

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 17, 2006.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Maryland's attainment plan for the Metropolitan Washington, DC severe 1-hour ozone nonattainment area and rescinding earlier final rules starting sanctions clocks from may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: November 8, 2005. Donald S. Welsh,  
**Regional Administrator,**  
*Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart V—Maryland**

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for 1-hour Ozone Attainment Plan at the end of the table to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
1-hour Ozone Attainment Plan	Washington DC 1-hour ozone nonattainment area.	9/2/2003 2/24/2004	11/16/05 [Insert page number where the document begins].	

**§ 52.1073 [Amended]**

■ 3. Section 52.1073 is amended by removing and reserving paragraphs (f) and (g).

[FR Doc. 05-22700 Filed 11-15-05; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[R05-OAR-2005-IN-0008; FRL-7997-8]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** On August 25, 2005, the State of Indiana, through the Indiana Department of Environmental Management (IDEM), submitted: a request for EPA approval of a redesignation of Delaware County to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS); and a request for EPA approval of an Indiana State Implementation Plan (SIP) revision

containing a 10-year ozone maintenance plan for Delaware County. EPA is approving the State's requests.

EPA's approval of the redesignation request is based on the determination that Delaware County and the State of Indiana have met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that Delaware County has attained the 8-hour ozone standard. In conjunction with the approval of the redesignation request for Delaware County, EPA is approving the State's plan to maintain the attainment of the 8-hour ozone NAAQS through 2015 in this area as a revision to the Indiana SIP. EPA is also approving the 2015 Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO<sub>x</sub>) Motor Vehicle Emissions Budgets (MVEBs) for this area, as defined in the ozone maintenance plan, for purposes of transportation conformity.

**DATES:** This rule is effective on January 3, 2006, unless EPA receives adverse written comments by December 16, 2005. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit comments, identified by Regional Material in EDocket (RME) ID No. R05-OAR-2005-IN-0008, by one of the following methods:

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

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

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

*Fax:* (312) 886-5824.

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

*Hand delivery:* Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.

*Instructions:* Direct your comments to RME ID No. R05-OAR-2005-IN-0008. EPA's policy is that all comments received will be included in the public docket without change, 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 RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

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

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever

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

- I. EPA's Actions
  - A. What actions is EPA taking?
  - B. Do these actions apply to me?
  - C. What is the background for these actions?
- II. What Are the Criteria for Redesignation to Attainment?
- III. What Is the Effect of EPA's Actions?
- IV. What Is EPA's Analysis of the State's Request?
- V. Has Indiana Adopted Acceptable Motor Vehicle Emissions Budgets for the End of the 10-Year Maintenance Plan (for 2015) Which Can Be Used to Support Conformity Determinations?
  - A. How are the MVEBs developed and what are the MVEBs for Delaware County?
  - B. What is a safety margin?
  - C. Are the MVEBs approvable?
- VI. Final Actions
- VII. Statutory and Executive Order Reviews

#### I. EPA's Actions

##### A. What actions is EPA taking?

EPA is taking several related actions. EPA is determining that Delaware County has attained the 8-hour ozone NAAQS, and that it has met the requirements for redesignation to attainment of the 8-hour ozone NAAQS under section 107(d)(3)(E) of the CAA. EPA is, therefore, approving a request from the State of Indiana to change the designation of Delaware County from nonattainment to attainment for the 8-hour ozone NAAQS.

EPA is also approving Indiana's ozone maintenance plan for this area as a SIP revision. The maintenance plan is designed to keep Delaware County in attainment of the 8-hour ozone NAAQS for the next 10 years, through 2015. As supported by and consistent with the ozone maintenance plan, EPA is also approving the 2015 VOC and NO<sub>x</sub> MVEBs for Delaware County for conformity purposes.

##### B. Do these actions apply to me?

These actions pertain to the designation of Delaware County for the 8-hour ozone NAAQS and to the emission controls related to attainment and maintenance of the 8-hour ozone NAAQS in this area. The emissions of concern are VOC and NO<sub>x</sub>. If you own or operate a VOC or NO<sub>x</sub> emissions source in Delaware County or live in this area, this final action may impact or apply to you. It may also impact you if you are involved in transportation planning or implementation of emission controls in this area.

##### C. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997, the EPA promulgated an 8-hour ozone NAAQS (62 FR 38856) of 0.08 parts per million parts of air (0.08 ppm) (80 parts per billion (ppb)).<sup>1</sup> The 8-hour ozone standard replaces a prior 1-hour ozone NAAQS, which was promulgated on February 8, 1979 (44 FR 8202), and which was revoked on June 15, 2005. It should be noted that ground-level ozone is not directly emitted by 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."

