

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1998. 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 granting limited approval of Pennsylvania's NSR-related regulations including its provisions for emissions banking and an ERC registry 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, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: November 7, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

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 NN—Pennsylvania

2. Section 52.2020 amended by adding paragraphs (c)(107) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(107) Revisions to the Pennsylvania Regulations, Chapter 127 by the Pennsylvania Department of Environmental Protection

(i) Incorporation by reference.

(A) Letter of February 4, 1994 from the Pennsylvania Department of Environmental Protection transmitting revisions to the New Source Review Provisions.

(B) Revisions to the following Pennsylvania Department of Environmental Quality Regulations, effective January 15, 1994:

(1) Addition of Chapter 127, Subchapter E, New Source Review, Sections 127.201 through 127.217 inclusive, effective January 15, 1994.

(2) Deletion of Chapter 127, Subchapter C, Sections 127.61 through 127.73.

(ii) Additional materials consisting of the remainder of the February 4, 1994 State submittal pertaining to Chapter 127, Subchapter E.

[FR Doc. 97-32189 Filed 12-8-97; 8:45 am]

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

[IN77-2; FRL-5933-3]

Approval and Promulgation of Air Quality Implementation Plans, and Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve an ozone maintenance plan submitted as a State Implementation Plan (SIP) revision request and a redesignation request submitted by the State of Indiana for the purpose of redesignating Vanderburgh County (Evansville) from marginal nonattainment to attainment of the one-hour ozone national ambient air quality standard. Besides being based on information contained in the State's redesignation request, the approval of this redesignation request is also based on review of the ozone data for this area over the three most recent years, 1995 through 1997. EPA finds the State's maintenance plan and redesignation request to be acceptable and notes that, based on the most recent three years of ozone data, the area is currently attaining the one-hour ozone standard. This action does not address the area's attainment of the recently promulgated eight-hour ozone standard, which will be addressed in future rulemaking.

DATES: This action is effective December 9, 1997.

ADDRESSES: Copies of the State's redesignation request and maintenance plan, EPA's analyses (technical support documents and proposed and final rulemakings), and public comments on EPA's proposed rulemaking are available for inspection at the following address:

U.S. Environmental Protection Agency,
Region 5, Air and Radiation Division, 77
West Jackson Boulevard, Chicago, Illinois
60604. (It is recommended that you
telephone Edward Doty at (312) 886-6057
before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT:
Edward Doty at (312) 886-6057.

SUPPLEMENTARY INFORMATION:**I. Background**

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, codified at 42 U.S.C. 7401-7671q. Pursuant to section 107(d)(4)(A) of the Clean Air Act (CAA or the Act), Vanderburgh County, Indiana was designated as nonattainment for the one-hour ozone standard and was classified as marginal (see 56 FR 56694 (November 6, 1991)).

The Indiana Department of Environmental Management (IDEM) submitted an ozone redesignation request and maintenance plan as a SIP revision for Vanderburgh County on November 4, 1993. On July 8, 1994 (59 FR 35044), EPA published a direct final rulemaking approving the redesignation of Vanderburgh County to attainment of the ozone standard. On the same day, a proposed rulemaking was also published in the **Federal Register** which established a 30-day public comment period for the redesignation approval and noted that, if adverse comments were received regarding the final rulemaking, EPA would withdraw the direct final rulemaking and would address the comments through a revised final rulemaking. EPA received adverse comments, and published a withdrawal of the direct final rulemaking on August 26, 1994 (59 FR 44040).

