

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 proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose

any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule proposing to approve the redesignation of the Tioga Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen Oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: April 26, 2007.

**Judith Katz,**

*Acting Regional Administrator, Region III.*

[FR Doc. E7-8669 Filed 5-7-07; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2006-0715; FRL-8310-9]

#### Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Clark and Floyd Counties 8-Hour Nonattainment Area to Attainment for Ozone

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

**ACTION:** Proposed rule.

**SUMMARY:** On November 15, 2006, the Indiana Department of Environmental Management (IDEM) submitted a request to redesignate the Indiana portion of the Louisville 8-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area (Clark and Floyd Counties) to attainment for the 8-hour ozone NAAQS, and a request for EPA approval of a 14-year maintenance plan for Clark and Floyd Counties. Today, EPA is making a determination that the Indiana portion of the Louisville 8-hour 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 proposing to approve the request to redesignate Clark and Floyd Counties to attainment of the 8-hour ozone standard based on its determination that the Louisville 8-hour ozone nonattainment area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is also proposing to approve Indiana's maintenance plan which adequately supports continued attainment through 2020 and, for purposes of transportation conformity, the Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO<sub>x</sub>) Motor Vehicle Emission Budgets (MVEBs) for the year 2003 and 2020.

**DATES:** Comments must be received on or before June 7, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-0715, by one of the following methods:

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

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

- *Fax:* (312) 886-5824.

- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office's official hours of operation are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2006-

0715. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website 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 <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hardcopy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hardcopy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. It is recommended that you telephone 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-18), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard,

Chicago, Illinois 60604, (312) 886-6052, [rosenthal.steven@epa.gov](mailto:rosenthal.steven@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

- I. What Action Is EPA Proposing to Take?
- II. What Is the Background for This Action?
- III. What Are the Criteria for Redesignation to Attainment?
- IV. What Are EPA's Analyses of the State's Redesignation Request and What Are the Bases for EPA's Proposed Action?
- V. 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?
- VI. What Is the Effect of EPA's Proposed Action?
- VII. Statutory and Executive Order Reviews

**I. What Action Is EPA Proposing to Take?**

We are proposing to take several related actions for the Indiana portion of the Louisville 8-hour nonattainment area (Clark and Floyd Counties). First, we are proposing to determine that Clark and Floyd Counties have attained the 8-hour ozone NAAQS based on air quality for the period of 2003 through 2005. Second, we are proposing to approve Indiana's ozone maintenance plan for Clark and Floyd Counties as a revision of the Indiana SIP. The maintenance plan is designed to keep Clark and Floyd Counties in attainment of the 8-hour ozone standard through 2020 by ensuring that the VOC and NO<sub>x</sub> emissions in both Clark and Floyd Counties and the entire Louisville area will be lower in 2020 than in 2003, an attainment year. As supported by and consistent with the ozone maintenance plan, we are also proposing to approve the 2003 and the 2020 VOC and NO<sub>x</sub> MVEBs for the Louisville area for transportation conformity purposes. We are also proposing to approve the request from the State of Indiana to change the designation of Clark and Floyd Counties from nonattainment to attainment of the 8-hour ozone NAAQS. We have determined that Indiana and Clark and Floyd Counties have met the requirements for redesignation to attainment under section 107(d)(3)(E) of the Clean Air Act (CAA).

**II. What Is the Background for This Action?**

*A. General Background Information*

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS of 0.08 parts per

million parts of air (0.08 ppm) (80 parts per billion (ppb)) (62 FR 38856).<sup>1</sup> This 8-hour ozone standard replaced a prior 1-hour ozone NAAQS, which had been promulgated on February 8, 1979 (44 FR 8202), and which was revoked on June 15, 2005 (69 FR 23858).

Ground-level ozone is not emitted directly by sources. Rather, emitted NO<sub>x</sub> and VOC react in the presence of sunlight to form ground-level ozone along with other secondary compounds. NO<sub>x</sub> and VOC are referred to as "ozone precursors." Control of ground-level ozone concentrations is achieved through controlling VOC and NO<sub>x</sub> emissions.

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

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and emission control requirements for nonattainment areas. Both are found in title I, part D of the CAA. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas for any pollutant governed by a NAAQS. Subpart 2 contains more specific requirements for certain ozone nonattainment areas, and applies to ozone nonattainment areas classified under section 181 of the CAA.