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

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

In the April 30, 2004 designation rulemaking, EPA divided 8-hour ozone nonattainment areas into the categories of subpart 1 nonattainment (basic nonattainment areas) and subpart 2 nonattainment (classified nonattainment

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

areas) based on their 8-hour ozone design values (i.e., the three-year average annual fourth-highest daily maximum 8-hour ozone concentrations at the worst-case monitoring sites in the designated areas) and their 1-hour ozone design values (i.e., the fourth-highest daily maximum 1-hour ozone concentrations over the three-year period at the worst-case monitoring sites in the designated areas).<sup>2</sup> 8-hour ozone nonattainment areas with 1-hour ozone design values equaling or exceeding 121 ppb were designated as classified nonattainment areas (as nonattainment areas required to meet the requirements of subpart 2 of the CAA). All other 8-hour ozone nonattainment areas were designated as basic nonattainment areas.

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

On August 25, 2005, the State of Indiana requested redesignation of Delaware County to attainment for the 8-hour ozone NAAQS based on ozone data collected during the 2002–2004 period. This redesignation request was supplemented on October 20, 2005 with a clarification of the State's intent with regard to the triggering of contingency measures in the ozone maintenance plan for Delaware County. Today's final rule addresses the ozone redesignation request as modified.

## II. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation to attainment provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and

enforceable emissions reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, and other permanent and enforceable emissions reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and, (5) the State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 29, 1992 (57 FR 13498). EPA provided further guidance on processing redesignation requests in the following documents:

Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, June 18, 1990;

"Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

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

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

"State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; "Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

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

"Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry,

Acting Director, Air Quality Management Division, November 30, 1993;

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

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

## III. What Is the Effect of EPA's Actions?

Approval of this redesignation request would change the official designation of Delaware County for the 8-hour ozone NAAQS found at 40 CFR part 81 from nonattainment to attainment. This final rule would also incorporate into the Indiana SIP a plan for maintaining the 8-hour ozone NAAQS in the area through 2015. The maintenance plan includes contingency measures to remedy or prevent possible future violations of the 8-hour ozone NAAQS, and establishes MVEB's of 3.50 tons per day (tpd) for VOC and 4.82 tpd for NO<sub>x</sub> for Delaware County.

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

In this final rule, EPA: (1) Determines that Delaware County has attained the 8-hour ozone standard and approves the redesignation of Delaware County to attainment of the 8-hour ozone NAAQS; and, (2) approves the ozone maintenance plan and 2015 VOC and NO<sub>x</sub> MVEBs for this area. The bases for our determination and approvals are as follows:

### 1. Delaware County Has Attained the 8-Hour Ozone NAAQS

EPA has determined that Delaware County has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and Appendix I of 40 CFR part 50, based on the most recent three complete, consecutive calendar years of quality-assured air quality monitoring data at any monitoring site in the area. To attain this standard, the average of the annual fourth-high daily maximum 8-hour average ozone concentrations recorded at each monitor (the monitoring site's ozone design value) over the 3-year period must not exceed

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

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

the ozone standard. Based on the rounding convention described in 40 CFR part 50, Appendix I, the 8-hour ozone standard is attained if the area's ozone design value (highest ozone design value for all monitoring sites in the area) is 84 ppb or lower. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Aerometric Information Retrieval System (AIRS). The ozone monitors generally should

have remained at the same locations for the duration of the monitoring period required for demonstrating attainment (for three years or more).

As part of the August 25, 2005 ozone redesignation request, IDEM submitted summarized ozone monitoring data indicating the top four daily maximum 8-hour ozone concentrations for the sole monitoring site in Delaware County, Albany Elementary, for each year during the 2001–2004 period. These ozone

concentrations have been quality-assured and are a subset of the quality-assured ozone data stored in EPA's AIRS. The annual fourth-high 8-hour ozone monitoring concentrations and the three-year average fourth-high 8-hour ozone concentrations are summarized in Table 1. Of particular note is the three-year average for the 2002–2004 period, the air quality basis for the determination of attainment for Delaware County.

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

Site	Year	Fourth-high 8-hour concentration	Three-year average for ending year
Albany Elementary .....	2001	84	NA
Albany Elementary .....	2002	95	NA
Albany Elementary .....	2003	85	88
Albany Elementary .....	2004	70	83

These data show that the ozone design value (average annual fourth-high daily maximum 8-hour ozone concentration over a three-year period) for the only ozone monitoring site in Delaware County during the 2002–2004 period is below the 85 ppb 8-hour ozone standard violation cut-off. These data support the conclusion that Delaware County did not experience a monitored violation of the 8-hour ozone standard during the period of 2002–2004. Preliminary data through September of the 2005 ozone season show that Delaware County continues to attain the 8-hour ozone standard.

