease in NO<sub>x</sub> emissions from heavy duty diesel vehicles.

*Non-Road Diesel Rule.* Issued in May 2004, this rule generally applies to new stationary diesel engines used in certain industries, including construction, agriculture, and mining. In addition to affecting engine design, this rule includes requirements for cleaner fuels. It is expected to reduce NO<sub>x</sub> emissions from these engines by up to 90 percent, and to significantly reduce particulate matter and sulfur emissions from these engines in addition to the NO<sub>x</sub> emission reduction. This rule did not affect 2004 emissions from these sources, but will limit emissions from new engines beginning in 2008.

Indiana commits to maintain all existing emission control measures that affect Lake and Porter Counties and the Chicago-Gary-Lake County, IL-IN area after Lake and Porter Counties are redesignated to attainment of the 8-hour ozone NAAQS. All changes in existing rules affecting Lake and Porter Counties and new rules subsequently needed to provide for the maintenance of the 8-hour ozone NAAQS in Lake and Porter Counties will be submitted to the EPA for approval as SIP revisions.

Thus, EPA proposes to determine that Lake and Porter Counties have met the requirement of section 107(d)(3)(E)(iii) of the CAA that the improvement in air quality is due to permanent and enforceable emissions reductions.

#### *F. Do Lake and Porter Counties Have a Fully Approvable Ozone Maintenance Plan Pursuant to Section 175A of the CAA?*

In conjunction with its request to redesignate Lake and Porter Counties to attainment of the ozone NAAQS, Indiana submitted a SIP revision request to provide for maintenance of the 8-hour ozone NAAQS in this area for at least 10 years after the redesignation of this area to attainment of the 8-hour ozone NAAQS. EPA proposes to approve this maintenance plan pursuant to section 175A and section 107(d)(3)(E)(iv) of the CAA.

##### 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. Within eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates maintenance of the standard for 10 years following the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary, to assure prompt correction of any future NAAQS violations. The September 4, 1992 John Calcagni memorandum provides additional guidance on the content of maintenance plans. An ozone maintenance plan should, at minimum, address the following items: (1) The attainment VOC and NO<sub>x</sub> emissions 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. What Are the Attainment Emission Inventories for Lake and Porter Counties?

IDEM prepared comprehensive VOC and NO<sub>x</sub> emission inventories for Lake and Porter Counties, including point (significant stationary sources individually inventoried), area (smaller and widely-distributed stationary sources collectively inventoried by source type and geographical area), mobile on-road, and mobile non-road sources for 2004 (the redesignation request's base year/attainment year). To develop the attainment year emission inventories, IDEM used the following approaches and sources of data.

###### a. Point Sources

2004 point source emissions were compiled using IDEM's annual emissions statement database and the 2005 EPA Air Markets acid rain emissions inventory database.

###### b. Area Sources

Area source VOC and NO<sub>x</sub> emissions were projected from Indiana's 2002 base year emissions inventory, which was previously submitted to EPA's National Emissions Inventory system. The documentation of this base year emissions inventory has been submitted by the State, and is reviewed elsewhere in this proposed rule.

c. On-Road Mobile Sources

Mobile source emissions were calculated using the MOBILE6 emission factor model and traffic data (vehicle miles traveled, vehicle speeds, and vehicle type and age distributions by roadway link and area) developed using the region's travel-demand model. IDEM has provided detailed data summaries to document the calculation of on-road mobile source VOC and NO<sub>x</sub> emissions for 2004, as well as for the projection years of 2010 and 2020 (further discussed below).

d. Non-Road Mobile Sources

2004 non-road mobile source emissions were projected for the 2002 National Emissions Inventory (NEI) non-road mobile source emissions developed by the EPA. IDEM used the NEI emissions along with growth factors to grow the non-road mobile source emissions to 2004. To address concerns about the accuracy of some of the emissions for various source categories in EPA's non-road emissions, the Lake Michigan Air Directors Consortium (LADCO) contracted with several consulting companies to review the base data used by the EPA and to make recommendations for corrections to the

model used to calculate the 2002 emissions. Emissions were estimated for commercial marine vessels and railroads. Recreational motorboat populations and surrogates (used to assign emissions to each county) were updated by contracted consultants. The populations for the construction equipment category were reviewed and updated based on surveys completed in the Midwest, and the temporal allocation of agricultural sources was also updated. Based on these and other updates, the EPA revised the non-road estimation model for 2002, which was used for the basis for the projected 2004 non-road mobile source emissions.