In the April 30, 2004, designation rulemaking, EPA divided 8-hour ozone nonattainment areas into the categories of subpart 1 nonattainment ("basic" nonattainment) and subpart 2 nonattainment ("classified" nonattainment). EPA based this division on the area's 8-hour ozone design values (i.e., on the three-year averages of the annual fourth-highest daily maximum 8-hour ozone concentrations at the worst-case monitoring sites in the areas) and on their 1-hour ozone design values (i.e., on the fourth-highest daily maximum 1-hour ozone concentrations over the three-year period at the worst-case monitoring sites in the areas).<sup>2</sup> EPA classified 8-hour ozone nonattainment areas with 1-hour ozone design values equaling or exceeding 121 ppb as

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

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

subpart 2, classified nonattainment areas. EPA classified all other 8-hour nonattainment areas as subpart 1, basic nonattainment areas. The basis for area classification was explained in a separate April 30, 2004 final rule (the Phase 1 implementation rule) (69 FR 23951).

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

In the April 30, 2004 ozone designation/classification rulemaking, EPA designated the Louisville nonattainment area, including Clark and Floyd Counties as a subpart 1 basic nonattainment area for the 8-hour ozone NAAQS. EPA based the designation on ozone data collected during the 2001–2003 period.

On November 15, 2006, the State of Indiana requested redesignation of Clark and Floyd Counties to attainment of the 8-hour ozone NAAQS based on ozone data collected in these counties from 2003–2005.

*B. What Is the Impact of the December 22, 2006 United States Court of Appeals Decision Regarding EPA's Phase 1 Implementation Rule?*

1. Summary of Court Decision

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). The Court held that certain provisions of EPA's Phase 1 Rule were inconsistent with the requirements of the Clean Air Act. The Court rejected EPA's reasons for implementing the 8-hour standard in nonattainment areas under Subpart 1 in lieu of subpart 2 of Title I, part D of the Act. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward

attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain conformity requirements for certain types of Federal actions. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions.

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

2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the Court's ruling rejected EPA's reasons for classifying areas under Subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under Subpart 2. Although any future decision by EPA to classify this area under Subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating State submissions in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any future requirements.

First, at the time the redesignation request was submitted, Clark and Floyd Counties (and the entire Louisville area) were classified under Subpart 1 and were obligated to meet Subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division) See also

Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See, e.g. also 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking. See *Sierra Club v. Whitman*, 285 F.3d 63 (DC Cir. 2002), in which the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: "Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under Subpart 2 that were not in effect at the time it submitted its redesignation request.

3. Requirements Under the 1-Hour Standard

With respect to the requirements under the 1-hour standard, Clark and Floyd Counties were attainment areas subject to a Clean Air Act section 175A maintenance plan under the 1-hour standard. The Court's ruling does not impact redesignation requests for these types of areas.

First, there are no conformity requirements that are relevant for redesignation requests for any standard, including the requirement to submit a transportation conformity SIP<sup>3</sup>. Under longstanding EPA policy, EPA believes that it is reasonable to interpret the conformity SIP requirement as not applying for purposes of evaluating a redesignation request under section

<sup>3</sup> Clean Air Act section 176(c)(4)(E) currently requires States to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emissions budgets that are established in control strategy SIPs and maintenance plans.

107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. 40 CFR 51.390. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995) (Tampa, FL redesignation). Federal transportation conformity regulations apply in all States prior to approval of transportation conformity SIPs. The 1-hour ozone areas in Indiana were redesignated to attainment without approved State transportation conformity regulations because the Federal regulations were in effect in Indiana. When challenged, these 1-hour ozone redesignations, which were approved without State regulations, were upheld by the courts. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001). See also 60 FR 62748 (December 7, 1995) (Tampa, Florida). Although Indiana does not have approved State transportation conformity regulations, it has developed memoranda of understanding, signed by all parties involved in conformity, to address conformity consultation procedures. The Federal transportation conformity regulations, which apply in Indiana, require the approved 1-hour ozone budgets to be used for transportation conformity purposes prior to 8-hour ozone budgets being approved.

Second, with respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, Clark and Floyd Counties are attainment areas subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)) and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus, the decision in *South Coast* should not alter requirements that would preclude EPA from finalizing the redesignation of this area.

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

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section

107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved an applicable state implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). The two main policy guidelines affecting the review of ozone redesignation requests are the following: "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (September 4, 1992 Calcagni memorandum); and, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995. For additional policy guidelines used in the review of ozone redesignation requests, see our proposed rule for the redesignation of the Evansville, Indiana ozone nonattainment area at 70 FR 53606 (September 9, 2005).

### IV. What Are EPA's Analyses of the State's Redesignation Request and What Are the Bases for EPA's Proposed Action?

EPA is proposing to: (1) Determine that Clark and Floyd Counties have

attained the 8-hour ozone standard; (2) approve the ozone maintenance plan for Clark and Floyd Counties and the VOC and NO<sub>x</sub> MVEBs supported by this maintenance plan; and (3) approve the redesignation of Clark and Floyd to attainment of the 8-hour ozone NAAQS. The bases for our proposed determination and approvals follow.

