

(c) Manufacturers of vehicles equipped with periodically regenerating trap oxidizer systems must propose a procedure for testing and certifying such vehicles including SFTP testing for the review and approval of the Administrator. The manufacturer must submit its proposal before it begins any service accumulation or emission testing. The manufacturer must provide with its submittal, sufficient documentation and data for the Administrator to fully evaluate the operation of the trap oxidizer system and the proposed certification and testing procedure.

(d) The provisions of paragraph (a) and (b) of this section also apply to MDPVs.

■ 26. Section 86.1844-01 is amended by adding paragraph (d)(17) to read as follows:

**§ 86.1844-01 Information requirements: Application for certification and submittal of information upon request.**

\* \* \* \* \*

(d) \* \* \*

(17) The name of an agent for service of process located in the United States. Service on this agent constitutes service on you or any of your officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part.

\* \* \* \* \*

[FR Doc. E6-14429 Filed 8-29-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2006-0399; FRL-8214-5]

#### Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Allen County 8-hour Ozone Nonattainment Area to Attainment for Ozone

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

**ACTION:** Direct final rule.

**SUMMARY:** On May 30, 2006, the State of Indiana, through the Indiana Department of Environmental Management (IDEM), submitted, in final: A request to redesignate the 8-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area of Allen County, Indiana, to attainment for the 8-hour ozone NAAQS; and a request for EPA approval of an Indiana State

Implementation Plan (SIP) revision containing a 14-year maintenance plan for Allen County. Today, EPA is making a determination that the Allen County, Indiana ozone nonattainment area has attained the 8-hour ozone NAAQS. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2003-2005 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. EPA is also approving the request to redesignate the area to attainment for the 8-hour ozone standard and the State's maintenance plan. EPA's approval of the 8-hour ozone redesignation request is based on its determination that Allen County, Indiana has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is also approving, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for the year 2020 that are contained in the 14-year 8-hour ozone maintenance plan for Allen County.

**DATES:** This rule is effective on October 30, 2006, unless EPA receives adverse written comments by September 29, 2006. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-0399, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: *mooney.john@epa.gov*.
- Fax: (312) 886-5824.
- Mail: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2006-0399. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

*www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* 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 legal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886-6052 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052, *Rosenthal.steven@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. What Actions Are EPA Taking?
- III. What Is the Background for These Actions?
- IV. What Are the Criteria for Redesignation?
- V. Why Is EPA Taking These Actions?
- VI. What Is EPA’s Analysis of the Request?
- VII. Has Indiana Adopted Acceptable Motor Vehicle Emissions Budgets for the End of the 14-Year Maintenance Plan Which Can Be Used To Support Conformity Determinations?
- VIII. What Is the Effect of EPA’s Actions?
- IX. Statutory and Executive Order Reviews.

**I. What Should I Consider as I Prepare My Comments for EPA?**

*A. Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*B. Tips for Preparing Your Comments.* When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.

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

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

**II. What Actions Are EPA Taking?**

EPA is taking several related actions. EPA is making a determination that the Allen County nonattainment area has attained the 8-hour ozone standard. EPA is also approving the State’s request to change the legal designation of the Allen County area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also approving Indiana’s maintenance plan SIP revision for Allen County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep Allen County in attainment for ozone for the next 14 years, through 2020. In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2020 VOC and NO<sub>x</sub> MVEBs for Allen County for transportation conformity purposes.

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

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

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone. NO<sub>x</sub> and VOC are referred to as precursors of ozone.

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years (2001–2003) of air quality data. The **Federal Register** notice making these designations was signed on April 15, 2004, and published on April 30, 2004, (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as “basic” nonattainment) contains general, less prescriptive, requirements

for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as “classified” nonattainment) provides more specific requirements for ozone nonattainment areas. Some areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA’s 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour design values. Allen County was originally designated as an 8-hour ozone nonattainment area by EPA on April 30, 2004, (69 FR 23857). The 2004 classification for Allen County as a subpart 1 8-hour ozone nonattainment area was based on air quality monitoring data from 2001–2003.

