

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 81**

[EPA-R05-OAR-2005-IN-0006; FRL-8015-7]

**Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Evansville Area To Attainment of the 8-Hour Ozone Standard****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is determining that the Evansville 8-hour ozone nonattainment area (Evansville area) has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Evansville area includes Vanderburgh and Warrick Counties. EPA is approving a request from the State of Indiana, submitted on June 2, 2005, to redesignate the Evansville area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA's approval of the redesignation request is based on the determination that the Evansville area and the State of Indiana have met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA), including the determination that the Evansville area has attained the 8-hour ozone standard. In conjunction with this approval, EPA is approving the State's plan for maintaining the 8-hour ozone NAAQS in the Evansville area through 2015 as a revision to the Indiana State Implementation Plan (SIP). EPA also finds as adequate and approves the 2015 Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO<sub>x</sub>) Motor Vehicle Emission Budgets (MVEBs) for the Evansville area contained in the Evansville area ozone maintenance plan.

**DATES:** This rule is effective on January 30, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2005-IN-0006. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty, Environmental Scientist, at (312) 886-6057 before visiting the Region 5 office.

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

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

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). This standard is violated in an area when any ozone monitor in the area records an average of the annual fourth-highest daily maximum 8-hour ozone concentrations equaling or exceeding 0.085 ppm over a three-year period. Ground-level ozone is not emitted directly by sources. Rather, emitted VOC and NO<sub>x</sub> react in the presence of sunlight to form ground-level ozone along with other secondary compounds. VOC and NO<sub>x</sub> are referred to as "ozone precursors."

In accordance with section 107(d) of the CAA as amended in 1977, EPA

designated the Evansville area (Vanderburgh and Warrick Counties) as an ozone nonattainment area for the 8-hour ozone NAAQS based on ozone data collected in this area during the 2001-2003 period. The **Federal Register** notice making this designation was signed on April 15, 2004, and was published on April 30, 2004 (69 FR 23857).

The Clean Air Act contains two sets of provisions—subpart 1 and subpart 2—that address planning and emission control requirements for nonattainment areas (both subparts are found in title I, part D of the CAA). Subpart 1 contains general, less prescriptive requirements for nonattainment areas governed by any 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.

In the April 30, 2004 ozone designation rulemaking, EPA divided 8-hour ozone nonattainment areas into the categories of subpart 1 nonattainment and subpart 2 nonattainment 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 ozone 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>1</sup> 8-hour ozone nonattainment areas with 1-hour ozone design values equaling or exceeding 0.121 ppm were designated as classified nonattainment areas (as nonattainment areas required to meet the requirements of subpart 2 of the CAA). All other 8-hour nonattainment areas were designated as "basic" nonattainment areas subject only to the requirements of subpart 1 of the CAA.

In the April 30, 2004 designation rulemaking, the Evansville area was designated as nonattainment for the 8-hour ozone standard, and was identified as a subpart 1 basic nonattainment area. This designation was based on ozone data collected in the Evansville area during the period of 2001-2003.

On June 2, 2005, the State of Indiana requested redesignation of the

<sup>1</sup> The 1-hour ozone standard, 0.12 ppm, has been replaced by the 8-hour ozone standard, with the 1-hour ozone standard being revoked on June 15, 2005.

Evansville area to attainment of the 8-hour ozone NAAQS based on ozone data collected during the period of 2002–2004. This redesignation request also included a 10-year ozone maintenance plan for the Evansville area and VOC and NO<sub>x</sub> MVEBs for the Evansville area based on emission projections in the ozone maintenance plan.

On September 9, 2005, EPA published a proposed rule (70 FR 53605), proposing to: (1) Determine that the Evansville area has attained the 8-hour ozone NAAQS and to approve Indiana's request to redesignate the Evansville area to attainment of the 8-hour ozone NAAQS; (2) approve Indiana's ozone maintenance plan for the Evansville area; and (3) approve the 2015 VOC and NO<sub>x</sub> MVEBs for the Evansville area and notify the public that these MVEBs are adequate for purposes of transportation conformity. This proposed rule established a 30-day public comment period. EPA received several requests for a hearing and for extension of the comment period on the proposed rule. EPA denied the requests for the hearing, stating it believed that the opportunity to submit written comments provided an adequate opportunity for public input. EPA did, however, grant a seven-day extension to the public comment period. See 70 FR 58167 (October 5, 2005).

## II. What Actions Are We Taking and When Are They Effective?

After consideration of the comments received in response to the September 9, 2005 proposed rule, as described in section V below, and the State's final adopted SIP revision and supporting material (reviewed in detail in the September 9, 2005 proposed rule), we are taking the following actions:

### A. Determination of Attainment and Redesignation of the Evansville Area To Attainment of the 8-Hour Ozone NAAQS

In the September 9, 2005 proposed rule (70 FR 53605), EPA proposed to determine that the Evansville area had attained the 8-hour ozone NAAQS and to approve Indiana's request to redesignate this area to attainment of the 8-hour ozone NAAQS. These proposed actions were based on ozone data from the period of 2002–2004 and on the State's demonstration that the criteria for redesignation to attainment, as specified in section 107 of the Clean Air Act, had been satisfied. EPA has reviewed the ambient monitoring data for ozone consistent with the requirements contained in 40 CFR part 58 and recorded in EPA's Aerometric

Information Retrieval System (AIRS) for the Evansville area for both the 2002–2004 ozone seasons and the 2003–2005<sup>2</sup> ozone seasons. On the basis of this review, EPA has determined that the area has attained the 8-hour ozone standard. Review of the ozone data, the State's submissions, and the public comments for and against the redesignation (see section V below) lead us to the conclusion that: (1) The Evansville ozone nonattainment area has attained the 8-hour ozone standard; and (2) the State of Indiana has met the criteria for redesignation of the Evansville area to attainment of the 8-hour ozone NAAQS. Therefore, in this final rule, we are finalizing our determination of attainment, and we are approving Indiana's request for redesignation of the Evansville area to attainment of the 8-hour ozone NAAQS.

The State must continue to operate an appropriate ozone monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the Evansville area. The air quality data relied on to determine that the area continues to attain the ozone NAAQS must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and must be recorded in EPA's AIRS.

### B. Approval of Indiana's Ozone Maintenance Plan for the Evansville Area

EPA is approving Indiana's plan for maintaining the 8-hour ozone NAAQS in the Evansville area through 2015 as a revision to the Indiana SIP. The maintenance plan meets the requirements of sections 175A and 107(d) of the Clean Air Act. The adopted maintenance plan contains triggering mechanisms and contingency measures designed to promptly correct (or prevent) a violation of the 8-hour ozone NAAQS occurring after redesignation of the Evansville area to attainment of the NAAQS. Section 175A of the Clean Air Act 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 occurs after redesignation.

The contingency measures listed in the adopted maintenance plan include, but are not limited to, the following:

1. Lower Reid vapor pressure gasoline requirements;<sup>3</sup>
2. Broader geographic applicability of existing emission control measures;
3. Tightened Reasonably Available Control Technology (RACT) requirements on existing sources covered by EPA Control Technique Guidelines (CTGs) issued in response to the 1990 Clean Air Act amendments;
4. Application of RACT to smaller existing sources;
5. Vehicle Inspection and Maintenance (I/M);
6. One or more Transportation Control Measures (TCM) sufficient to achieve at least a 0.5 percent reduction in actual area-wide VOC emissions;
7. Alternative fuel and diesel retrofit programs for fleet vehicle operations;
8. Controls on consumer products consistent with those adopted elsewhere in the United States;
9. VOC and NO<sub>x</sub> emission offsets for new or modified sources;
10. Increased ratio of the emission offset required for new sources; and,
11. VOC and NO<sub>x</sub> emission controls on new minor sources (with VOC or NO<sub>x</sub> emissions less than 100 tons per year).

Consideration and selection of one or more of the contingency measures will take place when a two-year average annual fourth-high monitored daily peak 8-hour ozone concentration of 0.085 ppm or a violation of the 8-hour ozone NAAQS<sup>4</sup> is recorded at any monitor in the Evansville area after the redesignation of the Evansville area to attainment of the ozone NAAQS. The selected contingency measures will be adopted and implemented within 18 months after the close of the ozone season with the ozone data that trigger the need for the implementation of the contingency measure(s).

The maintenance plan estimates emissions through 2015, ten years after the year in which the State anticipated that EPA would complete rulemaking on the State's ozone redesignation request, as required by section 175A of the Clean Air Act. These VOC and NO<sub>x</sub> emission estimates are for point, area, and mobile sources in the Evansville area. The emissions estimates

<sup>3</sup> Prior to implementing lower Reid vapor pressure gasoline requirements, the State of Indiana would have to be granted a waiver to address preemption requirements under section 211(c)(4)(C) of the Clean Air Act.

<sup>4</sup> On October 20, 2005, the Indiana Department of Environmental Management submitted a letter verifying the State's intent to implement an "Action Level Response" and the triggering of a requirement to select and implement contingency measures in the event of a violation of the 8-hour ozone NAAQS in several areas, including Vanderburgh and Warrick Counties.

<sup>2</sup> The 2005 ozone data have not been entered into AIRS, but have been quality assured by the State. The State has submitted a summary of the peak 2005 8-hour ozone concentrations at the request of the EPA to respond to public comments addressed in this final rule.

demonstrate continued maintenance of the 8-hour ozone standard through 2015. The latest available emissions information was used to project the emissions. The mobile source emissions estimates were developed using the MOBILE6 emission factor model. The State has committed to update the maintenance plan and maintenance demonstration eight years after the redesignation of the Evansville area to attainment of the 8-hour ozone NAAQS to demonstrate maintenance of the standard for an additional ten years, through 2025.

#### *C. Approval and Finding of Adequacy of VOC and NO<sub>x</sub> Motor Vehicle Emission Budgets for the Evansville Area*

EPA finds as adequate and approves the 2015 MVEBs of 4.20 tons per day for VOC and 5.40 tons per day for NO<sub>x</sub> for the Evansville area in the State-adopted ozone maintenance plan. These MVEBs have been addressed through the appropriate public involvement and review process without receiving adverse comment. These MVEBs meet the adequacy criteria, 40 CFR 93.118(e)(4), and are approvable as part of the 8-hour ozone maintenance plan. The approved 2015 MVEBs will replace the MVEBs currently used for transportation conformity analyses and demonstrations, as detailed in our September 9, 2005 proposed rule, upon the effective date of this rule. The newer MVEBs, which are being approved as part of the 8-hour ozone maintenance plan, are consistent with the goals of section 110(l) of the Clean Air Act because they set a tighter cap on mobile source VOC and NO<sub>x</sub> emissions for transportation conformity purposes, thereby limiting growth in mobile source emissions allowed in the area's transportation plan.

Subsequent to the effective date of this rule, the State of Indiana and local planning agencies in the Evansville area will have to use the 2015 MVEBs in all transportation conformity analyses and demonstrations.