#### A. Louisville Has Attained the 8-Hour Ozone NAAQS

For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and appendix I, based on the most recent three complete, consecutive calendar years of quality-assured air quality monitoring data at all ozone monitoring sites in the area and in its nearby downwind environs. To attain this standard, the average of the annual fourth-high daily maximum 8-hour average ozone concentrations measured and recorded at each monitor (the monitoring site's ozone design value) within the area and in its nearby downwind environs over the three-year period must not exceed the ozone standard. Based on an ozone data rounding convention described in 40 CFR part 50, appendix I, the 8-hour standard is attained if the area's ozone design value<sup>4</sup> is 0.084 ppm (84 ppb) or lower. The data must be collected and quality-assured in accordance with 40 CFR part 58, and must be recorded in EPA's Air Quality System (AQS). The ozone monitors generally should have remained at the same locations for the duration of the monitoring period required to demonstrate attainment (for three years or more). The data supporting attainment of the standard must be complete in accordance with 40 CFR part 50, appendix I.

Indiana submitted ozone monitoring data for the April through September ozone seasons from 2003 to 2005 for the Indiana and Kentucky portions of the Louisville nonattainment area. This data has been quality assured by Indiana and Kentucky and is recorded in AQS. 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  | 2006  |
|-----------------------|-------------|-----------|-------|-------|-------|-------|
| Charlestown, IN ..... | Clark ..... | 0.081     | 0.090 | 0.074 | 0.080 | 0.079 |

<sup>4</sup> The worst-case monitoring site-specific ozone design value in the area or in its affected downwind environs.

TABLE 1.—4TH HIGH VALUES IN PPM OZONE.—Continued

| Monitor                  | County          | 2003–<br>2005 | 2003  | 2004  | 2005  | 2006  |
|--------------------------|-----------------|---------------|-------|-------|-------|-------|
| New Albany, IN .....     | Floyd .....     | 0.079         | 0.086 | 0.071 | 0.079 | 0.076 |
| WLKY, KY .....           | Jefferson ..... | 0.071         | 0.073 | 0.068 | 0.074 | 0.067 |
| Watson, KY .....         | Jefferson ..... | 0.076         | 0.075 | 0.070 | 0.085 | 0.077 |
| Bates, KY .....          | Jefferson ..... | 0.073         | 0.072 | 0.070 | 0.079 | 0.074 |
| Shepherdsville, KY ..... | Bullitt .....   | 0.073         | 0.072 | 0.068 | 0.080 | 0.071 |
| Buckner, KY .....        | Oldham .....    | 0.082         | 0.082 | 0.076 | 0.089 | 0.083 |

These data show that the average fourth-high daily maximum 8-hour ozone concentrations for the monitoring sites in the Louisville area are all below the 85 ppb ozone standard violation cut-off. The data support the conclusion that the Louisville 8-hour ozone nonattainment area (including Clark and Floyd Counties) did not experience a monitored violation of the 8-hour ozone standard from 2003–2005. In addition, the surrounding counties in Indiana and Kentucky did not monitor nonattainment during the 2003–2005 period. As also noted in Table 1, the 8-hour ozone NAAQS continued to be attained in the Louisville area through 2006.

Indiana has committed to continue ozone monitoring at the sites in Clark and Floyd Counties. IDEM also commits to consult with the EPA prior to making any changes in the existing monitoring network. In summary, EPA believes that the data submitted by Indiana provide an adequate demonstration that the Louisville area attains the 8-hour ozone NAAQS.

*B. Clark and Floyd Counties Have Met All Applicable Requirements Under Section 110 and Part D of the CAA and the Area Has a Fully Approved SIP Under Section 110(k) of the CAA*

EPA has determined that Indiana has met all currently applicable SIP requirements for Clark and Floyd Counties under section 110 of the CAA (general SIP requirements). EPA has determined that the Indiana SIP meets currently applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 and subpart 2 ozone nonattainment areas). See section 107(d)(3)(E)(v) of the CAA. In addition, EPA has determined that the Indiana SIP is fully approved with respect to all applicable requirements. See section 107(d)(3)(E)(ii) of the CAA. In making these determinations, EPA ascertained what requirements are applicable to the area, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully

approved only with respect to currently applicable requirements of the CAA, those CAA requirements applicable to Clark and Floyd Counties at the time the State submitted the final, complete ozone redesignation request for this area.

*1. Clark and Floyd Counties Have Met All Applicable Requirements Under Section 110 and Part D of the CAA*

The September 4, 1992 Calcagni memorandum describes EPA's interpretation of section 107(D)(3)(E) of the CAA. Under this interpretation, to qualify for redesignation of an area to attainment, the State and the area must meet the relevant CAA requirements that come due prior to the State's submittal of a complete redesignation request for the area. See also a September 17, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation, "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992" and 66 FR 12459, 12465–12466 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the State's submittal of a complete redesignation request remain applicable until a redesignation to attainment of the standard is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

*General SIP requirements:* Section 110(a) of title I of the CAA contains the general requirements for a SIP, which include: enforceable emission limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect

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

SIP requirements and elements are discussed in the following EPA documents: "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 (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and "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, September 17, 1993.