The 2004 attainment year VOC and NO<sub>x</sub> emissions for Lake and Porter Counties are summarized along with the 2010 and 2020 projected emissions in Tables 5 below. We agree that the State has acceptably derived and documented the attainment year VOC and NO<sub>x</sub> emissions for Lake and Porter Counties.

3. Has the State Demonstrated Maintenance of the Ozone Standard in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN Ozone Nonattainment Area?

As part of the September 12, 2006 redesignation request submittal, IDEM

included a requested revision to the SIP to incorporate an ozone maintenance plan as required under section 175A of the CAA. The maintenance plan includes an ozone maintenance demonstration based on the comparison of projected emissions to the attainment year emissions levels. This demonstration shows that future (2010 and 2020) VOC and NO<sub>x</sub> emissions remain at or below the 2004 attainment year levels. Note that a maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099-53100 (October 19, 2001) and 68 FR 25430-25432 (May 12, 2003).

Table 5 specifies the VOC and NO<sub>x</sub> emissions in Lake and Porter Counties for 2004, 2010, and 2020. IDEM chose 2020 as the maintenance projection year to meet the 10-year maintenance projection requirement, allowing time for the EPA to approve the redesignation request and maintenance plan. IDEM also chose 2010 as an interim year to demonstrate that VOC and NO<sub>x</sub> emissions will remain below the attainment year levels throughout the maintenance period.

TABLE 5.—ATTAINMENT YEAR AND PROJECTED VOC AND NO<sub>x</sub> EMISSIONS IN LAKE AND PORTER COUNTIES IN TONS PER SUMMER DAY

Source sector	Years		
	2004	2010	2020
<b>VOC Emissions:</b>			
Point .....	25.62	25.36	30.84
Area .....	31.33	31.72	34.31
On-Road Mobile .....	18.90	9.93	5.71
Non-Road Mobile .....	31.63	24.44	20.26
Total .....	107.48	91.45	91.12
<b>NO<sub>x</sub> Emissions</b>			
Point .....	148.20	97.06	102.15
Area .....	5.77	6.07	6.40
On-Road Mobile .....	65.95	38.65	11.97
Non-Road Mobile .....	40.64	33.95	28.51
Total .....	260.56	175.73	149.03

Using emissions data provided by LADCO for the remainder of the Chicago-Gary-Lake County, IL-IN ozone

nonattainment area (for the Illinois portion of this area), IDEM has also determined the VOC and NO<sub>x</sub> emissions

for the entire nonattainment area. These VOC and NO<sub>x</sub> emissions are summarized in Table 6.

TABLE 6.—ATTAINMENT YEAR AND PROJECTED VOC AND NO<sub>x</sub> EMISSIONS IN THE CHICAGO-GARY-LAKE COUNTY, IL-IN OZONE NONATTAINMENT AREA IN TONS PER SUMMER DAY

Source sector	Years		
	2004	2010	2020
<b>VOC Emissions:</b>			
Point .....	97.65	94.35	128.84
Area .....	225.34	221.72	234.32

TABLE 6.—ATTAINMENT YEAR AND PROJECTED VOC AND NO<sub>x</sub> EMISSIONS IN THE CHICAGO-GARY-LAKE COUNTY, IL-IN OZONE NONATTAINMENT AREA IN TONS PER SUMMER DAY—Continued

Source sector	Years		
	2004	2010	2020
On-Road Mobile .....	198.90	165.27	100.60
Non-Road Mobile .....	159.63	109.44	122.25
Total .....	681.52	590.78	586.01
NO <sub>x</sub> Emissions:			
Point .....	442.21	301.06	334.15
Area .....	45.77	53.07	57.40
On-Road Mobile .....	464.95	314.59	145.08
Non-Road Mobile .....	321.64	242.95	101.51
Total .....	1274.57	911.67	638.14

Tables 5 and 6 show that VOC and NO<sub>x</sub> emissions are projected to decline in both Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area after 2004. This demonstrates maintenance of the ozone standard in these areas through 2020 and throughout the ozone maintenance period.