#### *D. Effective Date of These Actions*

These actions will become effective 30 days after today's publication of this final rule in the **Federal Register**.

### **III. Why Are We Taking These Actions?**

EPA has determined that the Evansville area has attained the 8-hour ozone standard. EPA has determined that the State of Indiana has demonstrated that all other criteria for the redesignation of the Evansville area from nonattainment to attainment of the 8-hour ozone NAAQS have been met. EPA is fully approving the ozone

maintenance plan for the Evansville area as meeting the requirements of sections 175A and 107(d) of the Clean Air Act.

In the September 9, 2005 proposed rule at 70 FR 53606, EPA described the applicable criteria for redesignation to attainment. Specifically, section 107(d)(3)(E) of the Clean Air Act allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the Clean Air Act; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the implementation of the applicable state implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the Clean Air Act; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the Clean Air Act.

EPA has determined that the Evansville area has attained the 8-hour ozone NAAQS. EPA has approved all requirements in the Indiana SIP applicable to the Evansville area under section 110(k) of the Clean Air Act for purposes of redesignation. EPA has determined that the improvement in ozone air quality in the Evansville area is due to permanent and enforceable emission reductions resulting from the implementation of the Indiana SIP, applicable Federal air pollution control regulations, and other permanent and enforceable emission reductions. EPA is fully approving an ozone maintenance plan for the Evansville area meeting the requirements of section 175A of the Clean Air Act. Finally, EPA concludes that the State of Indiana has met all requirements applicable to the Evansville area under section 110 and part D of the Clean Air Act for purposes of redesignation. Therefore, EPA concludes that the State of Indiana and the Evansville area have met all requirements applicable to the Evansville area for purposes of redesignation to attainment of the 8-hour ozone NAAQS under section 107 of the Clean Air Act.

By finding that the ozone maintenance plan provides for maintenance of the 8-hour ozone NAAQS through 2015, EPA is hereby finding adequate and approving the 2015 VOC and NO<sub>x</sub> MVEBs contained

in the maintenance plan. The MVEB for VOC in the Evansville area is 4.20 tons per day, and the MVEB for NO<sub>x</sub> in the Evansville area is 5.40 tons per day.

The rationale for these findings and actions is stated in this rulemaking and in more detail in the September 9, 2005 proposed rule, found at 70 FR 53605.

### **IV. What Are the Effects of These Actions?**

Approval of the Indiana redesignation request changes the official designation for the 8-hour ozone NAAQS found at 40 CFR part 81 for Vanderburgh and Warrick Counties, Indiana from nonattainment to attainment. It also incorporates into the Indiana SIP a plan for maintaining the 8-hour ozone NAAQS through 2015. The maintenance plan includes contingency measures to remedy any future violation or threatened violation of the 8-hour ozone NAAQS in the Evansville area, and includes VOC and NO<sub>x</sub> MVEBs for 2015 for the Evansville area.

### **V. What Comments Did We Receive and What Are Our Responses?**

We received comments from eight individuals and organizations responding to the September 9, 2005 proposed rule. Six of the commenters submitted comments critical of various portions of the proposed rule. One of the critical commenters included a petition signed by 125 individuals asserting that the Evansville area has an air quality problem requiring cleanup by the State and opposing a State lawsuit against the EPA.<sup>5</sup> One commenter, the Vanderburgh County Ozone Officer, supported the proposed rule, and provided additional data and analyses to support the proposed rule. Another commenter supported the proposed rule. A summary of the comments and EPA's responses to them are provided below.

#### *Comment 1: Air Quality in 2005 Shows That the Evansville Area Continues To Have an Ozone Problem*

A number of commenters have expressed the concern that the current air quality in the Evansville area does not warrant redesignation to attainment of the 8-hour ozone standard. These commenters focused primarily on the following: (1) A number of ozone alerts<sup>6</sup>

<sup>5</sup> The nature of the State lawsuit against the EPA is not defined in the signed petition.

<sup>6</sup> Ozone alerts are issued based on monitored ozone concentrations approaching or exceeding the standard and forecasted meteorology favoring the formation of high ozone concentrations. Ozone alerts are intended to alert the public to the potential for high ozone concentrations. Ozone alerts are not necessarily associated with ozone standard exceedances. Some ozone standard

were issued for southwestern Indiana during the summer of 2005; (2) certain days in 2005 had high ozone concentrations but lacked ozone alerts; (3) high levels of fine particulates (PM<sub>2.5</sub><sup>7</sup>) occurred on a number of days in 2005; and (4) the presence of haze and gray skies in southern Indiana during 2005 indicated an ongoing air quality problem. The commenters questioned whether air quality had improved enough to justify redesignation and expressed a further concern that a redesignation to attainment would result in the removal of air quality monitoring equipment from the area.

In addition, one commenter, Joanne M. Alexandrovich, Ph.D., Vanderburgh County Department of Public Health's Ozone Officer, expressed support for EPA's redesignation proposal. In so doing, she provided 2005 ozone data for Posey, Vanderburgh, and Warrick Counties showing that the Evansville area continues to meet the 8-hour ozone standard. This includes data containing peak 8-hour ozone concentrations for each monitoring site in the area for 2005 and three-year ozone design values for each monitoring site for the period of 2003–2005. Dr. Alexandrovich also

presented ozone concentration trends data for each of the monitoring sites for the period of 1995–2005 to demonstrate a robust downward trend in ozone design values at all monitoring sites in the area, including at the Yankeetown site (the site on the property of Alcoa, Incorporated (Alcoa), see Comment/Response 2 below) and at other sites in Warrick County, where the worst-case ozone monitors in the area are located.

Dr. Alexandrovich notes that there were four exceedance days in the vicinity of the Evansville area in 2005 (three in the Evansville area and one in Posey County) and that the exceedances were recorded at several sites, with only one site (Boonville High School in Warrick County) recording exceedances on two days, and with no sites recording exceedances on three or more days. This shows that the fourth-high daily peak 8-hour ozone concentrations at all monitors in the area in 2005 were below 0.085 ppm (a monitored exceedance level cutoff). Finally, Dr. Alexandrovich provided information regarding the dates of ozone alerts and high ozone concentrations in 2005. These data show that ozone alerts were issued on eight days in 2005, with only two of the alert days actually having exceedances

of the 8-hour ozone standard. Two days without ozone alerts also had ozone standard exceedances, one in the Evansville area and the other in Posey County. Most ozone alert days had relatively high peak ozone concentrations, but had peak ozone concentrations which failed to reach ozone standard-exceedance levels.

*Response 1*

In determining whether the 8-hour ozone standard is met, the 8-hour ozone standard requires the use of the three most recent, consecutive calendar years of monitoring data. 40 CFR 50.10, appendix I, parts 2.2 and 2.3. Thus, EPA has determined that the Evansville area has attained the 8-hour ozone standard based on the data for the period of 2002–2004. EPA has also reviewed quality assured data for 2005 provided by the Indiana Department of Environmental Management (IDEM), and has determined that they show that the Evansville area continued to attain the 8-hour ozone standard through 2005. The quality assured peak ozone concentrations for 2005 are summarized in Table 1 by monitoring site as submitted by the State.

TABLE 1.—PEAK 2005 8-HOUR OZONE CONCENTRATIONS IN THE EVANSVILLE AREA IN CONCENTRATIONS OF PPM

Site	County	First High	Second High	Third High	Fourth High
Evansville—Mill Road .....	Vanderburgh .....	0.090	0.081	0.081	0.080
Scott School—Inglefield .....	Vanderburgh .....	0.058	0.057	0.057	0.056
Boonville High School .....	Warrick .....	0.096	0.085	0.081	0.080
Dayville .....	Warrick .....	0.083	0.078	0.077	0.077
Tecumseh High School—Lynnville .....	Warrick .....	0.082	0.078	0.077	0.076

Although a number of ozone alerts were issued for Southwestern Indiana during the summer of 2005, quality assured data supplied by the State show that no monitors recorded fourth-high

ozone concentrations above the 8-hour ozone standard. In addition, the 2003–2005 ozone design values for all monitors in the Evansville area were below the ozone standard violation cut-

off level (below 0.085 ppm). Table 2 documents the 2003–2005 ozone design values by monitoring site in the vicinity of Evansville.

TABLE 2.—8-HOUR OZONE DESIGN VALUES IN THE EVANSVILLE AREA IN CONCENTRATIONS OF PPM FOR 2003–2005<sup>1</sup>

Monitoring Site	County	Ozone Design Value
Evansville—Mill Road .....	Vanderburgh .....	0.077
Scott School—Inglefield .....	Vanderburgh .....	0.063
Boonville High School .....	Warrick .....	0.076
Tecumseh High School—Lynnville .....	Warrick .....	0.073

<sup>1</sup> Ozone was also monitored at the Yankeetown-Alcoa and Dayville monitoring sites (both in Warrick County) during the period of 2003–2005. Ozone was monitored during 2003 and 2004 at the Yankeetown site, with an average fourth-high 8-hour daily maximum ozone concentration of 0.078 ppm. Ozone was monitored during 2005 at the Dayville site, with a fourth-high 8-hour daily maximum ozone concentration of 0.077 ppm.

These data show that no violations of the 8-hour ozone standard were

monitored in the Evansville area even when 2005 ozone data are considered.

This is true despite the commenters' observation that a number of ozone

exceedances simply fail to develop as forecasted. In addition, as the result of the ozone action alerts, some companies and individuals change operations

or activities, lowering emissions, and possibly averting ozone standard exceedances.

<sup>7</sup> Particulate matter with nominal aerodynamic diameters of 2.5 micrometers or less.

alerts were issued in 2005 for this area. In addition, as noted by one of the commenters, ozone alerts were issued on eight days, but only two of these alert days had monitored exceedances of the ozone standard. On only two days lacking ozone alerts were ozone standard exceedances monitored (only one of these was in the Evansville area, with the other in Posey County, outside of the ozone nonattainment area<sup>8</sup>). Only one monitoring site, Boonville High School, recorded multiple days of ozone standard exceedances in 2005, but did not record a violation of the 8-hour ozone standard during the period of 2003–2005. No monitors in the Evansville area have recorded violations of the 8-hour ozone NAAQS based on the three most recent years of quality assured monitoring data.<sup>9</sup>

A number of states and local area governments, including Indiana and Evansville, have chosen to activate ozone alerts when ozone concentrations are thought to be approaching the ozone standard and meteorological conditions are forecasted to be favorable for the formation of high ozone levels. Besides alerting the public to the potential for high ozone concentrations and to the potential for the need to change outdoor activities to avoid exposure to these high ozone levels, the ozone alerts also inform owners of ozone precursor emitting sources and the public that operations and activities should be

altered if possible to mitigate the ozone precursor emissions. This reduces the potential for high ozone concentrations, and helps avoid violations of the ozone NAAQS. Therefore, even though ozone action alerts were issued on a number of days in 2005, this is not an indication of a violation of the ozone standard, as demonstrated by the 2003–2005 ozone data for the Evansville area. The quality assured monitoring data for 2002–2004 show that the Evansville area attained the 8-hour ozone standard, and the quality assured 2003–2005 ozone data show that the area continues to attain the ozone standard. EPA is correct in determining that the Evansville area has attained the ozone standard, thus satisfying the criterion for redesignation pursuant to section 107(d)(3)(E)(i) of the Clean Air Act.