Section 110(a)(2)(D) of the CAA requires SIPs to contain certain measures to prevent sources in one State from significantly contributing to air quality problems in another State. To implement this provision, EPA required States to establish programs to address transport of air pollutants (NO<sub>x</sub> SIP call,

Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) of the CAA to meet the interstate transport requirements of section 110(a)(2)(D)(i) of the CAA (70 FR 21147, April 25, 2005). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's classification. EPA believes that the requirements linked with a particular nonattainment area's classification are the relevant measures to evaluate 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.

These requirements should not be construed to be applicable requirements for purposes of redesignation. In addition, the other section 110 elements described above that are not connected with nonattainment plan submissions and that are not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A State remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with an area's designation and classification are the relevant measures in evaluating this aspect of a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See: Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996 and 62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001). In addition, Indiana's response to the CAIR rule was due in September 2006. Because this deadline had not yet passed when the State submitted the final, complete redesignation request, the State's CAIR submittal is also not an applicable requirement for redesignation purposes.

It should be noted that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Nonetheless, we also note that EPA has previously approved provisions in the

Indiana SIP addressing section 110 elements under the 1-hour ozone standard. We have analyzed the Indiana SIP as codified in 40 CFR part 52, subpart P, and have determined that it is consistent with the requirements of section 110(a)(2) of the CAA. The SIP, which has been adopted after reasonable public notice and hearing, contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications of existing sources; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and requires stationary source emissions monitoring and reporting, and otherwise satisfies the applicable requirements of section 110(a)(2).

*Part D SIP requirements:* EPA has determined that the Indiana SIP meets applicable SIP requirements under part D of the CAA. 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 area plan requirements applicable to all nonattainment areas. Subpart 2 of part D, found in section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

*Part D, subpart 1 requirements:* For purposes of evaluating this redesignation request, the applicable subpart 1 part D requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and 176. A thorough discussion of the requirements of section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). (see also 68 FR 4852–4853 regarding a St. Louis ozone redesignation notice of proposed rulemaking for a discussion of section 172 requirements.)

No requirements under part D of the CAA came due for Clark and Floyd Counties prior to the State's November 15, 2006, submittal of a complete redesignation request. For example, the requirement for an ozone attainment demonstration, as contained in section 172(c)(1), was not yet applicable, nor were 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 attainment plan and RFP contingency measures (section 172(c)(9)). All of these required SIP elements are required for submittal after

November 15, 2006. Therefore, none of the part D requirements are applicable to Clark and Floyd Counties for purposes of redesignation.

*Section 176 conformity requirements:* Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air planning goals in the applicable 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 SIP revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

In addition to the fact that part D requirements did not become due prior to Indiana's submission of the complete ozone redesignation request for Clark and Floyd Counties, and, therefore, are not applicable for redesignation purposes, EPA has similarly concluded that the conformity requirements do not apply for purposes of evaluating the ozone redesignation request under section 107(d) of the CAA. In addition, it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the ozone redesignation request under section 107(d) of the CAA because state conformity rules are still required after redesignation of an area to attainment of a NAAQS and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001). See also 60 FR 62748 (December 7, 1995) (Tampa, Florida).

We conclude that the State and Clark and Floyd Counties have satisfied all applicable requirements under section 110 and part D of the CAA to the extent that the requirements apply for the purposes of reviewing the State's ozone redesignation request.

## 2. Clark and Floyd Counties Have a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the Indiana SIP for Clark and Floyd Counties under section 110(k) of the CAA for all applicable requirements. EPA may rely on prior SIP approvals in approving a redesignation request (see the September 4, 1992 John Calcagni memorandum, page 3, *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998), *Wall v. EPA*, 265 F.3d 426

(6th Cir. 2001)), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003). Since the passage of the CAA of 1970, Indiana has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to Clark and Floyd Counties for purposes of redesignation. No Clark and Floyd County SIP provisions are currently disapproved, conditionally approved, or partially approved. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of review of the State's redesignation request. EPA has concluded that the section 110 SIP submission approved under the 1-hour standard will be adequate for purposes

of attaining and maintaining the 8-hour standard. EPA also believes that since the part D requirements did not become due prior to Indiana's submission of a final, complete redesignation request, they also are not applicable requirements for purposes of redesignation.

*C. The Air Quality Improvement in Clark and Floyd Counties Is Due to Permanent and Enforceable Reductions in Emissions From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Emission Reductions*

EPA believes that the State of Indiana has demonstrated that implementation of the SIP, Federal measures, and other State-adopted measures have contributed to the observed air quality

improvement in Clark and Floyd Counties.