IDEM also notes that the State's EGU NO<sub>x</sub> emission control rules stemming from EPA's NO<sub>x</sub> SIP call, implemented beginning in 2004, with additional NO<sub>x</sub> emission reductions expected to result from the implementation of new Phase 2 NO<sub>x</sub> rules, and the Clean Air Interstate Rule (CAIR) will further lower NO<sub>x</sub> emissions throughout Northwest Indiana, in the Chicago-Gary-Lake County, IL-IN area, statewide in Indiana, and in other upwind states, resulting in decreased ozone and ozone precursor transport into Lake and Porter Counties and the Chicago-Gary-Lake County area. This will also support maintenance of the ozone standard in the Chicago-Gary-Lake County area.

IDEM has documented some of the procedures used to project emissions. On-road mobile sources were projected using the MOBILE6 emission factor model and projected traffic data obtained from the Northwest Indiana Regional Planning Commission (NIRPC), which maintains a travel demand forecast model that is capable of projecting changes in total daily VMT. Emissions for the other major source sectors were determined using projected source activity/growth data provided by LADCO, as well as major source emissions data obtained periodically for all major sources statewide.

Based on the comparison of the projected emissions and the attainment year emissions, we conclude that IDEM has successfully demonstrated that the 8-hour ozone standard should be maintained in Lake and Porter Counties and in the Chicago-Gary-Lake County,

IL-IN area. We believe that this is especially likely given the expected impacts of the NO<sub>x</sub> SIP call and CAIR. As noted by IDEM, this conclusion is further supported by the fact that other states in the eastern portion of the United States are expected to further reduce regional NO<sub>x</sub> emissions through implementation of their own NO<sub>x</sub> emission control rules for EGUs and other NO<sub>x</sub> sources and through implementation of CAIR, reducing ozone and NO<sub>x</sub> transport into Lake and Porter Counties.

The demonstration of maintenance for the 8-hour standard also demonstrates maintenance for the 1-hour standard because the same attainment year and maintenance year emissions inventories that show maintenance for the 8-hour standard similarly show maintenance for the 1-hour standard. As demonstrated above, future VOC and NO<sub>x</sub> emissions are projected to remain at or below the 2004 attainment year levels.

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

a. Verification of Continued Attainment

Continued attainment of the 8-hour ozone NAAQS in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN area depends on the State's efforts toward tracking applicable indicators during the maintenance period and taking appropriate actions if trends in the indicators indicate that additional emission reductions are needed to correct an existing or developing air quality problem. The State's plan for verifying continued attainment of the 8-hour ozone standard in these areas consists, in part, of a plan to continue ambient monitoring in Lake and Porter Counties and to track ozone air quality in the maintenance area, including the Illinois portion of the Chicago-Gary-

Lake County area and the Chiwaukee Prairie, WI monitor. In addition, IDEM will periodically revise and review the VOC and NO<sub>x</sub> emissions for Lake and Porter Counties to assure that emissions growth is not threatening the continued attainment of the 8-hour standard in this area. Revised emission inventories for this area will be prepared for 2005, 2008, and 2011 as necessary to comply with the emission inventory reporting requirements established in the CAA. The revised emissions will be compared with the 2004 attainment emissions and the 2020 projected maintenance year emissions to assure continued maintenance of the ozone standard.

b. Contingency Plan

The contingency plan provisions of the CAA are designed to result in prompt correction or prevention of violations of the NAAQS that might occur after redesignation of an area to attainment of the NAAQS. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan 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 in 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 a possible future ozone air quality problem. The contingency plan has two levels of actions/responses depending on whether a violation of the 8-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 (1-year) fourth-high monitored daily maximum 8-hour ozone concentration of 0.089 ppm occurs in a single ozone season or a 2-year averaged fourth-high monitored daily maximum 8-hour ozone concentration of 0.085 ppm or greater occurs within the maintenance area. A Warning Level Response will consist of a study to determine whether the ozone concentration indicates a trend toward higher ozone concentrations or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend taking into consideration ease and timing for implementation, as well as economic considerations.

Implementation of necessary controls in response to the Warning Level Response trigger will take place as expeditiously as possible, but in no event later than 12 months from the conclusion of the most recent ozone season (September 30). If new emission controls are needed to reverse the adverse ozone/emissions trend, the procedure for emission control selection under the Action Level Response will be followed.