EPA believes that the data submitted by Indiana provide an adequate demonstration that Delaware County has attained the 8-hour ozone NAAQS.

Indiana has committed to continue ozone monitoring in Delaware County. IDEM commits to consult with the EPA prior to making any changes in this ozone monitoring.

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

We have determined that Indiana has met all currently applicable SIP requirements for purposes of redesignation of Delaware County under section 110 of the CAA (general SIP requirements). We have also determined that the Indiana SIP meets all SIP requirements currently applicable for purposes of redesignation under Part D of title I of the CAA (requirements specific to subpart 1 nonattainment areas). See section 107(d)(3)(E)(v) of the

CAA. In addition, we have determined that the Indiana SIP is fully approved with respect to requirements applicable for purposes of redesignation. See section 107(d)(3)(E)(ii) of the CAA. In making these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

a. *Delaware County has met all applicable requirements under section 110 and part D of the CAA.* The September 4, 1992 Calcagni memorandum (see “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, to qualify for redesignation of an area to attainment, the state and the area must meet the relevant CAA requirements that come due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993 Shapiro memorandum and 66 FR 12459, 12465–12466 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved,

but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

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

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO<sub>x</sub> SIP call, Clean Air Interstate Rule (CAIR)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

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

We believe that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no Part D requirements applicable for purposes of

redesignation under the 8-hour standard became due prior to submission of the redesignation requests. Therefore, as discussed above, for purposes of redesignation, they are not considered applicable requirements.

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

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

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

Since the State of Indiana has submitted a complete ozone redesignation request for Delaware County prior to the deadline for any submissions required for purposes of redesignation, we have determined that these requirements do not apply to Delaware County for purposes of redesignation.

*Section 176 conformity requirements.* Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that the Federally-supported and 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 revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that the CAA required the EPA to promulgate.

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

*Identification and Quantification of Allowable Emissions for Major New or Modified Stationary Sources.* EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR, since PSD requirements will apply after redesignation. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Indiana has demonstrated that Delaware County will be able to maintain the 8-hour ozone standard without part D NSR in effect, and therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in Delaware County upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. *Delaware County has a fully approved SIP under section 110(k) of the CAA.* EPA has fully approved the Indiana SIP for Delaware County under section 110(k) of the CAA for all

requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See the September 4, 1992 John Calcagni memorandum, page 3, *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998), *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001)) plus on any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003). Since the passage of the CAA of 1970, Indiana has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to Delaware County for the 1-hour ozone standard. No Delaware County-related SIP provisions are currently disapproved, conditionally approved, or partially approved. As indicated above, EPA believes that the section 110 elements not connected

with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are, therefore, not applicable requirements for purposes of redesignation.

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

EPA believes that the State of Indiana has demonstrated that the observed air quality improvement in Delaware County is due to permanent and

enforceable reductions in emissions resulting from the implementation of the SIP, Federal measures, and other state-adopted measures.

In making this demonstration, the State has documented the changes in VOC and NO<sub>x</sub> emissions for both Delaware County and for nine Central Indiana Counties (Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby), whose emissions are believed to substantially impact the air quality in Delaware County, for the years of 2000 and 2002.<sup>4</sup> 2000 is a year in which Delaware was in violation of the 8-hour ozone standard, and 2002 is the first year of the three-year period in which Delaware County attained the 8-hour ozone standard.

A comparison of the VOC and NO<sub>x</sub> emissions for Delaware County and the Central Indiana Counties for 2000 and 2002 is summarized in Tables 2 and 3.

TABLE 2.—VOC EMISSIONS IN DELAWARE COUNTY AND CENTRAL INDIANA COUNTIES IN 2000 AND 2002 IN TONS PER YEAR

County	2000	2002
Delaware .....	396	300
Boone .....	22	9
Hamilton .....	197	148
Hancock .....	319	178
Hendricks .....	45	37
Johnson .....	1,006	494
Madison .....	414	485
Marion .....	3,115	2,100
Morgan .....	37	112
Shelby .....	859	914
Totals .....	6,410	4,777

TABLE 3.—NO<sub>x</sub> EMISSIONS IN DELAWARE COUNTY AND CENTRAL INDIANA COUNTIES IN 2000 AND 2002 IN TONS PER YEAR

County	2000	2002
Delaware .....	300	186
Boone .....	0	0
Hamilton .....	2155	1193
Hancock .....	84	58
Hendricks .....	124	2
Johnson .....	10	8
Madison .....	434	326
Marion .....	12718	12056
Morgan .....	4603	4743
Shelby .....	2681	1591
Totals .....	23109	20163

In the above tables, the most relevant emissions are those for Delaware County. These data show that the local VOC and NO<sub>x</sub> emissions have declined

between 2000, a year preceding the 2001–2003 violation period with emissions indicative of the emissions at the start of the ozone violation period,

and 2002, one of the years in the three-year attainment period.