In making this demonstration, the State has documented the changes in VOC and NO<sub>x</sub> emissions from anthropogenic (man-made or man-based) sources in Clark and Floyd, as well as the entire Louisville nonattainment area, between 1996 and 2004 and the statewide NO<sub>x</sub> emissions from Electric Generating Units (EGUs) from 1999 to 2005. The Louisville area was monitored in violation of the 8-hour ozone NAAQS during the period of 2001–2003 and in attainment with the NAAQS during the period of 2003–2005. The total VOC and NO<sub>x</sub> emissions for both Clark and Floyd Counties and the entire Louisville nonattainment area (Louisville NA in the table) for 2002, an attainment year, and 2003, a nonattainment year, are given in Table 2.

TABLE 2.—VOC AND NO<sub>x</sub> EMISSIONS IN CLARK & FLOYD COUNTIES AND LOUISVILLE, ALL SOURCES—EMISSIONS IN TONS/SUMMER DAY

| Pollutant                            | 2002   | 2003   |
|--------------------------------------|--------|--------|
| VOC—Clark & Floyd .....              | 32.69  | 29.26  |
| NO <sub>x</sub> —Clark & Floyd ..... | 57.59  | 51.76  |
| VOC—Louisville NA .....              | 138.24 | 133.83 |
| NO <sub>x</sub> —Louisville NA ..... | 247.46 | 238.76 |

The statewide NO<sub>x</sub> emissions for EGUs from 1999–2005 are given in Table 3 below.

TABLE 3.—NO<sub>x</sub> EMISSIONS FROM ELECTRIC GENERATING UNITS IN INDIANA STATEWIDE—EMISSIONS IN THOUSANDS OF TONS PER OZONE SEASON  
[April–October]

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

The NO<sub>x</sub> and VOC emissions for Clark and Floyd Counties and the entire Louisville nonattainment area have decreased from 2002, an 8-hour standard violation year, to 2003, an 8-hour standard attainment year. In addition, the Indiana Statewide EGU NO<sub>x</sub> emissions have continued to decline from 1999 to 2005. This is a result of the implementation of the Indiana NO<sub>x</sub> SIP (in response to EPA's NO<sub>x</sub> SIP call) and acid rain control regulations, both of which led to permanent, enforceable emission reductions.

VOC and NO<sub>x</sub> emissions have declined as a result of enforceable emission reductions. As required by Section 172 of the CAA, Indiana in the mid-1990s promulgated rules requiring

RACT for emissions of VOCs. Statewide RACT rules have applied to all new sources locating in Indiana since that time and include the following VOC 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); and 326 IAC 8–5 (miscellaneous sources). The VOC emission reductions resulting from the implementation of these VOC emission control rules are permanent and enforceable.

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 Clark and Floyd Counties (a similar set of control measures have been implemented for the Kentucky portion of the Louisville area) and will produce future emission reductions that will support maintenance of the ozone standard in these Counties. 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 Clark and Floyd Counties.

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

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

Indiana commits to maintain all existing emission control measures that affect Clark and Floyd Counties after this area is redesignated to attainment of the 8-hour ozone NAAQS. All changes in existing rules affecting Clark and Floyd Counties and new rules subsequently needed to provide for the maintenance of the 8-hour ozone NAAQS in Clark and Floyd Counties will be submitted to the EPA for approval as SIP revisions.

*D. Clark and Floyd Counties Have a Fully Approvable Ozone Maintenance Plan Pursuant to Section 175A of the CAA*

In conjunction with its request to redesignate Clark and Floyd Counties to attainment of the ozone NAAQS, Indiana submitted a SIP revision request to provide for maintenance of the 8-hour ozone NAAQS in Clark and Floyd

Counties for at least 10 years after the redesignation of this area to attainment of the 8-hour ozone NAAQS.

**1. What Is Required in an Ozone Maintenance Plan?**

Section 175A of the CAA sets forth the required elements of air quality maintenance plans for areas seeking redesignation from nonattainment to attainment of a NAAQS. Under section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves the redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates maintenance of the standard for 10 years following the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary, to assure prompt correction of any future NAAQS violations. The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of maintenance plans. An ozone maintenance plan should, at minimum, address the following items: (1) The attainment of VOC and NO<sub>x</sub> emissions inventories; (2) a maintenance demonstration showing maintenance for the 10 years of the maintenance period; (3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment; and (5) a contingency plan to prevent and/or correct a future violation of the NAAQS.

**2. Demonstration of Maintenance**

IDEM prepared comprehensive VOC and NO<sub>x</sub> emission inventories for Clark and Floyd Counties, including point (significant stationary sources), area (smaller and widely-distributed stationary sources), mobile on-road, and mobile non-road sources for 2003 (the base year/attainment year).