The 8-hour ozone design values submitted by Dr. Alexandrovich also show that ozone air quality has improved in the Evansville area. Ozone design values for all sites for the period of 1995–2005 show a significant downward trend, as noted by the commenter. The areawide ozone design value for 2002–2004 was 0.083 ppm and the areawide ozone design value for 2003–2005, based on the average of the fourth-highest daily maximum 8-hour ozone concentrations for this period, was 0.077 ppm. The data show several aspects of special note. All sites in the Evansville area exhibit essentially the

same downward trend in ozone design values. This shows that an ozone problem has not simply shifted from one monitor site/area to another. In addition, the similar trends in ozone design values show that the peak ozone concentrations are reacting to common effects, including long-term downward trends in regional ozone precursor emissions. An increase in the downward trend of the ozone design values in the period of 2003–2005 at all monitoring sites implies that the decrease in regional NO<sub>x</sub> emissions resulting from EPA's NO<sub>x</sub> SIP call and other regional emission reductions are having a beneficial impact on ozone levels on a regional basis. See the response to Comment 10 below. As this commenter notes and we agree, the trend toward decreasing ozone design values is not expected to reverse in the near future as additional reductions in regional emissions are expected to result through the implementation of federally enforceable emission controls on vehicles, fuels, electric utilities, and other major combustion sources.

To demonstrate the downward trend in ozone design values, Table 3 summarizes ozone design values by monitoring site for the most recent three three-year periods taken from the quality assured ozone data supplied by the State.

TABLE 3.—8-HOUR OZONE DESIGN VALUES FOR PERIODS OF 2001–2003, 2002–2004, AND 2003–2005 IN CONCENTRATIONS OF PPM

Monitoring Site	2001–2003	2002–2004	2003–2005
Evansville—Mill Road .....	0.083	0.082	0.077
Scott School—Inglefield .....	0.077	0.073	0.063
Alcoa—Yankeetown .....	0.085	0.083	NA
Dayville .....	NA	NA	<sup>1</sup> 0.077
Boonville .....	0.081	0.080	0.076
Tecumseh High School .....	0.081	0.078	0.073

<sup>1</sup> The Dayville site is only several miles from the discontinued Alcoa-Yankeetown site and is a replacement for the Alcoa monitor. The ozone design value given here is the fourth-high daily maximum 8-hour ozone concentration for 2005, the only year of monitoring data currently available for this monitoring site.

With regard to the claims of high PM<sub>2.5</sub> levels, it is noted that this rulemaking addresses only the ozone designation of the Evansville area. This rule does not address or affect the PM<sub>2.5</sub> designation for this area, and, thus, the PM<sub>2.5</sub> concentrations in this area have no bearing on EPA's determinations

regarding the attainment status of this area for the 8-hour ozone NAAQS.

The comment concerned with the ending of monitoring in the Evansville area upon redesignation to attainment of the ozone NAAQS is wrong for several reasons. First, and most importantly, the State of Indiana has committed to continuing ozone monitoring in this

area. See 70 FR 53613 (September 9, 2005). Second, the ozone maintenance plan requires and depends on continued ozone monitoring during the lifetime of the maintenance plan. Note that the ozone maintenance plan contains action triggers directly tied to ozone monitoring. Under the approved

<sup>8</sup> Even though 8-hour ozone standard exceedances have been monitored in Posey County, this County is not in violation of the 8-hour ozone standard.

<sup>9</sup> Occasional exceedances of the standard are allowed at any monitor without a violation of the 8-hour ozone NAAQS occurring. As long as the average annual fourth-high daily maximum 8-hour

ozone concentrations at all relevant ozone monitoring sites in an area remain at or below 0.084 ppm for the most recent three-year period, the area is not violating the 8-hour ozone NAAQS. With multiple monitoring sites in an area, multiple exceedance days (exceedance of the standard anywhere in the monitoring system) may occur

during any period without a violation of the ozone NAAQS actually occurring. That was the case for the Evansville area for 2005 and for the period of 2003–2005. Despite three exceedance days, the area continued to attain the standard, the relevant criterion for our determination of attainment and one of the criteria for redesignation to attainment.

maintenance plan, ozone levels will be tracked and certain corrective actions or further analyses will be triggered if monitored ozone concentrations reach specified levels. To implement the ozone maintenance plan, the State must continue ozone monitoring in the Evansville area.

With regard to haze and gray skies in southern Indiana, this issue also is not relevant to a redesignation of the area for the ozone standard, where the area has been shown to be attaining the 8-hour ozone standard. A number of pollutant sources lead to the formation of fine particulates, which can contribute to haze levels. Since the Evansville area is a nonattainment area for fine particulates, the State of Indiana is expected to assess the sources of the emissions leading to these fine particulates and to develop strategies and emission control regulations leading to attainment of the fine particulates standards. In doing so, the State's actions should also lead to reductions in haze levels and to cleaner skies. In addition, regional emission reductions achieved through EPA's NO<sub>x</sub> SIP call and Clean Air Interstate Rule (CAIR) will further lower haze levels and clear the skies of this area.

With regard to the claim that the State and the City of Evansville failed to issue an ozone alert when it would have been warranted, the record of ozone alerts provided by Dr. Alexandrovich shows more overpredictions of high ozone levels than underpredictions (more issued ozone alerts on days with no ozone standard exceedances than failures to issue ozone alerts on days with ozone standard exceedances). This claim is also irrelevant to a redesignation action, which is based on demonstrated attainment of the standard. There is no evidence to support the claim that actions with respect to prior ozone alerts call the maintenance plan into question. The maintenance plan contains corrective actions that will occur if high ozone levels are monitored, and does not conflict with or depend upon the State's plans for issuing ozone alerts in the future. The fact that there were ozone alerts also does not indicate that the area violated the ozone standard. The ozone maintenance plan is designed to provide corrective actions if high ozone levels or violation of the standard occur after redesignation of the area to attainment of the NAAQS. The maintenance plan's contingency measures are triggered by monitored ozone levels. The triggering of the contingency measures in no way depends on the forecasting of high ozone concentrations. Therefore, the

issuing of ozone alerts is in no way connected to the implementation of the ozone maintenance plan. The maintenance plan relies on monitored ozone data and not on forecasted concentrations. Regardless of the status of the ozone alert efforts, the relevant issue for redesignation is that the Evansville area has attained the 8-hour ozone NAAQS and has an approved plan for maintaining the ozone standard.

*Comment 2: The Critical Ozone Monitor at the Alcoa, Incorporated Site Is No Longer Operating, Resulting in the Loss of Data That Would Have Been a Violation of the Ozone Standard in 2005*

A commenter notes that Alcoa, Incorporated (Alcoa) had sought the ozone redesignation while, at the same time, asking that the ozone monitor on its property be terminated and/or relocated to another site. This is a particular concern to the commenter since the Alcoa monitor (which was shut down in October 2004) was the monitor that had recorded the ozone standard violation on which the 2004 Evansville area ozone nonattainment designation had been based. The commenter believes that, had the monitor been left on the Alcoa property, it would likely have continued to show a violation of the ozone NAAQS during the summer of 2005. This commenter also suggests that this redesignation request was originated by Alcoa. Finally, the commenter believes that EPA and the State are taking the approach of "no data, no problem."

*Response 2*

The Alcoa (Yankeetown) monitor operated through the end of the 2004 ozone season. Data from the Alcoa monitor were considered both in designating the Evansville area as nonattainment based on 2001–2003 data and in EPA's determination that the area attained the 8-hour ozone standard based on 2002–2004 data. The State considered this monitor to represent ambient air and requested Alcoa to quality assure the data from this site, meeting State monitoring standards, so that these data could be considered to be on par with the ozone data from other monitors in the Evansville area and in the State. Alcoa disagreed with the State, arguing that this monitor does not represent ambient air. Alcoa objected to and challenged the designation of the Evansville area as an 8-hour ozone nonattainment area based on the ozone monitoring at the Alcoa site. Alcoa terminated the monitor at the end of the 2004 ozone season and the State located a new ozone monitor very

close to the Alcoa site, but off the premises of Alcoa. This new monitor, the Dayville site, was operated in 2005.

Prior to the establishment of the Dayville ozone monitoring site, EPA was given the opportunity to review the characteristics of the Dayville site relative to the characteristics of the Alcoa site. The proximity of the two monitoring sites and the similarity of the emissions near the monitoring sites (particularly the similarity and spatial distribution of NO<sub>x</sub> emissions close to the monitoring sites) led us to the conclusion that the two monitoring sites were equivalent. We have seen no data to the contrary.

The ozone trends data provided by Dr. Alexandrovich, as discussed in Comment/Response 1, indicate that the Dayville monitoring data may be generally considered in conjunction with the Alcoa data to assess the long-term trend in the 8-hour ozone data for this area. The Alcoa/Dayville ozone data show an ozone trend very similar to the ozone trends for other monitors in the Evansville region. The 2005 data for Dayville fit well with the prior data for the Alcoa site to produce an ozone trend that matches those from other long-term sites in the area. If the Dayville site was significantly different in local emission characteristics and ozone response relative to the Alcoa site, one might expect the short-term ozone trend (2004–2005) for this site pair to be significantly different from the ozone trends for the long-term sites. This is not the case. Based on this observation and considering the close proximity and similarities of the Alcoa and Dayville monitoring sites and the fact that the Dayville monitor recorded a fourth-high daily maximum 8-hour ozone concentration of 0.077 ppm in 2005, we see no basis to assume or to speculate that the Alcoa site would have recorded a violation of the 8-hour ozone standard based on 2003–2005 ozone data. Therefore, we disagree with the commenters on this point.

EPA can base its determination on whether the standard has been met only on available ozone monitoring data and not on speculation. There is no evidence that air quality at the Alcoa monitor would have violated the 8-hour ozone standard in 2005. On the contrary, the data show no violation of the ozone standard during the period of 2002–2004 for the Alcoa monitor, and no exceedances of the 8-hour ozone standard at the replacement Dayville monitor in 2005. If anything, the available data indicate that the Alcoa site would not have violated the 8-hour ozone standard in 2005. At minimum, we cannot conclude that a violation of

the 8-hour ozone standard would have been recorded at the Alcoa monitor in 2005. The termination of the Alcoa monitor and its replacement by the Dayville monitor do not affect the eligibility of the Evansville area to qualify for redesignation. The available ozone data support this redesignation, and the State has demonstrated that the area has attained the 8-hour ozone NAAQS.