The Central Indiana Counties are generally upwind of Delaware County

<sup>4</sup> Emissions data for years after 2002 are not available for all sources. Note that 2002 is part of the three-year period in which Delaware County has

attained the 8-hour ozone standard, and, therefore, can be considered to be an attainment year for purposes of demonstrating the connection between

emissions and the improvement in air quality and for demonstrating maintenance of the 8-hour ozone standard.

on high-ozone days. The cumulative VOC and NO<sub>x</sub> emissions reductions in these Counties have contributed to the observed air quality improvement in Delaware County. Past ozone data analyses and ozone modeling conducted by the States in the Lake Michigan Air Directors Consortium (LADCO) have demonstrated that peak ozone levels throughout the Upper Midwest are significantly impacted by pollutant transport from upwind areas. Therefore, regional emissions reductions are assumed to have contributed to the air quality improvement in Delaware County.

IDEM notes that the NO<sub>x</sub> emissions in this area (Delaware County and the Central Indiana Counties) are decreasing primarily in response to national emission control programs affecting all Electric Generating Units (EGUs), including the acid rain control program and the NO<sub>x</sub> SIP call. The VOC reduction in Delaware County is due to a plant closure, which IDEM considers to be permanent and enforceable. The VOC emissions reduction in Marion County is primarily due to mobile source emission controls, including the Federal Motor Vehicle Emissions Control Program, and to implementation of emission controls on stationary sources.

#### Emission Control Measures Implemented in Delaware County

To support the conclusion that the air quality improvement in Delaware County is due to permanent and enforceable emission reductions, IDEM documented the emission controls that have been implemented in Delaware County and in nearby, upwind Counties. The following discusses the emission controls that have been implemented in this area:

a. *Reasonably Available Control Technology (RACT)*. IDEM notes that Delaware County was not previously required to be covered by RACT rules for existing sources under the CAA. Statewide RACT rules, however, have been required by Indiana and implemented through the following RACT rules:

326 IAC 8-1-6 Best Available Control Technology (BACT) for some Sources;

326 IAC 8-2 Surface Coating Emission Limitations;

326 IAC 8-3 Organic Solvent Degreasing Operations;

326 IAC 8-4 Petroleum Sources; 326 IAC 8-5 Miscellaneous Operations;

326 IAC 8-6 Organic Solvent Emission Limitations;

326 IAC 8-8.1 Landfill Emission Controls; and,

326 IAC 8-10 Auto Body Refinishing.

b. *NO<sub>x</sub> Rules*. Under EPA's NO<sub>x</sub> SIP call, Indiana was required to adopt and implement NO<sub>x</sub> emission control requirements for EGUs, industrial boilers, and cement kilns. Indiana has adopted the required emission control rules. Emission reductions resulting from these rules were required to begin in 2004, and should ultimately reduce NO<sub>x</sub> emissions by 31 percent statewide, with the emission reductions increasing through 2007. Note that statewide NO<sub>x</sub> emissions actually began to decline in 2002 as sources phased in emission controls needed to comply with the State's NO<sub>x</sub> emission control regulations. From 2004 on, NO<sub>x</sub> emissions from EGUs are capped at a statewide total well below pre-2002 levels. As noted below, NO<sub>x</sub> emissions are expected to decline further as the State meets the requirements of EPA's Phase II NO<sub>x</sub> SIP call.

c. *Federal Emission Control Measures*. Reductions in VOC and NO<sub>x</sub> emissions have occurred statewide as a result of Federal emission control measures, with additional emission reductions expected to occur in the future as additional emission controls are implemented. The Federal emission control measures have included: (1) National low emission vehicle standards; (2) Tier II emission standards for vehicles; (3) gasoline sulfur limits; and, (4) heavy-duty diesel engine standards. In addition, in 2004, EPA issued the Clean Air Non-road Diesel Rule. This rule will reduce off-road diesel emissions through 2010, with emission reductions starting in 2008.

Based on the information summarized above, we conclude that Indiana has adequately demonstrated that emissions have declined between 2000 and 2002 in Delaware County and in its upwind counties as a result of permanent and enforceable emission controls. Available ozone modeling (see the discussion of available ozone modeling in the section addressing the ozone maintenance plan below) shows that local VOC emission reductions and regional NO<sub>x</sub> emission reductions lead to lower ozone levels in this area. Based on this observation and the documentation of the emission reductions between 2000 and 2002, we conclude that the VOC and NO<sub>x</sub> emission reductions that occurred between 2000 and 2002 have contributed to the reduction in peak ozone levels that have been observed in Delaware County between the periods of 2001-2003 and 2002-2004.