As part of the November 15, 2006, redesignation request submittal, IDEM included a requested revision to the SIP to incorporate a 14-year ozone maintenance plan which is consistent with the requirements 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> emissions for both Clark and Floyd Counties and the entire Louisville nonattainment area and by documenting photochemical modeling results that support maintenance of the standard in this area.<sup>5</sup>

Table 4 specifies the VOC emissions in Clark and Floyd Counties and the entire nonattainment area for 2003, 2011 and 2020. IDEM chose 2020 as a projection year to meet the 10-year minimum maintenance projection requirement, allowing several years 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 2011 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. The mobile source emission projections for 2011 and 2020 exclude VOC reductions associated with Indiana's Clark and Floyd vehicle inspection and maintenance program that was discontinued at the end of 2006. Indiana's termination of its inspection and maintenance program in Clark and Floyd Counties will be the subject of a subsequent **Federal Register** notice.

Table 5, similar to Table 4, specifies the NO<sub>x</sub> emissions in Clark and Floyd Counties and the entire nonattainment area for 2003, 2011 and 2020. Together, the information contained in Tables 4 and 5 and the photochemical modeling results demonstrate that Clark and Floyd Counties, and the Louisville nonattainment area, should remain in attainment of the 8-hour ozone NAAQS between 2003 and 2020, which is more than 10 years after EPA is expected to approve the redesignation of these counties to attainment of the 8-hour ozone NAAQS. The mobile source emission projections for 2011 and 2020 exclude NO<sub>x</sub> reductions associated with Indiana's Clark and Floyd vehicle inspection and maintenance program that was discontinued at the end of 2006.

<sup>5</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 the Louisville area).

TABLE 4.—ATTAINMENT YEAR (2003) AND PROJECTED VOC EMISSIONS IN CLARK AND FLOYD COUNTIES AND ENTIRE NONATTAINMENT AREA  
[Tons per summer day]

| Source sector         | Year   |        |        |
|-----------------------|--------|--------|--------|
|                       | 2003   | 2011   | 2020   |
| Point:                |        |        |        |
| Clark and Floyd ..... | 4.17   | 6.61   | 7.14   |
| Louisville NA .....   | 36.62  | 39.28  | 39.85  |
| Area:                 |        |        |        |
| Clark and Floyd ..... | 11.94  | 12.77  | 14.59  |
| Louisville NA .....   | 35.07  | 36.93  | 40.02  |
| On-Road Mobile:       |        |        |        |
| Clark and Floyd ..... | 9.60   | 6.12   | 3.98   |
| Louisville NA .....   | 40.97  | 25.69  | 16.89  |
| Off-Road Mobile:      |        |        |        |
| Clark and Floyd ..... | 3.55   | 2.35   | 2.20   |
| Louisville NA .....   | 21.17  | 15.87  | 15.28  |
| Total:                |        |        |        |
| Clark and Floyd ..... | 29.26  | 27.85  | 27.91  |
| Louisville NA .....   | 133.83 | 117.77 | 112.04 |

TABLE 5.—ATTAINMENT YEAR AND PROJECTED NO<sub>x</sub> EMISSIONS IN CLARK AND FLOYD COUNTIES AND ENTIRE NONATTAINMENT AREA  
[Tons per summer day]

| Source sector         | Year   |        |        |
|-----------------------|--------|--------|--------|
|                       | 2003   | 2011   | 2020   |
| Point:                |        |        |        |
| Clark and Floyd ..... | 24.26  | 27.29  | 28.66  |
| Louisville NA .....   | 99.73  | 78.95  | 75.97  |
| Area:                 |        |        |        |
| Clark and Floyd ..... | 1.60   | 1.71   | 1.80   |
| Louisville NA .....   | 2.53   | 2.67   | 2.79   |
| On-Road Mobile:       |        |        |        |
| Clark and Floyd ..... | 20.27  | 10.20  | 4.15   |
| Louisville NA .....   | 95.51  | 47.53  | 19.62  |
| Off-Road Mobile:      |        |        |        |
| Clark and Floyd ..... | 5.63   | 4.43   | 3.49   |
| Louisville NA .....   | 41.01  | 34.77  | 27.88  |
| Total:                |        |        |        |
| Clark and Floyd ..... | 51.77  | 43.63  | 38.10  |
| Louisville NA .....   | 238.79 | 163.92 | 126.26 |

IDEM also notes that the State's EGU NO<sub>x</sub> emission control rules stemming from EPA's NO<sub>x</sub> SIP call, implemented beginning in 2004, and CAIR, which is to be implemented beginning in 2009 will further lower NO<sub>x</sub> emissions in upwind areas. This should result in decreased ozone and ozone precursor transport into Clark and Floyd Counties. It will also support maintenance of the ozone standard in Clark and Floyd Counties.