Control requirements are linked to each classification. Areas with more serious ozone pollution are subject to more prescribed requirements. The requirements are designed to bring areas into attainment by their specified attainment dates. The control requirements and dates by which attainment needs to be achieved vary with the area’s classification. For example, marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (*i.e.*, 0.084 ppm) is less than or equal to 0.08 ppm. (See 69 FR 23857 (April 30, 2004) for further information). The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

On May 30, 2006, Indiana submitted a request for redesignation to attainment for the 8-hour ozone standard for Allen County. The redesignation request included three years of complete, quality-assured data for the period of 2003 through 2005, indicating the 8-hour NAAQS for ozone had been achieved for the Allen County. The data satisfy the CAA requirements 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. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

**IV. What Are the Criteria for Redesignation?**

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing 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); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents: State Implementation Plans; "Ozone and Carbon Monoxide Design Value Calculations", Memorandum from Bill Laxton, June 18, 1990; "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992; "Contingency Measures for Ozone and Carbon Monoxide (CO)

Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

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

"State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

"Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

"State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1-10, "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," dated November 30, 1993.

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

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

**V. Why Is EPA Taking These Actions?**

On May 30, 2006, the State submitted in final, after an April 18, 2006, public hearing, a request to redesignate the area to attainment for the 8-hour ozone standard. EPA believes that Allen County has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

**VI. What Is EPA's Analysis of the Request?**

EPA is making a determination that the Allen County nonattainment area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The basis for EPA's determination is as follows:

1. *Allen County has attained the 8-hour ozone NAAQS:* EPA is making a determination that Allen County has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Indiana submitted ozone monitoring data for the April through September ozone seasons from 2003 to 2005. This data has been quality assured and is recorded in AIRS. In its May 30, 2006, redesignation request, Indiana certified that the Allen County 2003-2005 data is accurate. The 4th high averages are summarized in Table 1, in which the values are in ppm ozone.

TABLE 1.—4TH HIGH VALUES IN PPM OZONE

Monitor	County	2003-2005	2003	2004	2005
Leo .....	Allen ....	0.083	0.090	0.073	0.086
Ft. Wayne .....	Allen ....	0.076	0.084	0.069	0.076

In addition, as discussed below with respect to the maintenance plan, Indiana has committed to continue monitoring in these areas in accordance with 40 CFR part 58. In summary, EPA believes that the data submitted by Indiana provide an adequate demonstration that Allen County has attained the 8-hour ozone NAAQS.

2. *Allen County has met all applicable requirements under section 110 and part D of the CAA and the Area has a fully approved SIP under section 110(k) for Purposes of Redesignation.*

EPA has determined that Indiana has met all applicable SIP requirements for Allen County for purposes of redesignation under section 110 of the CAA (general SIP requirements). EPA has also determined that the Indiana SIP meets applicable SIP requirements under Part D of Title I of the Clean Air Act (requirements specific to Subpart 1 nonattainment areas). Section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements for purposes of redesignation. Section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained what requirements are applicable to the area and that they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. *Allen County has met all applicable requirements for purposes of redesignation under Section 110 and Part D of the CAA.*

The September 4, 1992 Calcagni memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993 and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, MI). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A (c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003 (St. Louis NFR)

*General SIP requirements:* Section 110(a)(2) of Title I of the CAA delineates

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

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO<sub>x</sub> SIP Call, Clean Air Interstate Rule). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are

linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001)

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no Part D requirements applicable for purposes of redesignation under the 8-hour standard are expected to be due prior to submission of the redesignation request. Therefore EPA believes that the State has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

*Part D requirements:* EPA has also determined that the Indiana SIP meets applicable SIP requirements under part D of the CAA since no such requirements are expected to become due for the 8-hour ozone standard prior to submission of the area's redesignation request. Under part D, an area's classification (marginal, moderate, serious, severe, and extreme) indicates the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Because Allen County is a subpart 1 8-hour ozone nonattainment area and is not classified under subpart 2 of part D of the CAA for the 8-hour ozone standard, subpart 2 of part D of the CAA does not apply to this area.

*Part D, Subpart 1 applicable requirements.* For purposes of evaluating this redesignation request, the applicable part D, subpart 1 requirements for all nonattainment areas are contained in section 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). [See also 68 FR 4852–3 in St. Louis NPR

for discussion of section 172 requirements.]