Subsequent to the July 8, 1994 direct final rulemaking, EPA was informed by IDEM that a possible violation of the ozone standard had been monitored at a privately-operated industrial site owned by the Aluminum Corporation of America (Alcoa) in Warrick County. Warrick County (designated as attainment for ozone) adjoins Vanderburgh County to the east. Because Warrick County can be considered to be a nearby area downwind of Vanderburgh County on certain days, EPA questioned whether the monitored violation in Warrick County should be considered in any subsequent rulemaking on the redesignation of Vanderburgh County. IDEM indicated its intent to investigate the high ozone values and requested that EPA not act on the redesignation request pending the outcome of that technical investigation. IDEM completed its investigation and submitted the results to the EPA on June 5, 1995. IDEM's investigation concluded that the Alcoa peak ozone concentrations were unusual during the period of the monitored ozone standard violation, were biased high (relative to peak ozone concentrations at other area monitoring sites during the May through June, 1994 time period), and were not

representative of the Vanderburgh County nonattainment area peak ozone levels. IDEM recommended that EPA proceed with the redesignation of Vanderburgh County to attainment so that the maintenance plan could become federally enforceable.

Due to the large extent of additional data received after the July 8, 1994 direct final rulemaking and the extent of public comments on that rulemaking, EPA concluded that it was appropriate to repropose rulemaking for this redesignation action. EPA evaluated all available information, including public comments on the July 8, 1994 direct final rulemaking, and proposed to approve the redesignation of Vanderburgh County to attainment of the ozone standard on March 14, 1997 (62 FR 12137).

Based on the available information at the time of the March 14, 1997 proposed rulemaking, EPA proposed to take final action approving the redesignation of Vanderburgh County to attainment if any of the following three events occurred: (1) If Warrick County attained the ozone standard prior to final rulemaking action by the EPA on the Vanderburgh County redesignation; (2) if EPA determined that Vanderburgh County did not significantly contribute to an ozone nonattainment problem in Warrick County; or (3) if the EPA determined that the information available is not sufficient to determine whether or not Vanderburgh County significantly contributed to a nonattainment problem in Warrick County. EPA also solicited public comment on whether the 1994 Warrick County ozone standard violation data should be excluded from consideration of the Vanderburgh County ozone attainment status.

On July 18, 1997, EPA promulgated a new National Ambient Air Quality Standard (NAAQS) for ozone, replacing the one-hour, 0.12 parts per million standard with an eight-hour, 0.08 parts per million standard (62 FR 38856). EPA is in the process of developing guidance and proposed rules to implement the new ozone standard based on a Presidential Directive signed on July 16, 1997, and published in the **Federal Register** on July 18, 1997. Today's action is a redesignation to attainment for Vanderburgh County for the one-hour, 0.12 parts per million standard and approval of the maintenance plan as it relates to the one-hour standard only. EPA's decision to redesignate Vanderburgh County to attainment and to approve the maintenance plan as a SIP revision is based on the requirements of section 107 of the Act and existing EPA policy and guidance

as they pertain to the one-hour standard. Today's decision does not in any way make a determination regarding Vanderburgh County's attainment status for the newly promulgated eight-hour standard. Decisions regarding the attainment status of areas for the new eight-hour ozone NAAQS will be made by EPA at a later date.

II. Current Air Quality

A violation of the one-hour, 0.12 parts per million ozone standard occurs in an area when the annual average number of expected daily exceedances of the ozone standard exceeds 1.0 at any site in the area based on the most recent 3 years of ozone data. Therefore, the condition for a violation of the ozone standard would generally require that more than 3 exceedances of the ozone standard be monitored during the 3 most recent years of monitoring at any site in the area.

To review the ozone data for possible ozone standard violations, one must consider the defined ozone season for the area. The ozone season is that portion of the year when one may expect relatively high ozone concentrations exceeding the standard. Outside of this period, ozone standard exceedances are rarely or never recorded. The calculation of expected ozone standard exceedance rates takes into account the potential for ozone standard exceedances on days during the ozone season with invalid or missing data. For the State of Indiana, including the Evansville area, the ozone season is defined in 40 CFR Part 52 to be April through September.

Review of current ozone data for the period of 1995 through 1997 for the Evansville area, including Vanderburgh, Posey, and Warrick Counties, shows that the one-hour ozone standard has not been violated in the area during the most recent 3 years. Only a single exceedance of the one-hour ozone standard was monitored in the area during this 3-year period: 0.131 parts per million, recorded at the Booneville site in Warrick County in 1995. IDEM, in an October 3, 1997 letter to the EPA, confirmed that there were no current ozone standard violations in the area and that the ozone data for the area through September, 1997 were quality assured. The October 3, 1997 letter listed the four highest daily one-hour ozone concentrations at all ozone monitoring sites in the Evansville area (including those in Posey, Vanderburgh, and Warrick Counties) during each year for the 1995 through 1997 period, confirming the lack of ozone standard violations in the area during this period.