#### 4. Delaware County Has a Fully Approvable Ozone Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with the request for the redesignation of Delaware County to attainment of the 8-hour ozone NAAQS, IDEM submitted a requested SIP revision to provide for maintenance of the 8-hour ozone NAAQS in Delaware County for at least 10 years after the redesignation of this area to attainment of the NAAQS, through 2015.

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

Section 175A of the CAA sets forth the required elements of maintenance plans for areas seeking redesignation from nonattainment to attainment. Under section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves the redesignation to attainment. The State must submit a revised maintenance plan eight years after the redesignation which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the 8-hour ozone maintenance plan must contain contingency measures, with a schedule for implementation, as EPA deems necessary, to assure prompt correction of any future ozone standard violation.

The September 4, 1992 John Calcagni memorandum provides additional guidance on the content of maintenance plans. An ozone maintenance plan should address the following items: (1) The attainment VOC and NO<sub>x</sub> emissions inventories; (2) a maintenance demonstration showing maintenance for the ten 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 of the NAAQS; and,

(5) a contingency plan to prevent or correct future violations of the NAAQS.

##### b. Attainment Emissions Inventories

IDEM prepared and documented comprehensive VOC and NO<sub>x</sub> emissions inventories for Delaware County and the Central Indiana Counties for 2002, the base/attainment year. These emissions include point (significant stationary sources), area (smaller stationary sources and widely-distributed sources), mobile on-road, and mobile non-road sources.

To develop the attainment year emissions inventories, IDEM used the

following approaches and sources of data:

**Area Sources**—Area source VOC and NO<sub>x</sub> emissions were taken from the Indiana 2002 periodic emissions inventory, which was previously submitted to the EPA. The area source emission estimates were derived using United States Department of Commerce Bureau of Economic Analysis (BEA) growth factors to project emissions to 2002 from prior years.

**Mobile On-Road Sources**—Mobile on-road emissions were calculated using MOBILE6 emission factors. Traffic data (vehicle miles traveled, vehicle speeds, and vehicle type and age distributions) for 2002 were calculated using the travel demand model and post-processor provided by the Delaware-Muncie Municipal Planning Commission (DMMPCC). IDEM has provided detailed data summaries to document the calculation of mobile on-road VOC and NO<sub>x</sub> emissions for 2002, as well as for the projection years of 2010 and 2015 (further discussed below).

**Point Source Emissions**—2002 point source emissions were compiled from IDEM's 2002 annual emissions

statement database and from the 2002 EPA Air Markets acid rain emissions inventory database.

**Mobile Non-Road Emissions**—Non-road mobile source emissions were generated by the EPA and documented in the 2002 National Emissions Inventory (NEI). In addition to the data taken from the NEI, IDEM also considered updated and revised emissions obtained from LADCO. IDEM also used data supplied by LADCO contractors to determine and assign emissions by county for railroads, recreational motorboats, and construction equipment. The emissions from construction equipment were revised based on surveys completed in the Midwest.

The 2002 attainment year VOC and NO<sub>x</sub> emissions for Delaware County are summarized along with the 2010 and 2015 projected emissions for Delaware County in Table 4 below. It is our conclusion that the State has adequately derived and documented the attainment year VOC and NO<sub>x</sub> emissions for this area.

c. Demonstration of Maintenance

As part of its August 25, 2005 ozone redesignation request submittal, IDEM requested revision of the SIP to include a 10-year ozone maintenance plan as required by section 175A of the CAA. This submission shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO<sub>x</sub> remain at or below the attainment year emissions levels.<sup>5</sup> Note that a maintenance demonstration may be based on projected emissions and need not be based on ozone modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001) and 68 FR 25430–25432 (May 12, 2003).

Table 4 summarizes the VOC and NO<sub>x</sub> emissions for Delaware County for 2002, 2010, and 2015 in Tons Per Summer Day (TPSD). IDEM chose 2010 as an interim year in the 10-year maintenance demonstration period to show that the VOC and NO<sub>x</sub> emissions are not projected to increase above the 2002 attainment levels in the middle of the 10-year period.

TABLE 4.—ATTAINMENT YEAR (2002) AND PROJECTED VOC AND NO<sub>x</sub> EMISSIONS IN DELAWARE COUNTY (TPSD)

Source sector	VOC			NO <sub>x</sub>		
	2002	2010	2015	2002	2010	2015
Point .....	0.83	1.00	1.17	0.35	0.37	0.39
Area .....	9.79	11.48	12.67	1.43	1.54	1.58
On-Road .....	8.19	4.69	3.33	13.89	7.66	4.59
Non-Road .....	9.23	5.43	5.28	4.11	3.29	2.74
Total .....	28.04	22.60	22.45	19.78	12.86	9.30

The emission projections show that in Delaware County, emissions are not expected to exceed the levels of the 2002 attainment year inventory during the 10-year maintenance period. Delaware County VOC and NO<sub>x</sub> emissions are projected to decrease by 5.59 TPSD and 10.48 TPSD, respectively, between 2002 and 2015.