It is not anticipated that any requirements under part D will become due prior to submission of the complete redesignation request, and, therefore, none is expected to be applicable to the area for purposes of redesignation. For example, the requirement for an ozone attainment demonstration to meet the requirement of section 172(c)(1) is not yet applicable, nor are the requirements for Reasonably available Control Measures (RACM) and Reasonably Available Control technology (RACT) (section 172(c)(1)), Reasonable Further progress (RFP) (section 172(c)(2)), and contingency measures section 172(c)(9)).

Since it is expected that Indiana will submit a complete ozone redesignation request for Allen County prior to the deadline for any submissions, we are determining that the part D requirements do not apply to Allen County for purposes of redesignation. In addition to the fact that certain Part D requirements applicable for purposes of redesignation are not expected to be due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the conformity and New Source Review requirements as not requiring approval prior to redesignation.

*Section 176 Conformity Requirements*

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure the Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (“transportation conformity”) as well as to all other Federally supported or funded projects (“general conformity”). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity requirements as

not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995) (Tampa, FL)

EPA has determined that areas being redesignated need not comply with the requirement that a New Source Review program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled “Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.” The State has demonstrated that the area will be able to maintain the standard without Part D NSR in effect, and therefore, the State need not have a fully approved Part D NSR program prior to approval of the redesignation request. The State’s Prevention of Significant Deterioration (PSD) program will become effective in the area upon redesignation to attainment. Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, OH (61 FR 20458–20469–70, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31827, June 21, 1996).

Thus, EPA finds that the area has satisfied all 8-hour ozone standard requirements applicable for purposes of section 107(d)(3)(E) under Part D of the CAA.

*b. The area has a fully approved applicable SIP for purposes of redesignation under section 110(k) of the CAA.*

EPA has fully approved the applicable Indiana SIP for purposes of redesignation for Allen County under section 110(k) of the Clean Air Act. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3 *Southwestern*

*Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Indiana has adopted and submitted and EPA has fully approved at various times provisions addressing the various SIP elements applicable in the Allen County area under the one-hour ozone standard. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area’s nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation have yet come due, and therefore they need not be approved into the SIP prior to redesignation.

*3. The air quality improvement in Allen County is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions.* EPA believes that the State of Indiana has demonstrated that the observed air quality improvement in Allen County is due to permanent and enforceable emission reductions resulting from implementation of the SIP, Federal measures, and other state-adopted measures.

In making this demonstration, the State has documented the changes in VOC and NO<sub>x</sub> emissions from all anthropogenic (man-made or man-based) sources in Allen County between 1999 and 2004 and the changes in NO<sub>x</sub> emissions from Electric Generating Units (EGUs) in Indiana between 1999 and 2005. Allen County was monitored in violation of the 8-hour ozone NAAQS in 1999 and in attainment with the NAAQS during the period of 2003 through 2005. The VOC and NO<sub>x</sub> emissions for Allen County are given in Table 2.

TABLE 2.—VOC AND NO<sub>x</sub> EMISSION TRENDS IN ALLEN COUNTY FOR ANTHROPOGENIC SOURCES—EMISSIONS IN TONS/ SUMMER DAY

Pollutant	1999	2002	2004	Percent reduction 2002 to 2004
VOC .....	68.65	57.16	52.28	8.5
NO <sub>x</sub> .....	48.87	48.75	44.94	7.8

The NO<sub>x</sub> emissions trends for EGUs for the 1999–2005 period in Indiana statewide are given in Table 3. The NO<sub>x</sub> emissions for Allen County and the statewide EGU NO<sub>x</sub> emissions have

shown significant downward trends from 1999, an 8-hour standard violation year, to 2004 and 2005, attainment years. IDEM notes that the NO<sub>x</sub> emissions statewide have declined

significantly as a result of the implementation of the Indiana NO<sub>x</sub> SIP and acid rain control regulations, both of which lead to permanent, enforceable emission reductions.