While EPA acknowledges that Alcoa chose to discontinue monitoring on its property, it is the State of Indiana—and not Alcoa—that developed, adopted, and submitted the ozone redesignation request. As discussed above, EPA believes that the new, nearby ozone monitor at Dayville provides ozone data equivalent those produced by the Alcoa-Yankeetown monitor.

The State is not exhibiting an attitude of “no data, no problem,” and has replaced the terminated Alcoa monitoring site with the Dayville monitoring site. The State has supported the original 8-hour ozone nonattainment designation for Warrick County (the county in which the Alcoa site was located), and has supported maintaining an ozone monitor in this area, recognizing that this area has a potential for relatively high ozone concentrations. This is why the Dayville ozone monitoring site was selected and implemented.

EPA is not taking the approach of “no data, no problem.” First, EPA (along with the State) considered the data from the Alcoa site in both its original ozone designation of the area and in determining that the area subsequently attained the 8-hour ozone standard. Second, EPA has routinely required states to operate and maintain adequate ozone monitoring networks to record ozone concentrations and to maintain such networks after redesignation to assure maintenance of the standard. EPA’s guidance provides that an area’s maintenance plan should contain provisions for continued operation of air quality monitors to verify continued attainment, and that the state should continue to operate an appropriate air quality monitoring network in accordance with 40 CFR part 58. Memorandum of John Calcagni, “Procedures for Processing Requests to Redesignate Areas to Attainment,” September 4, 1992. The State has committed to continue operating an appropriate monitoring network in the Evansville area. IDEM has committed to continue operating and maintaining an approved ozone monitoring network in accordance with 40 CFR part 58 through the 10-year maintenance period.

*Comment 3: High Ozone Concentrations Have Been Monitored in Downwind Perry County, and This Monitoring Site Should Be Considered in This Ozone Redesignation Review as Part of the Evansville Area*

Several commenters expressed concerns about high ozone concentrations monitored at the Leopold monitor in Perry County. The commenters believe that during the first two years that the Leopold monitor was operated, it showed exceedances of the 1-hour ozone standard. Because the monitor was removed before it collected three years of ozone data, the data for this monitoring site were not used to designate Perry County as nonattainment for the 1-hour ozone standard. The monitor has been replaced, although at a different site, and the new monitor has recorded exceedances of the 8-hour ozone standard, but has not collected three years of data showing a violation of the 8-hour ozone NAAQS. The commenters believe that the Leopold monitoring site should be considered to be part of the Evansville area, and that the Leopold data should be considered in EPA’s determination of the ozone attainment status for the Evansville area. One of these commenters wants a commitment from the EPA that the Leopold monitor will become part of the Evansville ozone monitoring network, and that such action will be considered as part of the ozone maintenance plan addressed in EPA’s final rule on Indiana’s ozone redesignation request.

Dr. Alexandrovich, the Vanderburgh County Ozone Officer, notes that an ozone monitor was operated in Perry County from 1998 through 2001, Aerometric Information Retrieval System (AIRS) site 18-123-0008. Although ozone levels were elevated at this site, no exceedances of the 1-hour ozone standard were monitored at this site through the 2001 ozone season. After the 2001 ozone season (April–September in Indiana), this monitoring site was shut down. In 2004, a new monitoring site was established at Leopold, AIRS site 18-123-0009. In 2005, this monitor recorded exceedances of the 8-hour ozone standard on four days.<sup>10</sup> Analyses of wind speeds and directions by hour (transport analyses) for the high ozone days in 2005 show that the Evansville area was not a likely source area for the

ozone standard exceedances on three of the four days.

*Response 3*

The Leopold monitoring site should not be considered to be part of the Evansville area. The boundary of the Evansville nonattainment area was set in EPA’s designation rulemaking of April 30, 2004, and EPA is not revisiting that rulemaking in this final rule. In its designation rulemaking, EPA evaluated the boundary of the Evansville nonattainment area in accordance with the statute, EPA guidance, and the criteria that EPA applied nationally, and we considered all relevant factors. See 69 FR 23858. Perry County, located to the east and separated from the Evansville area by Spencer County, is designated as attainment for the 8-hour ozone standard. See 40 CFR 81.315. There is no showing that Perry County is monitoring a violation of the 8-hour ozone standard. There is, thus, no possibility of showing that the Evansville area is contributing to a violation of the ozone standard in Perry County.

As noted by Dr. Alexandrovich, wind speed and direction analyses for high ozone days in 2005 indicate that the Evansville area emissions may be impacting the Leopold monitoring site on only one out of four exceedance days during 2005 at this site. Areas south and east of the Leopold monitor (and not west in the direction of the Evansville area) appear to be the primary emission source areas that may be affecting Perry County on three of the four exceedance days. These data show that the Evansville area cannot be held responsible for the majority of the days on which there are high levels of ozone at the Leopold monitoring site. It appears that a number of other ozone precursor source areas in Indiana, Kentucky, and other upwind areas may be affecting ozone concentrations in Perry County.

For all of these reasons, we disagree with the commenters’ assertions that Perry County should be part of the Evansville area and that the Leopold monitoring data should change EPA’s decisions on the attainment and maintenance status of the Evansville area.

The 1-hour ozone concentrations monitored in Perry County have no bearing on our decision regarding the attainment status of the Evansville area for the 8-hour ozone NAAQS. We are not considering 1-hour ozone concentrations in any decision regarding 8-hour ozone redesignations. In addition, as of June 15, 2005, the 1-

<sup>10</sup>No exceedance of the 8-hour ozone standard was monitored at this site in 2004. The average fourth-high daily maximum 8-hour ozone concentration for this site is 0.082 ppm for the period of 2004–2005 based on quality assured data supplied by the State.

hour ozone NAAQS was revoked and no longer exists.

There is no showing that Perry County and the other Counties cited by the commenters are monitoring violations of the 8-hour ozone standard. Therefore, neither EPA nor the State is failing to disclose a current violation of the standard in this area. Monitored air quality data for Perry County are available to the public through AIRS or through the State's data system and air quality data summaries. In addition, it should be noted that the adequacy of monitoring in areas which are outside of the Evansville area, and which have not been shown to affect the determination of attainment in the Evansville area, is not relevant to this rulemaking.

*Comment 4: There Was Unusually Cool Meteorology in 2003 and 2004 That Led to Abnormally Low Peak Ozone Concentrations*

Several commenters have asserted that the Evansville area experienced unusually cool weather in 2003 and 2004, and that EPA should consequently reject the State's redesignation request. A commenter further states that redesignation guidance issued by the EPA in September 1992 is clear in requiring that a redesignation to attainment must not be a result of "unusual meteorology." On the other hand, 2002 data show clear exceedances of the 8-hour ozone standard. This commenter also believes that the summer of 2005 clearly shows that, under the right conditions, the Evansville Metropolitan Statistical Area (MSA) will continue to exceed the 8-hour ozone standard.

Another commenter, Dr. Alexandrovich, notes that meteorological statistics indicate that over the last 10 years, with a few exceptions, the weather in the Evansville area was within normal ranges. The commenter presents data on the departure of daily average temperatures from normal daily temperature averages, the departure of monthly average temperatures from normal monthly average temperatures, and the departure of monthly precipitation levels from normal monthly precipitation levels for the April through September periods of 1995 through 2005 to support conclusions regarding whether 2003 and 2004 were atypical years unusually favorable to lower peak ozone concentrations. The commenter also documents the ozone standard exceedance days with respect to departures of daily average temperatures from normal daily average temperatures. The data, in the accumulative, indicate

that: (1) The weather in 2003 and 2004 was not atypically colder or drier/wetter than the weather during the ozone seasons in other years during the period of 1995–2005; (2) ozone standard exceedance days were not limited to days with atypically high temperatures; and (3) ozone exceedance trends (in number of exceedance days per year) were not associated with year-to-year trends in peak daily temperatures or precipitation. In other words, meteorological trends or deviations from normal meteorological conditions cannot explain the observed trends in peak ozone concentrations. This leaves one to conclude that the downward trend in peak ozone concentrations in the Evansville area is due to emission decreases in this area or in the surrounding region.

*Response 4*

As part of the State's ozone redesignation request, the State documented a temperature analysis conducted to show that unusually favorable meteorology was not responsible for the observed air quality improvement. In this analysis, the State considered temperatures during the ozone-conductive months of May through September for the period of 1971–2000 versus the same months during the attainment period, 2002–2004. Temperature data were reviewed for a number of weather stations, including Indiana weather stations at: Bloomfield; Boonville; Dubois; Freelandville; Huntingburg; Mount Vernon; Shoals; Saint Meinrad; and Washington, along with temperature data supplied by the Evansville National Weather Service office. The temperature data were used to calculate the monthly average number of 90 degree days<sup>11</sup> during the period of 1995–1999. Temperature data were also used to determine the monthly normal maximum temperatures for the summer months for the period of 1971–2004. Monthly maximum temperatures were compared by month for various years for 1996 through 2004. Based on these analyses, it was concluded that the temperatures during the 2002 summer months of May, June, July, August, and September, were 1 to 2 percent higher than the long-term monthly norms, while the monthly maximum temperatures during the 1996, 1997, 2000, 2001, 2003, and 2004 summer months were 1 to 5 percent lower than the long-term averages. On average, the monthly maximum temperatures in the

summer months of 2003 and 2004 were 3 percent and 2 percent below the long-term averages, respectively, whereas, on average, the monthly maximum temperatures in 2002 were 2 percent higher than the long-term averages. It should be noted that monthly maximum temperature ranges (when compared to the long-term monthly average maximum temperatures) were essentially identical between the 2001–2003 period used to designate the Evansville area as nonattainment for the 8-hour ozone NAAQS and the 2002–2004 attainment period. This is one indicator that temperature differences between various years were not the key factor in the observed air quality improvement.

The State also compared the number of 90 degree days during the summer months for each year during the period of 1995–2004 to the "normal" number of such days (the average for all years in this period) for the Evansville Regional Airport. The State compared these data to the number of 8-hour ozone standard exceedance days for each year. These data point to 2002 as being an abnormally warm summer, having a higher than average number of ozone standard exceedance days, whereas 2003 and 2004 were below average in warm summer days, but with numbers of ozone standard exceedance days more indicative of the averages during the period of 2000–2004, excluding 2002. The State concludes from these data that a greater number of ozone exceedance days per year correlates with a greater number of 90 degree days per year. This analysis supports a connection between meteorology and the number of ozone standard exceedance days per year, but does not support or address the case that 2003 and 2004 were atypically cool years. The State does conclude that, based on long-term trends, the annual number of 8-hour ozone standard exceedance days shows a greater downward trend than the annual number of 90 degree days. That is, the local summer climate is cooling, but the ozone air quality is improving at a faster rate, implying that emission decreases are responsible for the air quality improvement rather than the long-term change in meteorology.