An Action Level Response will be triggered when a violation of the 8-hour ozone standard is monitored at any of the monitors in the area. On February 20, 2007, IDEM submitted a letter to the EPA clarifying that an Action Level Response will be triggered if a future violation of the 8-hour ozone NAAQS is monitored within any part of the Chicago-Gary-Lake County, IL-IN area or at the Chiwaukee Prairie monitoring site in Kenosha County, Wisconsin. In the event that the Action Level is triggered and is not found to be due to an exceptional event, malfunction, or noncompliance with a source permit condition or rule requirement, IDEM will determine additional control measures needed to assure future attainment of the ozone NAAQS. In this case emission control measures that can be implemented in a short time will be selected in order to be implemented within 18 months from the close of the ozone season that prompted the Action Level Response.

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, providing the opportunity for a public hearing, 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 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. IDEM will submit to the EPA an analysis to demonstrate that the proposed emission control measures or existing emission control measures are adequate to return the area to attainment. As discussed below, EPA understands that Indiana will commit to submit any such proposed or existing emission control measure to EPA as a SIP revision.

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

- i. Vehicle emissions testing program enhancements, including liquid leak inspection; increased vehicle weight limit cutoffs; addition of diesel vehicles; etc.;
- ii. Asphalt paving VOC content restrictions (lower VOC formulation requirements);
- iii. Diesel exhaust retrofits;
- iv. Traffic flow improvements;
- v. Vehicle idle reduction programs;
- vi. Portable fuel container regulation (statewide);
- vii. Park and ride facilities;
- viii. Rideshare/carpool programs;
- ix. VOC cap-and-trade program for major stationary sources; and,
- x. Commercial/consumer solvent VOC content limits (statewide).

No contingency measure will be implemented without providing the opportunity for full public participation in the selection and adoption of controls. During this process, the relative costs and benefits of individual control measures would be evaluated.

EPA notes that two 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, it will no longer be considered in determining whether a violation has occurred. 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. EPA believes that this provides a mechanism for the State to take prompt corrective action, including expeditious and effective enforcement action 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.

Second, the maintenance plan does not call for the State to adopt and implement new contingency measures if it can be shown that an already adopted emission control measure (State or Federal) will eliminate an ozone air quality problem. We believe that such an emission control measure should become part of the SIP. Prior to final rulemaking, Indiana must commit that it will submit such a measure as a SIP revision, and final approval of the maintenance plan is conditioned upon the State committing to submit such measures as requested SIP revisions. Indiana has indicated that they will make such a commitment. This issue aside, we otherwise propose to approve the ozone maintenance plan as providing for maintenance of both the 8-hour and 1-hour standards, if that standard is deemed to be reinstated. With respect to maintenance of the 1-hour standard, EPA has determined that the 8-hour NAAQS provides increased public health protection as compared to the 1-hour ozone standard. See 62 FR at 38859 (July 18, 1997). Because the 8-hour standard is more stringent than the 1-hour standard, a maintenance plan

with triggers tied to the 8-hour standard will be more protective of public health than a maintenance plan with contingency measure triggers tied to the 1-hour standard.

5. Has the State Committed To Update the Ozone Maintenance Plan in Eight Years After the Redesignation of Lake and Porter Counties to Attainment of the 8-Hour Ozone NAAQS?

As required by section 175A(b) of the CAA, the State commits to submit to the EPA an update of the ozone maintenance plan eight years after redesignation of Lake and Porter Counties to attainment of the 8-hour ozone NAAQS. The updated maintenance plan will provide maintenance of the 8-hour ozone standard for an additional 10 years beyond the first 10 years of maintenance of the standard.

**VI. Has the State Adopted Acceptable MVEBs for the End Year of the Ozone Maintenance Period Which Can Be Used To Support Transportation Conformity Determinations?**

*A. How Are 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 redesignations to attainment of the ozone standard or revising existing ozone maintenance plans). These emission control SIP revisions (e.g., reasonable further progress and attainment demonstration SIP revisions), including ozone maintenance plans, must create 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 must be established for the last year of the maintenance plan. The MVEBs serve as ceilings on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993 transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (i.e., be consistent with)

the 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, rate-of-progress 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 state and Federal agencies in determining whether proposed transportation projects conform to the SIPs as required by section 176(c) of the CAA. EPA's criteria for determining the adequacy of MVEBs are specified in 40 CFR 93.118(e)(4).