TABLE 3.—NO<sub>x</sub> EMISSION TRENDS FOR ELECTRIC GENERATING UNITS IN INDIANA STATEWIDE—EMISSIONS IN THOUSANDS OF TONS PER OZONE SEASON (APRIL–OCTOBER)

Year	1999	2000	2001	2002	2003	2004	2005
Statewide .....	149.8	133.9	136.1	114.0	99.3	66.6	55.5

As noted in Table 2, the VOC emissions in Allen County have also declined between 1999 and 2004. VOC emission control measures have been implemented in Allen County. Statewide RACT rules have applied to all new sources locating in Indiana since the mid-1990s and include the following VOC control rules: 326 Indiana Administrative Code (IAC) 8–1–6 (Best Available Control Technology (BACT) for non-specific sources); 326 IAC 8–2 (surface coating emission limitations); 326 IAC 8–3 (organic solvent degreasing operations); 326 IAC 8–4 (petroleum sources, including storage, transport, and marketing sources and petroleum refining); 326 IAC 8–5 (miscellaneous sources); and 326 IAC 8–6 (organic solvent emission limitations). Compliance with these rules has controlled point source VOC emissions in Allen County, offsetting some source growth, as well as controlling VOC emissions in the remainder of Indiana. The VOC emission reductions resulting from the implementation of the VOC emission control rules are permanent and enforceable.

Since Allen County was not previously designated as a 1-hour ozone nonattainment area, no ozone precursor emission controls were specifically targeted at this County. Therefore, statewide and Federal emission control requirements have provided the majority of the VOC and NO<sub>x</sub> emission reductions in Allen County.

Besides the statewide VOC RACT rules and NO<sub>x</sub> emission control requirements, other Federal emission reduction requirements have resulted in decreased ozone precursor emissions in Allen County and will produce future emission reductions that will lead to maintenance of the ozone standard in Allen County (see a more detailed discussion on maintenance of the 8-hour ozone standard in Allen County below). These emission reduction requirements include the following:

*Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards.* These emission control requirements

result in lower emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules are being phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO<sub>x</sub> emission reductions will occur: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent; and larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are also expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Although some of these emission reductions have already occurred by the 2004 attainment year, most of these emission reductions will occur during the maintenance period for Allen County.

*Heavy-Duty Diesel Engines.* In July 2000, EPA issued a final rule to control the emissions from highway heavy duty diesel engines, including low-sulfur diesel fuel standards. These emission reductions are being phased in between 2004 and 2007. This rule is expected to result in a 40 percent decrease in NO<sub>x</sub> emissions from heavy duty diesel vehicles.

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

Indiana commits to maintain all existing emission control measures that affect Allen County after this area is designated to attainment. All changes in existing rules affecting Allen County and new rules subsequently needed for continued maintenance of the 8-hour ozone NAAQS in Allen County will be

submitted to the EPA for approval as SIP revisions. Based on the information summarized above, Indiana has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions.

4. *The area has a fully approved maintenance plan pursuant to section 175A of the CAA.* In conjunction with its request to redesignate Allen County to attainment status, Indiana submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in Allen County for 14 years after redesignation.

*a. What Is Required in a Maintenance Plan?*

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions: The attainment emissions inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan.

*b. Attainment Emissions Inventory*

IDEM prepared comprehensive VOC and NO<sub>x</sub> emission inventories for Allen County, including point (significant stationary sources), area (smaller and widely-distributed stationary sources), mobile on-road, and mobile non-road sources for 2004 (the base year/attainment year). To develop the attainment year emission inventories, IDEM used the following approaches and sources of data:

*Area Sources*—Area source VOC and NO<sub>x</sub> emissions were grown from Indiana’s 2002 periodic emissions inventory, which was previously submitted to the EPA.

*Mobile On-Road Sources*—Mobile source emissions were calculated using the MOBILE6 emission factor model and traffic data (vehicle miles traveled, vehicle speeds, and vehicle type and age distributions) extracted from the region’s travel-demand model.

*Point Source Emissions*—2004 point source emissions were compiled using IDEM’s 2004 annual emissions statement database and the 2005 EPA Air Markets acid rain emissions inventory database.