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

**Modeling support for the impact of emission changes on air quality and further improvements in air quality.** IDEM notes that, although ozone modeling is not required to support ozone redesignation requests, a significant amount of ozone modeling data exist that support the connection between emission reductions and air quality improvement, including ozone modeling data that support a demonstration of maintenance for Delaware County. IDEM notes that the available ozone modeling data demonstrate that Delaware County is significantly impacted by ozone and ozone precursor transport and that regional NO<sub>x</sub> emission reductions are significantly beneficial for reducing 8-

hour ozone concentrations in Delaware County.

IDEM draws the following conclusions from the various ozone modeling analyses that have addressed the Midwest:

i. **EPA Modeling Analyses for the Heavy Duty Engine Rule.** EPA conducted ozone modeling for the Tier II vehicles and low-sulfur fuels to support the final rulemaking for the Heavy Duty Engine (HDE) standards and highway diesel fuel rule (Tier II/Low Sulfur Fuel Rule). This modeling, in part, addressed ozone levels in Delaware County and the Central Indiana Counties. A base year of 1996 was modeled, and impacts of fuel changes and the NO<sub>x</sub> SIP call were

<sup>5</sup> The attainment year can be any year of the three consecutive years where the area has recorded clean air quality data (2002, 2003, or 2004 for Delaware County). 2002 is the recommended base year for ozone attainment and rate-of-progress

demonstrations, as discussed in a November 18, 2002 memorandum, "2002 Base Year Emission Inventory SIP planning: 8-hr Ozone, PM<sub>2.5</sub> and Regional Haze Programs," from Lydia N. Wegman, Director, Air Quality Strategies and Standards

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

modeled using high ozone episodes in 1995. The modeling supports the conclusion that the fuel improvements and the NO<sub>x</sub> SIP call should result in significant ozone improvements (lower projected ozone concentrations) in Delaware County and in the Central Indiana Counties. Using the modeling results to determine Relative Reduction Factors (RRFs)<sup>6</sup> and considering the 2001–2003 ozone design value (88 ppb) for the Albany Elementary monitoring site, IDEM projected the 2007 ozone design value for the Albany Elementary monitor to be 81.4 ppb. Therefore, the NO<sub>x</sub> SIP call and fuel modifications considered in the ozone modeling were found to significantly improve the ozone levels in Delaware County.

ii. *LADCO Modeling Analysis for the 8-Hour Ozone Standard Assessment.* LADCO has performed ozone modeling to evaluate the effects of the NO<sub>x</sub> SIP call and Tier II/Low Sulfur Fuel Rule on 2007 ozone levels in the Lake Michigan area, which includes Delaware County and the Central Indiana Counties. Like the EPA modeling discussed above, this modeling indicates that the ozone design value for the Albany Elementary monitoring site would be significantly reduced by 2007 as the result of implementing the NO<sub>x</sub> SIP call and the Tier II/Low Sulfur Fuel Rule.

The modeling results indicate that ozone levels will continue to drop in Delaware County as the modeled emission control programs are implemented. It should be noted that the improved air quality resulting from the existing Federal rules will be supplemented by additional emission reductions resulting from the implementation of the Clean Air Interstate Rule (CAIR) promulgated by the EPA on March 10, 2005, 70 FR 25161. CAIR is expected to further reduce the transport of NO<sub>x</sub> and ozone into Delaware County as the result of decreased NO<sub>x</sub> emissions outside of Delaware County.

#### d. Monitoring Network

Indiana currently operates one ozone monitor in Delaware County. IDEM has committed to continue operating and maintaining an approved ozone monitor in Delaware County.

<sup>6</sup> Relative Reduction Factors are fractional changes in peak ozone concentrations projected to occur as the result of changes in ozone precursor emissions resulting from the implementation of emission control strategies. Relative Reduction Factors derived through the ozone modeling area applied to monitored peak ozone concentrations to project post-control peak ozone levels.

#### e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in Delaware County depends, in part, on the State's tracking of indicators of continued attainment during the maintenance period. The State's plan for verifying continued attainment of the 8-hour standard in Delaware County consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. In addition, IDEM will periodically revise and review the VOC and NO<sub>x</sub> emissions inventories for Delaware County to ensure that emissions growth is not threatening the continued attainment of the 8-hour ozone standard. Emissions inventories will be revised for 2005, 2008, and 2011, as necessary to comply with the emissions inventory reporting requirements of the CAA. The updated emissions inventories will be compared to the 2002 emissions inventories to assess emission trends and assure continued attainment of the 8-hour ozone standard.