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 findings through two mechanisms. First, 40 CFR 93.118(f)(1) provides for posting a notice to the EPA conformity Web site at: <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 notice, 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 also for 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. Indiana has submitted budgets for both the 2010 year and also the 2020 year. EPA is taking comment on both the adequacy

and 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 8-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 the year 2009 or before, the applicable budget for the purposes of conducting transportation conformity will be the MVEBs for Lake and Porter Counties in the approved 1-hour ozone maintenance plan. For required regional emissions analysis years that involve 2010 or beyond, the applicable budgets are defined in the table below.

**LAKE AND PORTER COUNTY AREA MVEBS**  
[Tons per day]

Year	VOC	NO <sub>x</sub>
2010 .....	11.5	40.6
2020 .....	6.0	12.6

These MVEBs will be separate state area budgets for Lake and Porter Counties, Indiana. Illinois will establish MVEBs for the remainder of the Chicago 8-hour ozone area through the 8-hour ozone SIP submitted by Illinois.

EPA, through this rulemaking, is proposing to approve the MVEBs for both 2020 and 2010, as part of the 8-hour maintenance plan, to be used to determine transportation conformity in Lake and Porter Counties. EPA has determined that the budgets are consistent with the control measures in the SIP and that Lake and Porter Counties can maintain attainment of the 8-hour ozone NAAQS (projected VOC and NO<sub>x</sub> emissions for 2010 and 2020 remain below the attainment year, 2004, levels) for the relevant required 10-year period with mobile source emissions at the levels of the MVEBs. It should be noted that the current approved 1-hour ozone budgets, which were approved as part of the 1-hour ozone attainment

demonstration, will continue to be used for transportation conformity purposes through 2009. The current 1-hour ozone budgets that are being used for transportation conformity purposes are for the 2007 year and cap emissions at 12.37 tons per day for VOCs and 63.33 tons per day for NO<sub>x</sub>. When the 8-hour ozone maintenance plan MVEBs are approved or found adequate, the new 2010 and 2020 budgets will provide a lower cap on emissions in Lake and Porter Counties because the new budgets are lower than the current 2007 budgets. IDEM has determined the 2010 MVEBs for Lake and Porter Counties to be 11.5 tons per day of VOC and 40.6 tons per day of NO<sub>x</sub>. IDEM has also determined the 2020 MVEBs for Lake and Porter Counties to be 6.0 tons per day for VOC and 12.6 tons per day for NO<sub>x</sub>. It should be noted that these MVEBs exceed the on-road mobile source VOC and NO<sub>x</sub> emissions projected by IDEM for 2010 and 2020, as summarized in Table 5 above ("On-Road Mobile" source sector). Through discussions with all organizations involved in transportation planning for Lake and Porter Counties, IDEM decided to include safety margins of 5 percent (0.29 tons per day for VOC and 0.63 tons per day for NO<sub>x</sub> for 2020) in the MVEBs to provide for mobile source growth not anticipated in the projected 2010 and 2020 emissions and for a margin of error in the calculation of future mobile source emissions. Indiana has demonstrated that Lake and Porter Counties can maintain the 8-hour ozone NAAQS with these mobile source emissions since total source emissions including the increased mobile source emissions will remain under the attainment year emission levels.

#### *B. Are the MVEBs Approvable?*

The submitted MVEBs meet the criteria for adequacy. The submitted SIP was endorsed by the Governor and was subject to a State public hearing. The MVEBs were discussed during consultation among Federal, state and local agencies. The MVEBs are clearly identified and precisely quantified in the submitted SIP. The MVEBs, when considered together with all other emissions sources, 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 maintenance plan; and the established safety margins are within the allowable limits. No negative comments were received at the State public hearing which addressed the MVEBs in the maintenance plan.

The 2010 and 2020 VOC and NO<sub>x</sub> MVEBs for Lake and Porter Counties are approvable because the MVEBs 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 inventory levels, as required by the transportation conformity regulations. These MVEBs are adequate and approvable for transportation conformity purposes.