*Mobile Non-Road Emissions*—Non-road mobile source emissions were generated by the EPA and documented in the 2002 National Emissions Inventory (NEI). IDEM used these emissions estimates along with growth factors to grow the non-road mobile source emissions to 2004. To address concerns about the accuracy of some of

the emissions for various source categories in EPA’s non-road emissions model, the Lake Michigan Air Directors Consortium (LADCO) contracted with several companies to review the base data used by the EPA and to make recommendations for corrections to the model. Emissions were estimated for commercial marine vessels and railroads. Recreational motorboat population and spatial surrogates (used to assign emissions to each county) were updated. The populations for the construction equipment category were reviewed and updated based on surveys completed in the Midwest, and the temporal allocation for agricultural sources was also updated. The EPA provided a revised non-road estimation model for the 2002 analysis.

The 2004 attainment year VOC and NO<sub>x</sub> emissions for Allen County are summarized along with the 2010 and 2020 projected emissions for this County in Tables 4 and 5 below, which provide a demonstration of maintenance of this area. It is our conclusion that the State has acceptably derived and documented the attainment year VOC and NO<sub>x</sub> emissions for Allen County.

*c. Demonstration of Maintenance*

As part of its May 30, 2006 redesignation request, IDEM included a requested revision to the SIP to incorporate a 14-year ozone maintenance plan, as required under section 175A of the CAA. Included in the maintenance plan is a maintenance demonstration. This demonstration

shows maintenance of the 8-hour ozone NAAQS by documenting current and projected VOC and NO<sub>x</sub> and showing that future emissions of VOC and NO<sub>x</sub> remain at or below the attainment year emission levels.<sup>1</sup> Note that a maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001) and 68 FR 25430–25432 (May 12, 2003).

Table 4 specifies the VOC emissions in Allen County for 2004, 2010, and 2020. IDEM chose 2020 as a projection year to meet the 10-year maintenance projection requirement, allowing additional time for the State to complete its adoption of the ozone redesignation request and ozone maintenance plan and for the EPA to approve the redesignation request and maintenance plan. IDEM also chose 2010 as an interim year to demonstrate that VOC and NO<sub>x</sub> emissions will remain below the attainment levels throughout the 14-year maintenance period.

Table 5, similar to Table 4, specifies the NO<sub>x</sub> emissions in Allen County for 2004, 2010, and 2020. Together, Tables 4 and 5, in terms of projected emissions, demonstrate that Allen County should remain in attainment of the 8-hour ozone NAAQS between 2004 and 2020, for more than 10 years after EPA is expected to approve the redesignation of Allen County to attainment of the 8-hour ozone NAAQS.

TABLE 4.—ATTAINMENT YEAR (2004) AND PROJECTED VOC EMISSIONS IN ALLEN COUNTY (TONS PER SUMMER DAY)

Source sector	Year		
	2004	2010	2020
Point .....	9.33	7.91	9.74
Area .....	18.99	20.00	22.17
On-Road Mobile .....	13.86	9.14	5.57
Off-Road Mobile .....	10.10	7.02	6.57
Total .....	52.28	44.07	44.05

TABLE 5.—ATTAINMENT YEAR AND PROJECTED NO<sub>x</sub> EMISSIONS IN ALLEN COUNTY (TONS PER SUMMER DAY)

Source sector	Year		
	2004	2010	2020
Point .....	4.88	4.69	4.78
Area .....	3.89	4.09	4.33
On-Road Mobile .....	23.17	14.57	6.19
Off-Road Mobile .....	13.01	9.84	6.98
Total .....	44.95	33.19	22.28

<sup>1</sup> The attainment year can be any of the three consecutive years in which the area has clean

(below violation level) air quality data (2003, 2004, or 2005 for Allen County).

IDEM also notes that Indiana's and 21 other states' EGU NO<sub>x</sub> emission control rules stemming from EPA's NO<sub>x</sub> SIP call and CAIR, to be implemented beginning in 2006, will further lower NO<sub>x</sub> emissions in upwind areas, resulting in decreased ozone and ozone precursor transport into Allen County (the State did not project emission decreases resulting from CAIR and did not document future NO<sub>x</sub> emissions in upwind counties). This will also support maintenance of the ozone standard in Allen County.