Based on the current ozone monitoring data, it has been determined that the ozone standard has been attained in the Evansville area. As noted in the proposed rulemaking (62 FR 12138), this, along with approval of Indiana's maintenance plan and the State having met the redesignation requirements of section 107(d)(3)(E) of the CAA, forms the basis for final approval of IDEM's redesignation request for Vanderburgh County. It should be noted that the lack of an ozone standard violation for the period of 1995 through 1997 moots the issues surrounding the ozone standard violation monitored in 1994 at the Alcoa site.

III. Responses to Public Comments

EPA received 20 sets of comments on the March 14, 1997 proposed rulemaking, including 89 individual comments with significant overlap (the comments have been grouped into several general categories and are addressed below in summary form). All of these comment sets contained comments generally critical of EPA's proposed approval of the redesignation or of the proposed technical basis for the approval. The following discussion addresses the comments with one general exception. Those comments addressing EPA's treatment of the 1994 Alcoa ozone standard violation or emission contributions to that standard violation are not generally addressed, since those comments are rendered moot by the 1995 through 1997 monitored ozone data demonstrating attainment of the standard at the Alcoa site and at other sites in the Evansville area as a whole.

A. Air Quality and Designation Timing

1. Comment

Several commenters note that EPA and IDEM failed to redesignate Vanderburgh County to nonattainment in 1988 or 1989 following a violation of the ozone standard in the 1986 through 1989 time period. The commenters note that, had EPA or IDEM done so, Vanderburgh County would have been subject to stationary source Reasonably Available Control Technology (RACT) requirements under the pre-1990 CAA.

Response

It is true that a monitor in Vanderburgh County recorded a violation of the one-hour ozone standard during the 1987-1989 time period. The decisive ozone standard exceedance was recorded in 1989 and was not reported in quality assured form to the EPA until the last half of 1989,

in keeping with quality assurance and data reporting requirements.

During 1990, EPA was considering how to address the new ozone standard violation in the Evansville area. Under the CAA prior to its 1990 revision, EPA could not unilaterally redesignate an area to nonattainment without an initiating request from the State containing the area. EPA could, however, request a SIP revision under section 110 of the CAA to address an air quality problem despite the lack of a nonattainment designation. Under section 110 of the CAA, this "SIP-call" can require the State to address the problem in a timely manner, but cannot prescribe specific measures, such as the adoption of RACT rules, which can only be required in areas specifically designated as nonattainment.

Before a SIP-call could be used in the Evansville area, the CAA was revised. Under section 182 of the revised CAA, Vanderburgh County was classified as a marginal nonattainment area for ozone. Under section 182(a) of the revised CAA, sources located in marginal ozone nonattainment areas are not subject to new RACT requirements (sources in marginal nonattainment areas are subject only to correction of existing RACT regulations). It should also be noted that the SIP-call process would have extended well past the November 15, 1990 adoption time of the CAA revisions.

2. Comment

A commenter concurs with EPA's proposed rule that, if no ozone standard violation is monitored in Vanderburgh County or in its downwind environs during the 1995 through 1997 time period, the Clean Air Act would allow Vanderburgh County to be redesignated to attainment of the ozone standard. The commenter believes, however, that no action should be taken to redesignate Vanderburgh County until all of the data have been quality assured, demonstrating that there have been no ozone standard violations through 1997 and through the entire 1995-1997 period. To do otherwise would be premature and probably illegal. Other commenters also oppose the redesignation of Vanderburgh County until all of the data in the region, including Warrick County, demonstrate monitored attainment of the ozone standard.