To further consider this issue, we refer to the temperature and precipitation analyses documented by Dr. Alexandrovich (other commenters made assertions without providing supporting data). This commenter analyzed the ozone season departure of daily average temperatures from normal and the long-term daily average temperatures for each year during the

<sup>11</sup> Days with peak temperatures equal to or greater than 90 degrees Fahrenheit at any of the meteorological monitoring sites considered.

period of 1996–2005. This analysis also indicated the departures of daily average temperatures on 8-hour ozone standard exceedance days during this period. Considering temperature variations throughout the ozone seasons, the commenter concluded that 2003, 2004, and 2005 were not atypically colder during the ozone season than other years in the 1996–2005 period. No years showed departures of daily average temperatures outside of the typical meteorological variability range. Additionally, the commenter concluded that ozone standard exceedances occurred on days with both above and below average daily peak temperatures, but do preferentially occur over periods of increasing temperatures, reflecting the influence of warming air masses on increasing ozone levels.

Dr. Alexandrovich also analyzed the departures of average monthly temperatures and precipitation levels from normal levels during the ozone seasons for the period of 1995–2005 along with the annual number of 8-hour ozone standard exceedance days for this period. This analysis failed to show any connection between monthly average temperatures and monthly precipitation and the annual number of ozone standard exceedance days. This commenter concludes that the weather over the last 10 years in the Evansville area was within normal ranges and no “unusually favorable meteorology” influenced the downward trend in peak ozone levels (towards cleaner air).

Given the data supplied by the State and Dr. Alexandrovich and the lack of data countering their conclusions, we see no support for the commenter’s claim that the improvement in ozone air quality was due to unusually favorable meteorology. See the John Calcagni memorandum at 4. We agree that meteorology does influence peak ozone concentrations, but we see greater evidence in this case that emission reductions, both local and, more significantly, regional, were responsible for the reduction in peak ozone concentrations leading to attainment of the 8-hour ozone NAAQS. See our response to Comment 10 below. Therefore, we disagree with the commenters that unusually favorable meteorology led to attainment of the ozone NAAQS.

*Comment 5: The Maintenance Plan Failed To Address Surrounding Counties, and Emission Increases in These Surrounding Areas and in the Evansville Area Will Threaten Maintenance of the Ozone Standard*

A commenter questions why the maintenance plan did not include the surrounding counties in the Evansville MSA and why the surrounding counties were not included in the original ozone nonattainment area.

A commenter asserts that, if EPA allows this redesignation, this will allow increases in pollution levels instead of reducing emissions as required by the Clean Air Act.

A commenter notes that there is nothing in the State’s maintenance plan that deals with counties besides Warrick and Vanderburgh Counties. The commenter contends that additional counties should have been included in the original Evansville nonattainment area as required by EPA’s designation guidance. The commenter claims that EPA’s guidance required all of the counties in the MSA to be treated equally and to be included in the nonattainment area, and that EPA failed to follow its own guidance, excluding counties in Indiana and Kentucky from the nonattainment area that are part of the Evansville MSA. As a result of this, the commenter argues that nothing in the maintenance plan will apply to the “other” counties, whose emissions impact the ozone levels in the entire region.

A commenter asserts that the failure to include the other counties will bode poorly for the health of citizens in this region since new coal-fired power plants are proposed for Henderson County, Kentucky, just a few miles from the current ozone nonattainment area. The commenter claims that, had EPA followed its own guidance in establishing the original nonattainment area, the prospect of new coal-fired power plants for the region would have been different, if not impossible.

Several commenters demand that all counties in the Evansville MSA comply with the Indiana maintenance plan. The commenters believe that to let these counties “off the hook” when they have emission sources that are larger than anything in Vanderburgh County is outside of the spirit, legal guidance, and rules of the Clean Air Act. A commenter contends that Gibson and Posey Counties in Indiana and Henderson County in Kentucky should also be included in the maintenance plan for the Evansville area.

A commenter questions whether EPA and IDEM considered the impact of

several new power plants proposed for the region, including a “giant” 1500 megawatt old technology plant just upwind of the ozone nonattainment area in Kentucky that has already received an operating permit from the Kentucky Division of Air Quality. This commenter additionally notes that proposals for at least three additional large power plants are pending, one just northwest of the ozone nonattainment area, one to the north of the nonattainment area, and one just south of the nonattainment area in Henderson County, Kentucky. The commenter claims that these power plants, together with those already permitted, will likely make it impossible to maintain the attainment of the 8-hour ozone standard in the future.

A commenter contends that there are at least 15 coal-fired power plants in the Evansville region, and that these plants emit sulfur dioxide, nitrogen oxide, fine and coarse particulates, mercury, and hydrochloric acid. The commenter claims that it stands to reason, especially since the Evansville area is not in attainment according to EPA standards, that the Evansville area needs to have a monitor in place to ensure that the area’s air quality is at safe levels needed for healthy, productive lives.

Another commenter expressed the hope that, if new coal-fired power plants are brought on line in the future, the older coal-fired plants will be phased out and clean coal technologies will be used.

One of the commenters raising concerns about the growth of new power plants in the area attached a copy of a “Clean Air Petition to Governor Daniels.” This document was signed by a number of citizens of Newburgh, Indiana, and expresses opposition to “the state’s lawsuit against the E.P.A.” The nature of the State lawsuit against EPA is not specified in the petition, nor in the commenter’s cover letter.

Finally, a commenter states that, aside from the potential for new power plants, an attainment designation would tell companies that they have done enough toward reducing their emissions. The commenter argues that companies will do no more than is necessary, and that power plants will not make any improvements to decrease emissions of carcinogens. The commenter asserts that people are beginning to see the problem in the Evansville area, that government agencies are failing the people.

*Response 5*

Regarding the issue of whether other counties should have been included in the Evansville ozone nonattainment area, as indicated above in the response to Comment 3, the appropriateness of

the designation of the area, which was promulgated on April 30, 2004, is not the subject of this rulemaking. EPA evaluated the designation of the Evansville area in accordance with the statute, EPA guidance, and criteria that EPA applied in designations nationally. EPA considered all appropriate factors and concluded that Vanderburgh and Warrick Counties were the appropriate area for the nonattainment area. See 69 FR 23858.

Regarding the issue of whether additional counties should be included in the maintenance plan, section 107(d)(3)(E)(iv) of the Clean Air Act provides that, in approving a redesignation request, the Administrator must have a "fully approved a maintenance plan for the area" as meeting the requirements of section 175A. Thus, EPA need only approve a plan adequate to cover the nonattainment area that is being redesignated. Nevertheless, EPA and the State also reviewed the emission levels in other southwestern Indiana counties and determined that further declines in emissions are projected there as well. In our proposed rulemaking, we considered the attainment year and projected year NO<sub>x</sub> emissions for five other counties in southwestern Indiana, and determined that emissions totals in these counties were projected to decrease during the Evansville area's ozone maintenance period (through 2015). See 70 FR 53612 (September 9, 2005). In addition, we note that ozone modeling conducted by the EPA and by the Lake Michigan Air Directors Consortium (LADCO) to support the Clean Air Interstate Rule (CAIR) for 2010 and 2015 shows that regional NO<sub>x</sub> emission reductions at electric generating units (power plants) in the eastern states will result in peak ozone reductions throughout the eastern states, and most importantly for the purposes of this rulemaking, throughout southwestern Indiana. CAIR will result in NO<sub>x</sub> emission reductions throughout southwestern Indiana that will contribute to the maintenance of the ozone standard in the Evansville area. See also response to Comment 10.

Other counties outside the maintenance area are not "being let off the hook," as one commenter alleges, since they remain subject to the Clean Air Act requirements applicable to them and must demonstrate attainment of the 8-hour ozone standard. The fact that the counties are not included in the Evansville area ozone maintenance plan does not exempt these counties from the applicable requirements of the Clean Air Act with respect to attainment and maintenance of the 8-hour ozone

standard. Thus, there is no requirement or need to extend the maintenance plan beyond the Evansville area.

Redesignation of the Evansville area is not expected to result in overall emissions increases. Redesignation does not relax any pollution control measures on existing sources in place at the time of the redesignation. Indiana has committed to maintaining all existing emission control measures that affect the Evansville area after redesignation. If the area were not redesignated, the only difference would be that the area would be subject to New Source Review (NSR) requirements under part D of title I for nonattainment areas, rather than the NSR requirements under part C of title I for attainment areas. This difference, however, does not mean that redesignation itself would result in increased emissions from the area. Note that the State demonstrated that overall emissions will decrease in the ten years following redesignation, even with part C NSR requirements. The maintenance plan also provides for contingency measures to be activated in the event that ozone levels increase to exceedance levels, so that, if increased emissions cause ozone air quality problems, implementation of new emission controls would be required.

With regard to power plants in the areas surrounding the Evansville area, several points are relevant to this set of comments. First, the existence of a number of power plants in the area has not prevented the Evansville area from achieving attainment of the 8-hour ozone standard. Despite the emissions from these power plants, the air quality in the Evansville area has improved to the point of attaining the 8-hour ozone standard. In fact, the reduction of regional NO<sub>x</sub> emissions at these power plants, as a result of EPA's NO<sub>x</sub> SIP call, is believed to be a significant contributor to the air quality improvement in the Evansville area. Second, the redesignation of the Evansville area to attainment will have no bearing on the implementation of the state NO<sub>x</sub> emission control rules resulting from the NO<sub>x</sub> SIP call and on the State's adoption and implementation of emission control rules resulting from CAIR. NO<sub>x</sub> emissions at the power plants will continue to be capped on statewide bases and states will have to account for new power plant emissions within these statewide emission caps. Finally, the designation of the Evansville area has little or no bearing on the permitting of new power plant emissions, particularly those in areas outside of Indiana. The impact of any new power plant on the area should be considered in the

permitting process. Section 165(a)(3) of the Clean Air Act provides that there must be an air quality analysis to demonstrate that a proposed project will not cause or contribute to a violation of a NAAQS. Indiana has demonstrated that emissions inside of the Evansville area will remain at or below the attainment year levels through 2015, which indicates that the 8-hour ozone standard will be maintained during this period. As for the impact of emissions outside of the Evansville area, the commenters provided no analysis indicating that any such emissions would be likely to cause or contribute to violations of the ozone NAAQS in the future. In fact, NO<sub>x</sub> emissions projections for other counties within southwestern Indiana show that they are expected to decrease. See 70 FR 53612 (September 9, 2005). Furthermore, EPA notes that NO<sub>x</sub> emissions from proposed power plants will be subject to the regional NO<sub>x</sub> emission reduction requirements of the NO<sub>x</sub> SIP call and, in the future, CAIR. See 70 FR 25162 (May 12, 2005). Since Kentucky and Indiana are subject to these programs, sources subject to these programs and to the state rules that result from these programs will remain subject to NO<sub>x</sub> emissions budgets for the States that will not increase as a result of a possible new power plant. Consequently, new power plants will have to obtain NO<sub>x</sub> emission allowances from other existing sources subject to the NO<sub>x</sub> SIP call and/or CAIR, maintaining statewide NO<sub>x</sub> emissions from power plants at or below the statewide NO<sub>x</sub> emission budgets. Therefore, permitting of new power plants subject to these rules is not expected to result in increases in regional NO<sub>x</sub> emissions. In addition, this rulemaking concerns only the 8-hour ozone standard and does not address emissions for other pollutants. Sources remain subject to the statutory and regulatory requirements governing those pollutants.