The emission projections for Allen County coupled with the expected impacts of the State's EGU NO<sub>x</sub> rules and CAIR lead to the conclusion that Allen County should maintain the 8-hour ozone standard throughout the 14-year maintenance period. The decrease in local VOC and local and regional NO<sub>x</sub> emissions indicate that peak ozone levels in Allen County may actually further decline during the 14-year ozone maintenance period.

IDEM has documented some of the procedures used to project emissions. On-road mobile sources were projected using the MOBILE6 emission factor model and projected traffic data obtained from the Northwest Indiana Regional Planning Commission (NIRPC), who maintains a travel demand forecast model that is capable of projecting changes in total daily Vehicle Miles Traveled (VMT). Emissions for the other major source sectors were determined using source activity/growth data provided by the Lake Michigan Air Director's Consortium, as well as major source emissions data obtained periodically for all major sources statewide. Emissions projections for Allen County are consistent with the planning analyses being conducted to attain the 8-hour ozone and fine particle (PM<sub>2.5</sub>) standards throughout Indiana and throughout the Lake Michigan area.

Based on the comparison of the projected emissions and the attainment year emissions, we conclude that IDEM has successfully demonstrated that the 8-hour ozone standard should be maintained in Allen County. We believe that this is especially likely given the expected impacts of the NO<sub>x</sub> SIP call and CAIR. As noted by IDEM, this conclusion is further supported by the fact that other states in the eastern portion of the United States are expected to further reduce regional NO<sub>x</sub> emissions through implementation of their own NO<sub>x</sub> emission control rules for EGUs and other NO<sub>x</sub> sources and through implementation of CAIR.

#### *d. Monitoring Network*

IDEM commits to continue operating and maintaining an approved ozone monitoring network in Allen County, in accordance with 40 CFR part 58, throughout the 14-year maintenance period. This will allow the confirmation of the maintenance of the 8-hour ozone standard in this area.

#### *e. Verification of Continued Attainment*

Continued attainment of the 8-hour ozone NAAQS in Allen County depends, in part, on the State's efforts toward tracking applicable indicators during the maintenance period. The State's plan for verifying continued attainment of the 8-hour ozone standard in Allen County consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. In addition, IDEM will periodically revise and review the VOC and NO<sub>x</sub> emissions inventories for Allen County to assure that emissions growth is not threatening the continued attainment of the 8-hour ozone standard in this area. Revised emission inventories for this area will be prepared for 2005, 2008, and 2011 as necessary to comply with the emission inventory reporting requirements established in the CAA. The revised emissions will be compared with the 2004 attainment emissions and the 2020 projected maintenance year emissions to assure continued maintenance of the ozone standard.

#### *f. Contingency Plan*

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

to attainment. See section 175A(d) of the CAA.

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

A Warning Level Response will be prompted whenever an annual (1-year) fourth-high monitored daily peak 8-hour ozone concentration of 89 ppb (or greater) occurs at any monitor in Allen County, or a 2-year averaged annual fourth-high daily peak 8-hour ozone concentration of 85 ppb or greater occurs at any monitor in Allen County. A Warning Level Response will consist of a study to determine whether the monitored ozone level indicates a trend toward higher ozone levels or whether emissions are increasing, threatening a future violation of the ozone NAAQS. The study will evaluate whether the trend, if any, is likely to continue, and, if so, the emission control measures necessary to reverse the trend, taking into consideration the ease and timing of implementation, as well as economic and social considerations, will be selected, adopted, and implemented. Implementation of necessary controls will take place as expeditiously as possible, but in no event later than 12 months from the conclusion of the most recent ozone season. If new emission controls are needed to reverse the adverse ozone trend, the procedures for emission control selection under the Action Level Response will be followed.

An Action Level Response will occur (be triggered) when a violation of the 8-hour ozone standard is monitored at any of the monitors in Allen County (when a 3-year average annual fourth-high monitored daily peak 8-hour ozone concentration of 85 ppb is recorded at any monitor in Allen County). In this situation, IDEM will determine the additional emission control measures needed to assure future attainment of the 8-hour ozone NAAQS. IDEM will focus on emission control measures that can be implemented within 18 months from the close of the ozone season in which the ozone standard violation is monitored.