#### **VII. Modeled Attainment of the Ozone Standard**

Although EPA does not require use of air quality models to support ozone redesignation requests, IDEM has chosen to review existing modeling results to support the view that the 8-hour ozone NAAQS has been attained in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN area due to the implementation of permanent and enforceable emission controls, and that attainment of the ozone standard will be maintained in these areas as the result of implementation of additional emission controls already adopted. In addition, analyses of modeling results and other related meteorological data also allowed IDEM to assess the impacts of changes in meteorology on area peak ozone concentrations to support the case that changes in emissions are responsible for attainment of the ozone standard in these areas and not changes in meteorology.

##### *A. Regional Ozone Modeling Results*

Regional ozone modeling has been conducted to support several national emission control efforts and to support the preparation of 8-hour ozone attainment demonstrations in the Lake Michigan region. The results of these modeling studies have been reviewed for their modeled ozone concentrations in Lake and Porter Counties and the rest of the Chicago-Gary-Lake County area. The conclusions based on these modeling studies are summarized here.

##### *EPA Modeling Analysis for Heavy-Duty Engine and Diesel Fuel Rules*

EPA conducted ozone modeling to support the Tier II vehicle and low-sulfur fuel rules. The results of the modeling were documented in the report "Technical Support Document for the Heavy Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements: Air Quality Modeling Analyses" (EPA 420-R-00-028). IDEM reviewed these documented modeling results, and notes that this modeling study shows that the ozone impacts of the subject emission controls, as well as the impacts of the NO<sub>x</sub> SIP call, are significant in Lake and

Porter Counties. IDEM used these modeling results to determine the relative impacts on peak ozone concentrations in this area during 2007 and 2020. The modeling results indicate that the monitoring site ozone design values in Lake County would be lowered to a range of 0.069 ppm to 0.071 ppm (depending on the monitor) in 2007. Similar ozone design values are indicated for 2020, although slightly reduced due to the impacts of more years of implementation of the emission controls.

##### *EPA Ozone Modeling for the Clean Air Interstate Rule*

EPA conducted ozone modeling to assess the ozone impacts resulting from the NO<sub>x</sub> emission reduction expected to be produced by the CAIR. Modeling was conducted for 2010 and 2015. Results of the CAIR modeling show that Lake and Porter Counties will have attained the ozone NAAQS in 2010, with a peak modeled 8-hour concentration below 0.085 ppm. With additional NO<sub>x</sub> emission reduction projected through 2015, the modeling shows that monitoring site ozone design values will further decrease through 2015. This supports maintenance of the ozone standard in Lake and Porter through 2015.

##### *LADCO Updated Round 4 Ozone Modeling*

LADCO recently completed updated ozone modeling using the CAMx model for ozone and the most current emissions inventories and model updates and inputs. This modeling was performed to support ozone attainment demonstrations for the LADCO States. The Round 4 modeling included scenarios considering the "on-the-books" emission controls for future years, 2009 and 2012. Note that the State of Indiana is developing a rule to implement CAIR requirements. Using the relative change in the peak ozone concentrations indicated by the Round 4 modeling along with the 2003–2005 ozone design value, IDEM derived future ozone design values for 2009 and 2012 for the Lake and Porter Counties' monitoring sites. All estimated ozone design values for 2009 and 2012 are well below the ozone standard. This implies that the "on-the-book" emissions controls will help to maintain the ozone standard in Lake and Porter Counties.

##### *B. Temperature—Ozone Exceedance Frequency Study*

IDEM analyzed the 1995–2005 trend in the annual number of days with peak daytime temperatures equaling or

exceeding 90 degrees Fahrenheit versus the annual number of 8-hour ozone standard exceedances at various monitoring sites. Although ozone standard exceedance numbers showed some correlation to the annual number of high temperature days, IDEM noted that this correlation is changing. While the trend in the annual number of high temperature days shows no distinct trend, the annual number of ozone standard exceedances is showing a downward trend. IDEM attributes the difference in trends to the impacts of VOC and NO<sub>x</sub> emission controls. Based on this observation, IDEM attributes the improvement in ozone air quality to the implementation of emission controls.

#### **VIII. Review of Indiana's 2002 Base Year Emissions Submittal**

The CAA gives the States the responsibility to inventory emissions contributing to the violation 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 base year inventories of actual ozone precursor emissions (emissions of VOC, NO<sub>x</sub>, and CO) 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 States must also inventory facility-specific emissions for major source facilities. 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, to Regional Air Division Directors) 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 for Lake and Porter Counties. 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 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 the EPA for incorporation into the National Emissions Inventory (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 source-specific emissions.