In addition, as noted by a commenter, if new power plants are built in the future, they may utilize lower-emitting technologies as they replace older, less-controlled power plants. To the extent this occurs, regional emissions could be further reduced and not necessarily increased.

Finally, with regard to the petition to Governor Daniels, we believe that the referenced lawsuit against EPA is *Catawba County, North Carolina v. EPA*, Case No. 05-1064, and consolidated cases (D.C. Cir.). In that action, a number of parties (including State of Indiana) have challenged EPA's January and April 2005 designation of certain areas as nonattainment for the PM<sub>2.5</sub>

NAAQS. As that matter deals solely with EPA's PM<sub>2.5</sub> designations, it is not relevant to the subject matter of this rulemaking, which concerns a redesignation for the 8-hour ozone standard.

*Comment 6: Serious Health Problems Occur at Ozone Concentrations Below 80 Parts Per Billion, and the Evansville Area Should Not Redesignate To Attainment Until the Area Meets a Tighter Ozone Standard*

Several commenters expressed their belief that serious health problems from ozone exposure occur at levels below the 0.08 ppm standard established by the EPA, noting that the State of California has adopted a 70 parts per billion (ppb) (0.07 ppm) ozone standard. One commenter added that EPA should adopt this tighter ozone standard, and should not redesignate the Evansville area to attainment until it has attained this more stringent standard. Another commenter stated his belief that EPA is considering the promulgation of a tighter ozone standard, and that it made no sense to redesignate the Evansville area to attainment only to shortly thereafter designate the Evansville area as nonattainment for the tighter ozone standard.

*Response 6*

The issue of whether EPA should adopt a tighter ozone standard is not part of this rulemaking. In this rulemaking, EPA is addressing the attainment status of the Evansville area for the 0.08 ppm ozone standard currently in effect. Under the Clean Air Act, EPA can determine the attainment status of areas based only on currently adopted air quality standards. The Clean Air Act does not provide for nonattainment designations based on air quality standards that have not been promulgated. See section 107(d)(3)(E) of the Clean Air Act.

If, after a future review of the available health data, the EPA revises the ozone standard, the Evansville area and other areas would be judged against that new standard. Redesignating the Evansville area to attainment of the current standard now would not prevent designating the Evansville area as a nonattainment area under the new standard if the available ozone monitoring data warrant such a designation. Until then, EPA can only judge the Evansville area under the current ozone standard.

*Comment 7: Political and Industrial Pressures Have Preempted Both Public and Environmental Health Concerns, and This Redesignation Will Allow More Emissions and Worse Air Quality*

A number of commenters asserted that the redesignation process was politically motivated, and that the State and EPA were more concerned about the area's economic status than about public health. Referring in part to comments made by local officials during a 2003 public hearing, they argued that political and industrial pressures have preempted public health and environmental concerns with little or no input from the affected public. One commenter questioned EPA's delegation of programs to Indiana. Another commenter asserted that EPA's action was inconsistent with EPA's mission to protect human health and the environment.

*Response 7*

The comments as to the motivation of State and Federal regulators are irrelevant to the issue of whether the Evansville area qualifies for redesignation under the Clean Air Act. The pertinent issue is whether the redesignation meets the applicable requirements and procedures. As discussed in greater detail in response to Comment 9, the State has complied with all of the substantive and procedural requirements established by Congress for redesignation pursuant to section 107(d)(3) of the Clean Air Act. This includes a determination that the area has attained the 8-hour ozone NAAQS, as evidenced by quality-assured monitoring data which show no NAAQS violations. It also includes a 10-year maintenance plan to ensure that the area continues to attain the NAAQS.

The State also complied with all applicable notice and hearing requirements prior to submitting the redesignation request and ozone maintenance plan to the EPA. Similarly, EPA followed the applicable procedures when it proposed action on September 9, 2005, and provided for the submission of written comments. Thus, the State and EPA have followed all statutory procedures for notice and public participation.

EPA has evaluated the State's submission in light of the applicable statutory criteria. After notice and consideration of the State's submission, the data, and all comments, EPA has determined that the area has attained the 8-hour ozone standard and that it meets the other criteria for redesignation to attainment set forth in the Clean Air Act. Contrary to a commenter's

allegation, EPA is not working to "mask the true state of nonattainment" in the area, and is not "conspiring" to "doctor" or "deny" the scientific data on record. EPA has carried out its obligation to review the redesignation request in conformance with the statute and with all prescribed procedures. Contrary to a commenter's contention, EPA, in redesignating the area, is not giving "deference to big polluters." Nor has EPA ignored or concealed monitored violations in the Evansville area. When the Evansville area monitored a violation of the 8-hour ozone standard, EPA took action to designate the area as nonattainment, as evidenced by the nonattainment designation promulgated for the area on April 30, 2004. As stated in the response to Comment 5, the redesignation action is not expected to cause overall emissions increases in the area.

Statements made during a state hearing in 2003 regarding the prospective designation of the area are irrelevant as to whether the area qualifies for redesignation to attainment based on subsequent air quality data, plan submissions, and rulemaking proceedings. In redesignating the area, EPA is acting in good faith and in accordance with the statute and applicable regulations and with all prescribed procedures, and in keeping with its obligations to administer the law in the public interest.

To the extent that the comments reflect concern about new industrial growth in the area, EPA notes that statutory and regulatory requirements remain in place to ensure that such growth occurs in a manner consistent with today's action. In addition to the State's maintenance plan, this includes the State and Federal requirements for the Prevention of Significant Deterioration (PSD) at 326 IAC 2-2 and 40 CFR part 52.21, respectively. Under PSD, major new sources cannot be constructed unless the source owners/operators install the Best Available Control Technology (BACT), can demonstrate that the applicable air quality increments will be protected, and meet additional requirements to ensure that the area remains in attainment.

*Comment 8: The EPA has Misinterpreted the Ozone Standard in Concluding That an Ozone Design Value of 83 Parts Per Billion Is At or Below the Ozone Standard*

Several commenters have noted that the 2002-2004 ozone design value at the Yankeetown monitor (Alcoa monitor in Warrick County) was 83 ppb. The commenters argue that this ozone

design value is above the 80 ppb ozone standard, and, therefore, should be considered to be a violation of the ozone standard. They also assert that the 83 ppb ozone design value is closer to the 85 ppb ozone exceedance cutoff level than to the 80 ppb standard, and that EPA should err on the side of caution to protect public health and the environment and not redesignate the Evansville area to attainment of the ozone NAAQS with this monitored ozone design value. A commenter believes that the rounding protocol (rounding of monitored ozone concentrations to the digital accuracy reflected in the ozone standard itself) should not be allowed in the redesignation of nonattainment areas, and that following it indicates that EPA's decision is more based on politics than on science or common sense.

#### Response 8

In assessing an area's ozone air quality data in the review of an ozone redesignation request, EPA must determine whether the area has attained the 8-hour ozone NAAQS based on the definition of the NAAQS contained in 40 CFR 50.10, as interpreted in appendix I. The definition of the standard and its interpretation in appendix I establish specific criteria for the review of air quality data.

The definition of the ozone standard (primary and secondary<sup>12</sup>) in 40 CFR 50.10 specifies that the level of the standard is 0.08 ppm, daily maximum 8-hour average. Note that the ozone standard level is not specified in units of ppb. We sometimes refer to the standard in units of ppb only for purposes of readability, avoiding the use of fractional numbers; but this is not a precise reference to the standard. Therefore, the commenters err in asserting that the 8-hour ozone standard level is 80 ppb.

The definition of the ozone standard in 40 CFR part 50.10 states that "the 8-hour primary and secondary ozone standards are met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with appendix I to this part." Ozone data from air quality monitors are reported with decimal levels of three digits, although the 8-hour standard itself contains just two decimal digits. 40 CFR part 50, appendix I, parts 2.1,

2.1.2, and 2.2. Appendix I, part 2.1.1 requires that hourly average ozone concentrations shall be reported in parts per million to the third decimal place. EPA applies an established rounding convention, set forth in regulations, to determine whether a monitoring result expressed to the third decimal place complies with the two-decimal-place standard. Specifically, section 2.3 of 40 CFR part 50, appendix I, "Comparisons with the Primary and Secondary Standards" states:

The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.

The examples provided in appendix I also make it clear that the standard is met when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.084 ppm (84 ppb). EPA has consistently used this rounding convention since promulgating the standard, and properly applied the convention here to assess compliance with the standard. Thus, an ozone design value of 83 ppb (0.083 ppm) is not a violation of the 8-hour ozone NAAQS. Moreover, the Evansville area ozone design value for the most recent three years, through the end of the 2005 ozone season, based on the average of the annual fourth-highest daily maximum 8-hour ozone concentrations over three years, is 0.077 ppm. Thus, the most recent ozone data show an ozone design value for the area substantially lower than 0.085 ppm, the level set as the smallest ozone concentration average that exceeds the 8-hour ozone standard.

Previously, under the 1-hour ozone standard, EPA followed a rounding convention similar to that in appendix I. EPA's application of the rounding convention under the 1-hour standard to determinations of attainment has been upheld by the Ninth Circuit Court of Appeals in *Our Children's Earth Foundation v. EPA*, No. 04-73032, Memorandum Opinion at 2 (June 28, 2005).

Based on the above, we conclude that we have not erred in determining that

the Evansville area has attained the 8-hour ozone standard. EPA based its determination of attainment in this case squarely on the interpretation of the ozone NAAQS set forth in its regulations. We disagree with the commenters on this point.

#### Comment 9: EPA Should Conduct a Public Hearing Before EPA Finalizes the Ozone Redesignation of the Evansville Area

While several commenters acknowledge that public hearings have been held by the State regarding the requested ozone redesignation and the ozone maintenance plan, they assert that they did not realize until the summer of 2005 how serious the pollution problem is in southern Indiana. As a result, the commenters request that EPA conduct a public hearing prior to acting on the State's ozone redesignation request. One commenter asserted that the Evansville area is well above the national average in many major diseases, thus further justifying the need for a public hearing.

Several other commenters have registered complaints regarding EPA's denial of requests for a public hearing on the proposed redesignation of the Evansville area to attainment of the 8-hour ozone NAAQS. One of these commenters acknowledges that the State held a public hearing on the redesignation request in April 2005, but this commenter believes that the State was anything but objective in preparing the redesignation request and in conducting this public hearing, giving deference to large polluters in the area. A commenter also questioned the State of Indiana's objectivity on the basis of IDEM's testimony supporting a new power plant over the objections of local residents.