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

opportunity for a public hearing, and other measures required by Indiana law for rulemaking by State environmental boards. If a new State emission control measure is already promulgated and scheduled for implementation at the Federal or State level, and that emission control is determined to be sufficient to address the air quality problem or adverse trend, additional local emission control measures may be determined to be unnecessary. IDEM will submit to the EPA an analysis to demonstrate that the proposed emission control measures are adequate to provide for future attainment of the 8-hour ozone NAAQS in Allen County.

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

- i. Lower Reid vapor pressure gasoline requirements;
- ii. Broader geographic applicability of existing emission control measures;
- iii. Tightened RACT requirements on existing sources covered by EPA Control Technique Guidelines (CTGs) issued in response to the 1999 CAA amendments;
- iv. Application of RACT to smaller existing sources;
- v. Vehicle Inspection and Maintenance (I/M);
- vi. One or more Transportation Control Measure (TCM) sufficient to achieve at least a 0.5 percent reduction in actual area-wide VOC emissions, to be selected from the following:
  - A. Trip reduction programs, including, but not limited to, employer-based transportation management plans, area-wide rideshare programs, work schedule programs, and telecommuting;
  - B. Transit improvement;
  - C. Traffic flow improvements; and
  - D. Other new or innovative transportation measures not yet in widespread use that affect State and local governments as deemed appropriate;
- vii. Alternative fuel and diesel retrofit programs for fleet vehicle operations;
- viii. Controls on consumer products consistent with those adopted elsewhere in the United States;
- ix. VOC or NO<sub>x</sub> emission offsets for new or modified major sources;
- x. VOC or NO<sub>x</sub> emission offsets for new or modified minor sources;
- xi. Increased ratio of emission offset required for new sources; and
- xii. VOC or NO<sub>x</sub> emission controls on new minor sources (with VOC or NO<sub>x</sub> emissions less than 100 tons per year).

#### *g. Provisions for a Future Update of the Ozone Maintenance Plan*

As required by section 175A(b) of the CAA, the State commits to submit to the EPA an update of the ozone maintenance plan eight years after redesignation of Allen County to attainment of the 8-hour ozone NAAQS. The updated maintenance plan would provide for maintenance of the 8-hour ozone standard in Allen County for an additional 10 years beyond the period covered by the initial ozone maintenance plan.

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

#### **VII. Has Indiana Adopted Acceptable Motor Vehicle Emissions Budgets for the End of the 14-Year Maintenance Plan Which Can Be Used To Support Conformity Determinations?**

##### *A. How Are the Motor Vehicle Emission Budgets Developed and What Are the Motor Vehicle Emission Budgets for Allen County?*

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

Under 40 CFR part 93, MVEBs for an area seeking a redesignation to attainment of the NAAQS are established for the last year of the maintenance plan. The MVEBs serve as ceilings on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993 transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs if needed.

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

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

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

The Transportation Conformity rule in section 93.118(f) provides for adequacy findings through two mechanisms. Section 93.118(f)(1) provides for posting a notice to the EPA conformity Web site at: <http://www.epa.gov/otaq/stateresources/>

*transconf/adequacy.htm* and providing a 30 day public comment period. The second mechanism is described in section 93.118(f)(2) which provides that EPA can review the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan. In this notice, EPA is simultaneously reviewing the adequacy of the motor vehicle emission budgets as part of this review and proposal on the overall maintenance plan. Indiana has requested parallel processing and the expediency of the process is best suited to following section 93.118(f)(2).

The Allen County 14-year maintenance plan contains VOC and NO<sub>x</sub> MVEBs for 2020. EPA has reviewed the submittal and the VOC and NO<sub>x</sub> MVEBs for Allen County and finds that the budgets meet the adequacy criteria in the Transportation Conformity rule. The 30-day comment period for adequacy will be the same as the comment period for approval of the budgets and maintenance plan. Any and all comments on the adequacy or approvability of the budgets should be submitted during the comment period stated in the **DATES** section of this notice.