#### f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

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

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

An Action Level response will occur when a two-year average annual fourth-high monitored daily peak 8-hour ozone concentration of 85 ppb or greater occurs at any monitor in the ozone maintenance area or when a violation of the 8-hour ozone standard occurs at any monitor in the ozone maintenance area (Delaware County).<sup>7</sup> In this situation, IDEM will determine the additional emission control measures needed to assure future attainment of the 8-hour ozone NAAQS. IDEM will focus on emission control measures that can be implemented in a short time, and selected emission control measures will be adopted and implemented within 18 months from the close of the ozone season with ozone monitoring data that prompted the Action Level response. Adoption of any additional emission control measures will be subject to the necessary administrative and legal procedures, including publication of notices and the opportunity for public comment and response. If a new emission control measure is adopted by

<sup>7</sup> On October 20, 2005, IDEM submitted a letter which verified the State's intent to activate an Action Level response in the event of a violation of the 8-hour ozone NAAQS in several areas, including Delaware County. The ozone maintenance plan submitted on August 25, 2005 could be interpreted to require an Action Level response only in the event that the average annual fourth-high daily maximum 8-hour ozone concentration equaled 85 ppb. Therefore, a violation of the 8-hour ozone standard would theoretically not have triggered an Action Level response under certain circumstances. The October 20, 2005 submittal rectified this potential problem.

the State (independent of the ozone contingency needs) or is adopted at a Federal level and is scheduled for implementation in a time frame that will mitigate an ozone air quality problem, IDEM will determine whether this emission control measure is sufficient to address the ozone air quality problem. If IDEM determines that existing or soon-to-be-implemented emissions control measures are adequate to correct the ozone standard violation problem, IDEM may determine that additional emission control measures at the State level may be unnecessary. Regardless, IDEM will submit to the EPA an analysis to demonstrate that proposed emission control measures are adequate to provide for future attainment of the 8-hour ozone NAAQS in a timely manner. EPA notes that it is construing this provision to require that any non-federal control measure relied upon in lieu of a contingency measure will be adopted by the State for inclusion in the State SIP and will be submitted to EPA for approval as a revision of the SIP.

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

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

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

B. Transit improvements;

C. Traffic flow improvements; and

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

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

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

- ix. VOC or NO<sub>x</sub> emission offsets for new or modified major sources;
- x. VOC or NO<sub>x</sub> emission offsets for new or modified minor sources;
- xi. Increased ratio of the emission offset required for new sources; and,
- xii. VOC or NO<sub>x</sub> emission controls on new minor sources (with VOC or NO<sub>x</sub> emissions less than 100 tons per year).

#### g. Provisions for Future Updates of the Ozone Maintenance Plan

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

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Indiana for Delaware County meets the requirements of section 175A of the CAA, and, therefore is approved.

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

#### A. How are MVEBs developed and what are the MVEBs for Delaware County?

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

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation

system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB if needed.

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

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

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and (3) making a finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change" published on July 1, 2004 (69 FR 40004). EPA follows this guidance and

rulemaking in making its adequacy determinations.

Delaware County's 10-year maintenance plan submission contains new VOC and NO<sub>x</sub> MVEBs for 2015. The availability of the SIP submissions with these 2015 MVEBs was announced for public comment on EPA's adequacy Web page on August 2, 2005, at: <http://www.epa.gov/otaq/transp/conform/cursips.htm>. The EPA public comment period on adequacy of the 2015 MVEBs for Delaware County closed on September 1, 2005. No requests for this submittal or adverse comments on this submittal were received during the adequacy comment period. On November 7, 2005, EPA informed the State of Indiana, through a letter, that the 2015 MVEBs are adequate for the purposes of transportation conformity analyses.

EPA, through this rulemaking, is approving the MVEBs for use to determine transportation conformity in Delaware County because EPA has determined that the area can maintain attainment of the 8-hour ozone NAAQS for the relevant 10-year period with mobile source emissions at the levels of the MVEBs. IDEM has determined the 2015 MVEBs for Delaware County to be 3.50 tpd for VOC and 4.82 tpd 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 2015, as summarized in Table 4 above ("on-road" source sector). IDEM decided to include safety margins (described further below) of 0.17 tpd of VOC and 0.23 tpd for NO<sub>x</sub> in the MVEBs to provide for mobile source growth. Indiana has demonstrated that Delaware County can maintain the 8-hour ozone NAAQS with mobile source emissions of 3.50 tpd of VOC and 4.82 tpd of NO<sub>x</sub> in 2015, including the allocated safety margins, since emissions will still remain under attainment year emission levels.