Area source emissions were calculated using a variety of information sources and guidance from the 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 September 12, 2006 ozone redesignation request included a detailed description of the procedures and input data used to determine the mobile source emissions for Lake and Porter Counties for 2002, as well as for emission projections used to document attainment year and maintenance period mobile source VOC and NO<sub>x</sub> emissions (see the discussion of mobile source emissions and emission budgets for Lake and Porter Counties, above). The March 26, 2007 base year 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 7.

TABLE 7.—2002 OZONE PRECURSOR EMISSIONS IN LAKE AND PORTER COUNTIES, INDIANA—EMISSIONS IN 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>

Although the state did not hold a separate public hearing on the 2002 base year inventory, the 2002 emissions for Lake and Porter County were the primary source of emissions data used to project the attainment year (2004) and maintenance period (2010 and 2020) VOC and NO<sub>x</sub> emissions discussed in the State's September 12, 2006 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.

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

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

EPA is proposing to determine that the Chicago-Gary-Lake County, IL-IN 8-hour ozone nonattainment area has attained the 8-hour ozone NAAQS and is also proposing to approve Indiana's request to redesignate the Lake and Porter County, IN portion of the area to attainment for the 8-hour ozone standard. EPA has evaluated the State of Indiana's redesignation request and determined that it meets the redesignation criteria set forth in section

107(d)(3)(E) of the CAA. Final approval of the redesignation request would change the official designation of Lake and Porter Counties for the 8-hour ozone NAAQS, found at 40 CFR part 81, from nonattainment to attainment. EPA is also proposing to approve Indiana's ozone maintenance plan for Lake and Porter Counties as a revision to the Indiana SIP because it meets the requirements of section 175A of the CAA. Final approval would thus also incorporate into the Indiana SIP a plan for maintaining the ozone NAAQS through 2020. The maintenance plan includes contingency measures to remedy possible future violations of the 8-hour ozone NAAQS, and establishes MVEBs of 6.00 tons per day for VOC and 12.60 tons per day for NO<sub>x</sub> for 2020 and also MVEBs of 11.5 tons per day for VOC and 40.6 tons per day of NO<sub>x</sub> for 2010. EPA is proposing to approve these MVEBs.

EPA is also proposing to approve into the Indiana SIP the VOC and NO<sub>x</sub> periodic inventories for 1999, 2002 and 2004, pursuant to section 182(a)(3)(A) under the 1-hour standard as well as the 2002 base year VOC and NO<sub>x</sub> emission inventories for Lake and Porter Counties, pursuant to section 182(a)(1) under the 8-hour standard.

EPA is also proposing to find that, if the 1-hour ozone standard is deemed to be reinstated, the Chicago-Gary-Lake County area has attained the 1-hour standard, and Lake and Porter Counties have met the requirements for and would also qualify for redesignation to attainment of the 1-hour ozone

standard. Thus, EPA proposes to find that if the 1-hour standard is reinstated, EPA would redesignate the area to attainment for the 1-hour standard. EPA further proposes to approve and to find that Indiana's maintenance plan for the 8-hour standard also provides for maintenance of the 1-hour standard.

#### X. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this proposed 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 of an area to attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator

certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### **Unfunded Mandates Reform Act**

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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

This proposed action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to affect the status of a geographical area does not impose any new requirements on sources, and to approve state rules, 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 proposes approval of a state rule implementing a federal standard.

#### **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 regulatory 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 (NTTAA), 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 impractical. In reviewing SIP 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 SIP 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. Therefore, the requirements of section 12(d) of the NTTA do not apply.

#### **Executive Order 12898: Environmental Justice**

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as appropriate, disproportionately high and adverse human health of environmental effects of their programs, policies, and activities on minority and low-income populations. Today's proposed actions would not result in the relaxation of control measures on existing sources and therefore would not cause emissions increases from those sources. Overall, emissions in the area are projected to decline following redesignation. Thus, these proposed actions would not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

#### **List of Subjects**

*40 CFR Part 52*

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

*40 CFR Part 81*

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

Dated: May 11, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

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