One commenter stated that EPA should address the issue of environmental justice, noting that the EPA had recently proposed a broader definition of environmental justice to encompass criteria beyond those related to race and minority populations.

#### Response 9

The EPA believes that interested parties were given ample opportunities to comment on Indiana's ozone redesignation request and associated SIP revision request. Section 553(c) of the Administrative Procedure Act (APA), which governs informal rulemaking actions, such as redesignation rulemakings, does not require EPA to provide for a hearing. Section 553(c) states that:

"The agency shall give interested persons an opportunity to participate in the rulemaking

<sup>12</sup> Primary standards are set to protect human health, and secondary standards are set to protect the environment. In the case of ozone, the primary and secondary standards are identical.

through submission of written data, views, or arguments with or without opportunity for oral presentation.”

EPA does not, as a matter of standard practice, conduct hearings on redesignation requests. EPA believes that the opportunity to provide written comments is sufficient, and stated in its response to requests for a hearing that it believed that to be the case with respect to Evansville. In denying the requests for a hearing, EPA explained that it had determined that the opportunity to submit written comments on its proposed rulemaking action constituted an adequate means of providing input from the public, and extended the public comment period. See 70 FR 58167 (October 5, 2005). Indeed several sets of written comments were received and EPA is addressing those comments in this final rule. There is no contention that the commenters lacked adequate time to prepare and submit written comments. EPA has provided an opportunity for interested parties to present data, views, and arguments through written comments. No showing was made that the opportunity to provide written comments precluded meaningful public participation.

The State has provided evidence that it notified the public of its intent to hold a public hearing on the redesignation request. The State held a public hearing and received feedback on its plans and draft submittals. EPA finds that the State met the public participation requirements of the Clean Air Act, Section 110(a). There was no change in circumstances that would have required the State to hold additional hearings, and commenters did not indicate that they requested additional hearings at the state level. The State submissions were adequate to support the redesignation request and the requested SIP revision. Claims that the State lacked objectivity are irrelevant to EPA's finding that the quality-assured monitoring data and other documentation submitted by the State are sufficient to support the request for redesignation of the area to attainment.

The incidence of cancer and other diseases noted by a commenter is not relevant to the issue of whether the area should be redesignated to attainment based on recent air quality in the Evansville area that meets the 8-hour ozone NAAQS, and the fulfillment of other statutory criteria for redesignation as described elsewhere in this notice.

With regard to the comment on environmental justice, based on its commitment to environmental justice, EPA seeks to ensure that its actions do not have disproportionately high and

adverse environmental effects on communities, including minority and low-income communities. As explained elsewhere in this document (see the response to Comment 5), today's action is designed to prevent violations of the health-based national ambient air quality standard. It does not result in the relaxation of control measures on existing sources and therefore will not cause emissions increases from those sources. Overall, as discussed in response to Comment 5, emissions in the area are projected to decline following the redesignation. Thus, today's action will not have disproportionately high and adverse effects on any communities in the area, including minority or low-income communities.

*Comment 10: The State Has Not Adopted and Implemented Federally Enforceable Emission Controls as Required by the Clean Air Act as a Condition for Redesignation to Attainment*

A commenter notes that the Clean Air Act requires that areas seeking redesignation to attainment must undertake actions that are “federally enforceable” to improve air quality. The commenter claims that the State has not done so. The commenter argues that the State is, instead, relying entirely on the Federal NO<sub>x</sub> SIP call, which was promulgated in 2001—three years before EPA made the decision to make the Evansville area nonattainment for the ozone NAAQS. The commenter also claims that there has been no action by any level of government to reduce ozone forming conditions since the Evansville area was designated nonattainment.

Another commenter contends that, while there were some reductions in ozone precursor emissions in the immediate nonattainment area as a result of EPA's NO<sub>x</sub> SIP call, it is unclear, at this time, whether these emission reductions will have a positive or negative impact on the local air quality as the result of “NO<sub>x</sub> scavenging” of ozone. The commenter claims that this phenomenon appears to be the case in the summer of 2005, when the ozone monitor in Inglefield recorded low levels of ozone compared to the other monitors in the area.

Dr. Alexandrovich states that the ozone trends at monitors in the Evansville area, particularly in the most recent years, are explained by regional emission reductions achieved through the Federal Motor Vehicle Emissions Control Program, acid rain control program, and NO<sub>x</sub> SIP call supplemented by local emissions reductions in Vanderburgh and Warrick

Counties. Further emissions reductions will be achieved through additional Federal emission reductions from vehicles, fuels, and electric utilities. This commenter goes on to state that ozone formation in the Evansville area is NO<sub>x</sub>-limited and ozone reduction through NO<sub>x</sub> scavenging is not an issue. Ozone levels have declined as regional NO<sub>x</sub> emissions have decreased. The ozone decrease is most evident at the Inglefield monitor, AIRS 18-163-0013 (Vanderburgh County). The ozone decrease in this area is consistently greater than at other monitoring sites in the Evansville area, probably due to regional NO<sub>x</sub> emission reductions in an area that is NO<sub>x</sub>-limited.

*Response 10*

Although the NO<sub>x</sub> SIP call was issued by the EPA in 2001, the State of Indiana can claim credit for the regional NO<sub>x</sub> emission reductions that have resulted from the implementation of the NO<sub>x</sub> emission control rules adopted by the State to comply with the NO<sub>x</sub> SIP call. The State of Indiana adopted NO<sub>x</sub> emission control regulations which were implemented beginning in the period of 2003-2004, and which will result in additional reductions in regional NO<sub>x</sub> emissions through 2007 or later. The State can take credit for these federally enforceable emission reductions when considering the emission reductions that led to the air quality improvement in the Evansville area. The State may also consider these emission reductions in its maintenance demonstration, to the extent that such emission reductions are permanent, enforceable, and will continue to occur after the attainment period (after 2002-2004).

The EPA and the Clean Air Act do not require the State to consider only emission reductions resulting from rules adopted after designation of areas as nonattainment of the NAAQS. The State may consider emission reductions resulting from “existing” regulations as long as the emission reductions themselves occur subsequent to the period of NAAQS violation upon which a nonattainment designation is based. Since the nonattainment designation for the Evansville area was based on ozone data for the period of 2001-2003, the State can consider the emission reductions that occurred subsequent to any year in this period. The State is correct in taking credit for the NO<sub>x</sub> emission reductions that resulted from the implementation of the State's emission control regulations under the NO<sub>x</sub> SIP call. In addition, EPA has implemented several programs that have resulted in reduced emissions in recent

years. For cars and light trucks, EPA has instituted the National Low Emissions Vehicle (NLEV) program, which went into effect nationally in 2001, and EPA's Tier 2 rules, which went into effect in 2004. In addition, Tier 2 standards for nonroad diesel engines were phased in between 2001 and 2004. Over time, the phase-in of these programs has resulted in reductions in emissions as new vehicles have replaced older, higher-polluting vehicles. Further emission reductions have occurred as a result of implementation of EPA standards for small spark-ignited engines (e.g., lawnmowers) and locomotives. The heavy duty highway truck engine rule also implemented emission reductions beginning in 2004. See also the discussion in our September 9, 2005 proposed rule, 70 FR 53610–53611 and the responses to Comments 1 and 4 above.

As noted in the State's June 2, 2005 submittal, significant NO<sub>x</sub> emission reductions have occurred in the southwestern Indiana area as a result of the implementation of State NO<sub>x</sub> emission control rules for electric generating units. The State NO<sub>x</sub> emission control rules were adopted and implemented to comply with EPA's acid rain control requirements and EPA's NO<sub>x</sub> SIP call. On December 6, 2005 and December 7, 2005, IDEM submitted to the EPA more detailed information to document the NO<sub>x</sub> emission reductions resulting from the implementation of these NO<sub>x</sub> emission control regulations. Based on ozone season-specific, facility-specific NO<sub>x</sub> emissions data, IDEM has determined that electric generating unit NO<sub>x</sub> emissions have steadily declined between 1998 and 2005. Table 4 documents the change in ozone season NO<sub>x</sub> emissions for these facilities.

TABLE 4.—OZONE SEASON NO<sub>x</sub> EMISSIONS FROM ELECTRIC GENERATING UNITS IN SOUTHWESTERN INDIANA<sup>1</sup> IN UNITS OF TONS PER OZONE SEASON.

Year	NO <sub>x</sub> Emissions (tons per ozone season)
1998 .....	66707
1999 .....	63242
2000 .....	58852
2001 .....	57922
2002 .....	52719
2003 .....	47784
2004 .....	30427
2005 .....	22294

<sup>1</sup>Southwestern Indiana includes Dubois, Gibson, Pike, Posey, Spencer, Vanderburgh, and Warrick Counties.

These data clearly show the reduction in regional NO<sub>x</sub> emissions that resulted between 2001–2003, the ozone nonattainment period, and 2002–2004, the attainment period. These data also show continued reduction of regional NO<sub>x</sub> emissions through 2005. Note that the NO<sub>x</sub> emissions from electric generating units in southwestern Indiana declined by 47.5 percent between 2001 (a year during the 2001–2003 nonattainment period) and 2004 (a year during the 2002–2004 attainment period). These emissions decreased an additional 26.7 percent between 2004 and 2005 as a result of the implementation of Indiana's NO<sub>x</sub> emission control regulations in compliance with EPA's NO<sub>x</sub> SIP call. These emission reductions have resulted from the implementation of permanent and enforceable emission reduction requirements, and have contributed to the attainment of the 8-hour ozone standard in the Evansville area and to maintenance of this standard in this area. Emission reductions from these sources will continue through 2007 and beyond, and will be supplemented by CAIR through 2015 and beyond.

Besides the Federal and State emission control programs mentioned above, permanent and enforceable emission reductions have been achieved through other means, such as enforcement of existing regulations. A prime example of such emission reductions resulted from an enforcement action against the Southern Gas and Electric Company, Incorporated (SIGECO). In June 2003, the United States and SIGECO entered into a consent decree in which, among other things, SIGECO agreed to implement certain NO<sub>x</sub> control measures at its F.B. Culley Station in Warrick County. *U.S. v. SIGECO*, No. IP99–1692 (S.D. Ind.). More specifically, by no later than September 1, 2003, the Company was required to continuously operate Selective Catalytic Reduction (SCR) emission controls at the Culley Station Unit 3 to reduce NO<sub>x</sub> emissions. In addition, by December 31, 2006, SIGECO is required to undertake additional, substantial NO<sub>x</sub> emission reduction measures at Culley Station Unit 1, which will help to maintain the 8-hour ozone standard in the Evansville area. These measures collectively should result in a total NO<sub>x</sub> emission reduction of 4,000 tons per year at this facility.