EPA, through this rulemaking is approving the MVEBs for use to determine transportation conformity in Allen County because EPA has determined that the budgets are consistent with the control measures in the SIP and that Allen County can maintain attainment of the 8-hour ozone NAAQS for the relevant required 14-year period with mobile source emissions at the levels of the MVEBs. IDEM has determined the 2020 MVEBs for Allen County to be 6.5 tons per day for VOC and 7.0 tons per day for NO<sub>x</sub>. It should be noted that these MVEBs exceed the on-road mobile source VOC and NO<sub>x</sub> emissions projected by IDEM for 2020, as summarized in Tables 4 and 5 above ("On-Road Mobile" source sector). Through discussions with all organizations involved in transportation planning for Allen County, IDEM decided to include safety margins of 0.93 tons per day for VOC and 0.81 tons per day for NO<sub>x</sub> in the MVEBs to provide for mobile source growth not anticipated in the projected 2020 emissions. Indiana has demonstrated that Allen County can maintain the 8-hour ozone NAAQS with mobile source emissions of 5.57 tons per day of VOC and 6.19 tons per day of NO<sub>x</sub> in 2020 since total source emissions will remain under the attainment year levels.

#### *B. What Is a Safety Margin?*

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Tables 4 and 5, Allen County VOC and NO<sub>x</sub> emissions are projected to have safety margins of 8.23 tons per day for VOC and 22.66 tons per day for NO<sub>x</sub> in 2020 (the difference between the 2004, attainment year, and 2020 VOC and NO<sub>x</sub> emissions for all sources in Allen County).

The MVEBs requested by IDEM contain safety margins (selected by the State) significantly smaller than the safety margins reflected in the total emissions for Allen County. The State is not requesting allocation of the entire available safety margins actually reflected in the demonstration of maintenance (in Tables 4 and 5). Therefore, even though the State is requesting MVEBs that exceed the on-road mobile source emissions for 2020 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration.

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

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

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

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

EPA is also approving the maintenance plan SIP revision for Allen County. The 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 2020 MVEBs submitted by Indiana in conjunction with the redesignation request.

#### **IX. Statutory and Executive Order Reviews**

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

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

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

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

##### *Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

##### *Unfunded Mandates Reform Act*

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

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

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

##### *Executive Order 13132 Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the

national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

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

*National Technology Transfer Advancement Act*

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

*Paperwork Reduction Act*

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

*Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 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 in 40 CFR Part 52**

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

Dated: August 16, 2006.

**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 (ff) to read as follows:

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

\* \* \* \* \*

(ff) Approval—On May 30, 2006, Indiana submitted a request to redesignate Allen County to attainment of the 8-hour ozone National Ambient Air Quality Standard. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. Also included were motor vehicle emission budgets for use to determine transportation conformity in Allen County. The 2020 motor vehicle emission budgets are 6.5 tons per day for VOC and 7.0 tons per day for NO<sub>x</sub>.

**PART 81—[AMENDED]**

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

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

■ 2. Section 81.315 is amended by revising the entry for Fort Wayne, IN: Allen County in the table entitled “Indiana Ozone (8-Hour Standard)” to read as follows:

**§ 81.315 Indiana.**

\* \* \* \* \*

**INDIANA OZONE (8-HOUR STANDARD)**

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Fort Wayne, IN: Allen County .....	September 29, 2006	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. 06-7248 Filed 8-29-06; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[EPA-HQ-OPP-2006-0327; FRL-8090-1]

**Bifenazate; Pesticide Tolerance****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of bifenazate in or on pea, garden; pea, edible podded; vegetable, tuberous and corn, subgroup 1C; fruit, stone, group 12, except plum; plum; cattle fat; goat fat; hog fat; horse fat; and sheep fat. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective August 30, 2006. Objections and requests for hearings must be received on or before October 30, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the

**SUPPLEMENTARY INFORMATION).**

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2006-0327. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:**

Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number:

(703) 308-3194; e-mail address: [brothers.shaja@epa.gov](mailto:brothers.shaja@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office’s pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gpo/opptsfrs/home/guidelin.htm>.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may

file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2006-0327 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 30, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2006-0327, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket’s normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

**II. Background and Statutory Findings**

In the **Federal Register** of May 3, 2006 (71 FR 26087) (FRL-8058-6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petitions (PP 3E6762 and 5E6992) by IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902. The petition requested that 40 CFR 180.572 be amended by establishing tolerances for combined residues of the insecticide, bifenazate, (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-