Based upon the data in Table 4, VOC emissions in Clark and Floyd Counties are projected to decline by about 5% between 2003 and 2020 and VOC emissions in the entire nonattainment area are projected to decline by 16%. Based upon the data in Table 5, NO<sub>x</sub> emissions in Clark and Floyd Counties are projected to decline by over 26% between 2003 and 2020, and NO<sub>x</sub>

emissions in the entire nonattainment area are projected to decline by 47%.

Based on the projected VOC and NO<sub>x</sub> emission reductions between the attainment year in 2003 and the maintenance year of 2020, for both Clark and Floyd Counties and the entire Louisville nonattainment area, we conclude that IDEM has successfully demonstrated that the 8-hour ozone standard should be maintained in Clark and Floyd Counties, as well as the entire Louisville nonattainment area through 2020. This is reinforced by photochemical modeling done for Clark and Floyd Counties. We believe that this is especially likely given the expected impacts of the NO<sub>x</sub> SIP call and CAIR. This conclusion is further supported by the fact that other states in the eastern portion of the United States are expected to further reduce regional NO<sub>x</sub>

emissions through implementation of their own NO<sub>x</sub> emission control rules for EGUs and other NO<sub>x</sub> sources and through implementation of CAIR, reducing ozone and NO<sub>x</sub> transport into Clark and Floyd Counties and the entire Louisville nonattainment area.

### 3. Monitoring Network

IDEM commits to continue operating and maintaining an approved ozone monitoring network in Clark and Floyd Counties in accordance with 40 CFR part 58 through the 14-year maintenance period. This will allow the confirmation of the maintenance of the 8-hour ozone standard in this area and the triggering of contingency measures if needed.

### 4. Verification of Continued Attainment

Continued attainment of the 8-hour ozone NAAQS in Clark and Floyd

Counties depends 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 Clark and Floyd Counties consists, in part, of a plan 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 these counties 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 2003 attainment emissions and the 2020 projected maintenance year emissions to assure continued maintenance of the ozone standard.

#### 5. 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 commits to review its maintenance plan eight years after redesignation and to adopt and expeditiously implement any necessary corrective actions (or contingency measures). Contingency measures to be considered will be selected from a comprehensive list of measures deemed appropriate and effective at the time the selection is made. The contingency plan has two levels of actions/responses

depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level Response) or has actually occurred (Action Level Response).

A Warning Level Response will be prompted whenever an annual (1-year) fourth-high monitored daily peak 8-hour ozone concentration of 89 ppb (or greater) occurs at any monitor in Clark and Floyd Counties, or a 2-year averaged annual fourth-high daily peak 8-hour ozone concentration of 85 ppb or greater occurs at any monitor in Clark or Floyd Counties. 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. 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 be triggered when a violation of the 8-hour ozone standard is monitored at any of the monitors in the maintenance area (when a 3-year average annual fourth-high monitored daily peak 8-hour ozone concentration of 85 ppb or higher is recorded at any such monitor). 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 processes dictated by State law. This process will include publication of public notices, providing the opportunity for a public hearing, and other measures required by Indiana law for rulemaking by State environmental boards. If a new emission control measure is already promulgated and scheduled for implementation at the Federal or State level, and that emission control measure is determined to be

sufficient to address the air quality problem or adverse trend, additional local emission control measures may be determined to be unnecessary. IDEM will submit to the EPA an analysis to demonstrate that the proposed emission control measures are adequate to return the area to attainment.

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 Clark and Floyd Counties. These include, but are not limited to, the following:

- i. Lower Reid vapor pressure gasoline requirements;
- ii. Broader geographic applicability of existing emission control measures;
- iii. Tightened RACT requirements on existing sources covered by EPA Control Technique Guidelines (CTGs) issued in response to the 1990 CAA amendments;
- iv. Application of RACT to smaller existing sources;
- v. Vehicle Inspection and Maintenance;

vi. One or more Transportation Control Measures 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 offsets 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).

#### 6. 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 the County to attainment of the 8-hour ozone NAAQS. The revision will contain Indiana's plan

for maintaining the 8-hour ozone standard for 10 years beyond the first 10-year period after redesignation.

**V. 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 Clark and Floyd Counties?*

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

Under 40 CFR part 93, MVEBs for an area seeking a redesignation to attainment of the NAAQS are established for the last year of the maintenance plan and the State has the option of setting budgets for other years in 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 the adequacy of MVEBs consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEBs during a public comment period; and (3) making a finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas: Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change" published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Transportation Conformity Rule, in 40 CFR section 93.118(f), provides for MVEB adequacy findings through two mechanisms. First, 40 CFR 93.118(f)(1) provides for posting a notice to the EPA conformity Web site at: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm> and providing a 30-day public comment period. Second, a mechanism is described in 40 CFR 93.118(f)(2) which provides that EPA can review the adequacy of an implementation plan MVEB simultaneously with its review of the implementation plan itself.