We agree with Dr. Alexandrovich, the Vanderburgh County Ozone Officer, that the Evansville area appears to be NO<sub>x</sub>-limited. This explains why peak ozone concentrations in the area have

decreased as state NO<sub>x</sub> rules controlling emissions from electric generating units (power plants) and other major combustion sources have been implemented. We also agree with this commenter that other federally enforceable emission controls on regional emissions from mobile sources and fuels, and through CAIR, will be implemented in the future and that these emission controls will further lower ozone concentrations in the Evansville area.

It should be noted that the EPA and other organizations and institutions conducted considerable ozone modeling analyses to support the NO<sub>x</sub> SIP call. These analyses supported the conclusion that the NO<sub>x</sub> SIP call, and the state regulations resulting from the NO<sub>x</sub> SIP call, would result in regional NO<sub>x</sub> emission reductions and significantly lower ozone levels east of the Mississippi River. We disagree with the commenter's claim that the benefits of the NO<sub>x</sub> SIP call are dubious. The commenter has presented no data or evidence to support this claim. We, along with the State, believe that the NO<sub>x</sub> SIP call was instrumental in the attainment of the ozone NAAQS in the Evansville area. The State's NO<sub>x</sub> emission control regulations helped to attain the ozone NAAQS in the Evansville area, and will help to maintain the ozone NAAQS in this area.

To demonstrate that regional VOC and NO<sub>x</sub> emission reductions have contributed to attainment of the 8-hour ozone standard in the Evansville area and will contribute to maintenance of the 8-hour ozone standard, IDEM used ozone modeling results from various studies to assess ozone impacts resulting from the implementation of regional emission controls. In the State's June 2, 2005 ozone redesignation request for the Evansville area, IDEM draws the following conclusions from the various ozone modeling analyses that have addressed the Midwest:

EPA modeling analysis for the Heavy Duty Engine rule. EPA conducted modeling for Tier II vehicle and low-sulfur fuels to support the final rulemaking for the Heavy Duty Engine (HDE) and Vehicle Standards and Highway Diesel Fuel Rule. This modeling, in part, addressed ozone levels in Indiana, including the Evansville area. A base year of 1996 was modeled, and the impacts of fuel changes and the NO<sub>x</sub> SIP call were addressed for high ozone episodes in 1995. The modeling supports the conclusion that fuel improvements and the NO<sub>x</sub> SIP call result in significant ozone improvements (lower projected peak ozone concentrations) in the

Evansville area. Using the modeling results to determine Relative Reduction Factors (RRFs)<sup>13</sup> and considering the 2001–2003 ozone design values for each monitor in the Evansville area, IDEM projected the 2007 ozone design values for the monitoring sites. The worst-case monitoring site (based on the 2001–2003 ozone design values), the Alcoa-Yankeetown monitoring site, was projected to have a 2007 ozone design value of 0.071 ppm, down from a 2001–2003 ozone design value of 0.085 ppm. All monitoring sites in the Evansville area were projected to experience significant decreases in peak ozone concentrations between 2001–2003 and 2007. The highest peak ozone concentration in 2007 was projected to be 0.073 ppm at the Evansville-Mill Road monitoring site, with a projected 2007 ozone design value of 0.073 ppm. All monitoring sites were projected to experience 12 to 17 percent decreases in peak 8-hour ozone concentrations between 2001–2003 and 2007. Therefore, the NO<sub>x</sub> SIP call and the fuel modifications considered in the ozone modeling were found to significantly improve the ozone levels in the Evansville area.

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

EPA and LADCO modeling analysis for CAIR. EPA conducted modeling in support of the CAIR rulemaking. IDEM used the EPA modeling results and 2000–2002 monitored ozone design values for Posey, Vanderburgh, and Warrick Counties to project 2010 ozone design values with and without the implementation of CAIR. The implementation of CAIR was projected to slightly decrease the 2010 ozone design values in these counties. Similar to EPA, LADCO modeled base period

and future ozone levels to assess the impact of CAIR in the Lake Michigan area. IDEM used the LADCO ozone modeling results along with the 2001–2003 ozone design values for the ozone monitors in the Evansville area to derive RRFs and to project 2010 ozone design values. All projected 2010 ozone design values were significantly below the 8-hour ozone standard, with the worst-case 2010 ozone design value projected to be 0.075 ppm at the Alcoa-Yankeetown monitoring site. These modeling results show that CAIR will further reduce peak ozone levels in the Evansville area and that, with the implementation of the NO<sub>x</sub> SIP call (also factored into EPA's and LADCO's ozone modeling) and CAIR, the Evansville area will continue to maintain the 8-hour ozone standard.

The modeling analyses and demonstrations discussed above provide further support for our determination that the area will maintain the 8-hour ozone standard. See the response to Comment 5.

With regard to the negative comment regarding NO<sub>x</sub> scavenging, it is noted that NO<sub>x</sub> scavenging refers to a decrease in local ozone concentrations associated with significant local NO<sub>x</sub> emissions or with increases in local NO<sub>x</sub> emissions (some ozone is converted to oxygen and nitrogen dioxide due to reaction with NO<sub>x</sub>). Similarly, there can be an increase in local ozone concentrations associated with a decrease in local NO<sub>x</sub> emissions. NO<sub>x</sub> scavenging is always a possibility near large NO<sub>x</sub> sources. This does not appear to be a factor in this case. Please note that any such NO<sub>x</sub> scavenging, if a factor, was likely to have been present in the area when the 8-hour ozone NAAQS was originally violated in 2001–2003, when the EPA designated the Evansville area as nonattainment for the 8-hour ozone NAAQS. In the period of 2001–2003, the pre-NO<sub>x</sub> SIP call emissions would have been relatively high and could have decreased local ozone concentrations to some degree; yet the area violated the ozone standard. Beginning in 2003–2004 and later, NO<sub>x</sub> emissions from power plants would have been lower due to implementation of NO<sub>x</sub> emission control regulations resulting from the NO<sub>x</sub> SIP call. If NO<sub>x</sub> scavenging were a factor, local ozone concentrations should have increased, yet the Evansville area attained the ozone standard. Thus, it is unlikely that NO<sub>x</sub> scavenging due to power plant emissions is an explanation for why the Evansville area ozone monitors are now recording attainment of the 8-hour ozone standard. (In addition, as pointed out by Dr. Alexandrovich, the area

appears to be NO<sub>x</sub>-limited; as such, future regional NO<sub>x</sub> emission reductions will further lower ozone concentrations in this area.) Finally, the commenter concerned about NO<sub>x</sub> scavenging has provided no data showing that such has occurred.

For all of the above reasons, and for the reasons stated in our September 9, 2005 proposed rule, we believe that the criterion set forth in section 107(d)(3)(E)(iii) of the Clean Air Act is satisfied, and that “the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions.” EPA, thus, is not acting illegally in approving the State's ozone redesignation request for the Evansville area.

## VI. What Are Our Final Actions?

EPA is making a determination that Vanderburgh and Warrick Counties have attained the 8-hour ozone NAAQS, and EPA is approving the redesignation of Vanderburgh and Warrick Counties 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 changes the official designation for Vanderburgh and Warrick Counties from nonattainment to attainment for the 8-hour ozone standard.

EPA is also approving the maintenance plan SIP revision for Vanderburgh and Warrick Counties. 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 have reviewed comments on our September 9, 2005 proposed rule, and have found no comments that would cause us to reverse the actions we documented in the proposed rule. Therefore, all proposed actions are being finalized here.

## VII. Statutory and Executive Order Review

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and

<sup>13</sup> Relative Reduction Factors are fractional changes in peak ozone concentrations projected to occur as a result of assumed changes in precursor emissions resulting from the implementation of emission control strategies. Relative Reduction Factors are derived through modeling of peak ozone concentrations before and after implementation emission controls and are applied to monitored ozone concentrations to project post-control peak ozone levels.

therefore is not subject to review by the Office of Management and Budget.

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

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

*Regulatory Flexibility Act*

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

*Unfunded Mandates Reform Act*

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

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

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

*Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, and does not impose any new requirements on sources, or allows a state to avoid adopting or implementing additional requirements, and does not alter the relationship or distribution of power and responsibilities established in the Clean Air Act.

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

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

*National Technology Transfer Advancement Act*

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

*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 or environmental effects of their programs, policies, and activities on minority and low-income populations. As explained elsewhere in this document (see responses to Comments 5 and 9), today’s action is designed to prevent violations of the health-based national ambient air quality standard. It does not result in the relaxation of control measures on existing sources and therefore will not cause emissions increases from those sources. Overall, as discussed in response to Comments 5 and 9, emissions in the area are projected to

decline following the redesignation. Thus, today’s action will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

*Paperwork Reduction Act*

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

*Congressional Review Act*

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 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 dioxide, Ozone, Particulate matter, Volatile organic compounds.

*40 CFR Part 81*

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

Dated: December 15, 2005.  
**Bharat Mathur,**  
*Acting Regional Administrator, Region 5.*

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

**PART 52—[AMENDED]**

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

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

**Subpart P—Indiana**

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

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

\* \* \* \* \*

(ee) Approval—On June 2, 2005, Indiana submitted a request to redesignate Vanderburgh and Warrick Counties 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 Vanderburgh and Warrick Counties. The

2015 motor vehicle emission budgets are 4.20 tons per day for VOC and 5.40 tons per day for NO<sub>x</sub> for both counties combined.

**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 Evansville, IN: Vanderburgh and Warrick Counties 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
Evansville, IN:				
Vanderburgh County .....	1/30/06	Attainment.		
Warrick County .....	1/30/06	Attainment.		

<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. 05–24542 Filed 12–28–05; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

[FRL–8017–2]

RIN 2060–AK45

**Protection of Stratospheric Ozone: Adjusting Allowances for Class I Substances for Export to Article 5 Countries**

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

**ACTION:** Final rule.

**SUMMARY:** This action finalizes adjustments to allocations of Article 5 allowances that permit production of Class I ozone-depleting substances (ODSs) solely for export to developing countries to meet those countries’ basic domestic needs. This action adjusts the baseline Article 5 allowances for companies for specific Class I controlled substances and establishes a schedule for reductions in the Article 5

allowances for these Class I controlled substances in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) and the Clean Air Act (CAA). This action also extends the allocation of Article 5 allowances for the manufacture of methyl bromide solely for export to developing countries beyond January 1, 2005, in accordance with the Montreal Protocol and the CAA.

**EFFECTIVE DATE:** This final rule is effective on December 29, 2005.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. OAR–2004–0506. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available, only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at

the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Hodayah Finman, U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; telephone number: (202) 343–9246; fax number: (202) 343–2338; [finman.hodayah@epa.gov](mailto:finman.hodayah@epa.gov). You may also visit the EPA’s Ozone Depletion Web site at [www.epa.gov/ozone](http://www.epa.gov/ozone) for further information about EPA’s Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

**SUPPLEMENTARY INFORMATION:** This action establishes a new Article 5 allowance baseline for specified Class I