#### B. What is a safety margin?

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 4, Delaware County VOC and NO<sub>x</sub> emissions are projected to have safety margins of 5.59 tpd for VOC and 10.48 tpd for NO<sub>x</sub> in 2015 (the difference between the attainment year, 2002, emissions and the 2015 emissions for all sources in Delaware County). Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

The MVEBs requested by IDEM contain safety margins for mobile sources significantly smaller than the allowable safety margins reflected in the total emissions for Delaware County. The State is not requesting allocation of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the State is requesting MVEBs that exceed the on-road mobile source emissions for 2015 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

#### C. Are the MVEBs approvable?

The VOC and NO<sub>x</sub> MVEBs for Delaware County are approvable because they maintain the total emissions for Delaware County at or below the attainment year inventory levels, as required by the transportation conformity regulations.

#### VI. Final Actions

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

EPA is also approving the maintenance plan SIP revision for Delaware County. Approval of the maintenance plan is based on Indiana's demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. Additionally, EPA is finding adequate and approving the 2015 MVEBs submitted by Indiana in conjunction with the redesignation request.

We are publishing these actions without prior proposal because we view these actions as non-controversial and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be

effective January 3, 2006 without further notice unless we receive relevant adverse written comments by December 16, 2005. If we receive such comments, we will publish a timely withdrawal of the action, informing the public that the rule will not take effect. EPA will respond to the public comments in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period.

Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective January 3, 2006.

#### VII. Statutory and Executive Order Reviews

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

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

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

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

##### *Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

##### *Unfunded Mandates Reform Act*

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

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

*Executive Order 13132 Federalism*

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

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

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

*National Technology Transfer Advancement Act*

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

geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

*Paperwork Reduction Act*

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

**Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 17, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

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

*40 CFR Part 81*

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

Dated: November 9, 2005.

**Margaret Guerriero,**

*Acting Regional Administrator, Region 5.*

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

**PART 52—[AMENDED]**

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

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

**Subpart P—Indiana**

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

**§ 52.777 Control strategy: photochemical oxidants (hydrocarbons).**

\* \* \* \* \*

(cc) Approval—On August 25, 2005, Indiana submitted a request to redesignate Delaware County to attainment of the 8-hour ozone National Ambient Air Quality Standard. This request was supplemented with a submittal dated October 20, 2005. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. Also included were motor vehicle emission budgets for use to determine transportation conformity in Delaware County. The 2015 motor vehicle emission budgets for Delaware County are 3.50 tons per day for VOC and 4.82 tons per day for NO<sub>x</sub>.

**PART 81—[AMENDED]**

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

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

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

**§ 81.315 Indiana.**

\* \* \* \* \*

INDIANA OZONE  
[8-Hour standard]

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Muncie, IN: .....	1/3/06	Attainment .....		
Delaware County .....				

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

[FR Doc. 05-22696 Filed 11-15-05; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[VA139-5073a; FRL-7997-6]

**Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Virginia; Control of Emissions From Hospital/Medical/ Infectious Waste Incinerator Units; Correction**

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

**ACTION:** Direct final rule; correcting amendment.

**SUMMARY:** This document corrects an error in the rule Summary language of a final rule pertaining to EPA's approval of the Commonwealth of Virginia hospital/medical/infectious waste incinerator (HMIWI) section 111(d)/129 plan submitted by the Virginia Department of Environmental Quality (DEQ).

**DATES:** *Effective* November 16, 2005.

**FOR FURTHER INFORMATION CONTACT:** James B. Topsale, at (215) 814-2190 or by e-mail at [topsale.jim@epamail.epa.gov](mailto:topsale.jim@epamail.epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever "we," or "our" are used we mean EPA. On September 10, 2004 (69 FR 54753), we published a final rulemaking action announcing our approval of the Commonwealth of Virginia hospital/medical/infectious waste incinerator (HMIWI) section 111(d)/129 plan. In that document, we inadvertently included language relating to commercial and industrial solid waste incinerator units in the rule Summary. The intent of the rule Summary was to briefly describe the applicability and

scope of the rule. This action corrects the erroneous language.

In rule document 04-20429 published in the **Federal Register** on September 10, 2004 (69 FR 54753), on page 54753 of the Summary, first column, revise the third sentence to read, "The plan establishes emission limits, monitoring, operating, and recordkeeping requirements for HMIWI units for which construction commenced on or before June 20, 1996." This revision is consistent with the promulgated Identification of Sources Provision, section 62.11626, of the noted rule and the related emissions guidelines under 40 CFR part 60, subpart Ce.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

**Statutory and Executive Order Reviews**

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001)). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any

other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does 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), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of