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in the Louisville 8-hour ozone area because EPA has determined that the budgets are consistent with the control measures in the SIP and that Louisville 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.

The MVEBs in the maintenance plan are for the entire Louisville area, which includes the Kentucky areas (Bullitt, Jefferson and Oldham Counties), in addition to Clark and Floyd Counties in Indiana. Through the transportation consultation process, it was decided that the best way to maintain the mobile source emissions for the area would be to set budgets for the entire area rather than each individual State. There is one Metropolitan Planning Organization for the entire area (the Kentuckiana Regional Planning and Development Agency). The transportation network modeling and transportation conformity determinations are conducted for the entire Louisville area. The transportation conformity regulations allow States to decide in consultation with the transportation partners, to determine budgets for the entire area or for each state. The transportation conformity budgets are listed in the Table below. MVEBs are proposed for both the 2020 year or last year of the maintenance plan and also for the 2003 year which is an attainment year.

**LOUISVILLE KY-IN 8-HOUR OZONE REGIONAL MOTOR VEHICLE EMISSIONS BUDGETS**

(Tons per day)

|                       | 2003  | 2020  |
|-----------------------|-------|-------|
| VOC .....             | 40.97 | 22.92 |
| NO <sub>x</sub> ..... | 95.51 | 29.46 |

Kentucky and Indiana have jointly chosen to allocate a portion of the available safety margin to the 2020 MVEBs. This allocation is 6.03 tpd for VOC and 9.84 tpd for NO<sub>x</sub>. The 2020 regional MVEBs are derived as follows for VOC: [16.89 tpd for total mobile emissions] + [6.03 tpd from available safety margin] = 22.92 tpd; and for NO<sub>x</sub>: [19.62 tpd for total mobile emissions] + [9.84 tpd from available safety margin] = 29.46 tpd. Thus, the remaining safety margin for the interstate Louisville area is 15.76 tpd for VOC and 102.69 tpd for NO<sub>x</sub>.

These budgets are the same as the budgets that have been submitted by the State of Kentucky for the entire Louisville area and have been discussed by the transportation partners for the Louisville area.

Through this rulemaking, EPA is proposing to approve the 2003 and 2020 MVEBs for the interstate Louisville 8-hour ozone area for use to determine transportation conformity because EPA has determined that the interstate Louisville area maintains the standard with emissions at the levels of the budgets. If EPA approves the 2003 and

2020 MVEBs in the final rulemaking action, the new MVEBs must be used for future transportation conformity determinations. The new regional 2003 and 2020 MVEBs, if found adequate or if approved in the final rulemaking, will be effective with the publication of EPA's adequacy finding or final rulemaking in the **Federal Register**, whichever is done first. For required regional emissions analysis years that involve the year 2020 or beyond, the applicable budgets for the purposes of conducting transportation conformity will be the 2020 MVEBs for the interstate Louisville area. For required analysis years prior to 2020, the applicable budgets will be the 2003 MVEBs.

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

The VOC and NO<sub>x</sub> MVEBs for Louisville are approvable because they provide for continued maintenance of the 8-hour ozone standard through 2020 and provide a 6.03 tons-per-day safety margin for VOC and 9.84 tons-per-day safety margin for NO<sub>x</sub>.

EPA is proposing to approve the 2003 and 2020 MVEBs for the interstate Louisville area because the maintenance plans demonstrate that expected emissions for the area, including the MVEBs plus the estimated emissions for all other source categories, will continue to maintain the 8-hour ozone standard.

#### **VII. What is the Effect of EPA's Proposed Action?**

Approval of the redesignation request would change the official designation of Clark and Floyd Counties from nonattainment to attainment of the 8-hour ozone NAAQS. It would also incorporate into the Indiana SIP a plan for maintaining the ozone NAAQS through 2020. The maintenance plan includes contingency measures to remedy possible future violations of the 8-hour ozone NAAQS, and establishes MVEBs (for the entire Louisville area) for the years 2003 and 2020.

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

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

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

##### *Paperwork Reduction Act*

This proposed rule does not impose an information collection burden under the provisions of the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

##### *Regulatory Flexibility Act*

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

##### *Unfunded Mandates Reform Act*

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

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

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve 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 13175: Consultation and Coordination with Indian Tribal Governments*

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

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

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes approval of a state rule implementing a Federal Standard.

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

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

##### *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTAA do not apply.

#### **List of Subjects**

##### *40 CFR Part 52*

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

##### *40 CFR Part 81*

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

Dated: April 30, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*  
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