Response

As noted above, on October 3, 1997, IDEM confirmed that the 1997 ozone data for Vanderburgh, Posey, and Warrick Counties had been quality assured through September (the end of

the defined ozone season). The 1995 through 1997 ozone data demonstrate that no violation of the ozone standard has occurred in the Evansville area, including in Posey and Warrick Counties, during the most recent 3 years.

B. Regional Air Quality Impacts

1. Comment

Commenters note that industrial source emissions must be "cleaned-up" in Vanderburgh County as well as in its surrounding counties before the area can be redesignated to attainment. The commenters believe that a regional ozone problem exists in the area. The commenters state that emission reductions in Vanderburgh County only would not be sufficient to address the regional ozone problem of the Evansville area (Vanderburgh, Gibson, Posey, and Warrick Counties).

Response

As noted above, attainment of the ozone standard has been monitored in the entire area. This was accomplished without the implementation of a region-wide emission reduction program mandating controls beyond emission reductions already required in the area, such as those resulting from the implementation of the Federal Motor Vehicle Emission Control Program (FMVCP).

With regard to the regional nature of the area's peak ozone concentrations, it should be noted that the Ozone Transport Assessment Group (OTAG) process has reached closure, with the participating States recommending a range of possible Oxides of Nitrogen (NO_x) emission reduction requirements to the EPA. On November 7, 1997 (62 FR 60318), the EPA proposed rulemaking that would require States to meet statewide NO_x emission budgets. The implementation of requirements to attain the NO_x emission budgets in the eastern United States should significantly reduce the amount of ozone transported into the Evansville area or generated by Evansville emissions and transported to downwind areas. Assuming that the rulemaking is finalized, the State of Indiana is expected to reduce regional NO_x emissions to comply with the allowed NO_x emission budget. These NO_x emission reductions should reduce regional ozone levels.

In addition, the commenters cite no policy requiring such a region-wide emission reduction. Since Vanderburgh County is a marginal nonattainment area, the CAA does not require emission

reductions over a larger region, such as a metropolitan statistical area.

2. Comment

A commenter notes that, when the State was asked to put a monitor in Posey County in 1988, the State refused, saying that what happened in Vanderburgh County from an emissions control standpoint would also happen in the contiguous counties. The commenter believes that, in reality, the State only contemplated emission controls in Vanderburgh County, for which the nonattainment designation was imposed. The commenter believes that this restriction of emission controls was wrong given that emissions in surrounding counties exceed those in Vanderburgh County.

Response

Based on Indiana's 1990 base year Volatile Organic Compound (VOC) emissions inventory for the Evansville area, emissions of VOC in Vanderburgh County exceeded those from any of the surrounding counties. Based on this fact and the fact that, at the time of the designation of Vanderburgh County as nonattainment for ozone, the ozone standard violation was limited to Vanderburgh County, it was appropriate to assume that the emission control measures should focus on Vanderburgh County. In addition, since only Vanderburgh County was designated as nonattainment for ozone, it was reasonable to focus attention on emission controls there.

The commenters provide no data showing that emissions of VOC in the surrounding counties, on a county-by-county basis or as an area total, exceed those in Vanderburgh County.

3. Comment

A commenter notes that, in 1988, the commenter was assured by the State that, if Vanderburgh County was designated as nonattainment for ozone, all of the surrounding counties would be given the same designation. Only Vanderburgh County, however, was proposed for the nonattainment status. To the commenter, it appears that political and industrial interests in the counties surrounding Vanderburgh County were able to persuade the State to make only Vanderburgh County nonattainment. Meanwhile, EPA and IDEM have refused to discuss ozone precursor emission controls for the surrounding counties.

Response

Designation of Vanderburgh County only and not the entire metropolitan area as nonattainment for ozone is

entirely consistent with the requirements for marginal nonattainment area designations under section 107(d)(4)(A)(iv) of the CAA. IDEM acted within the requirements and limits of the CAA in selecting only Vanderburgh County as the marginal ozone nonattainment area. This decision was supported given that the ozone standard violation in the 1987 through 1989 period was limited to Vanderburgh County, and that the VOC emissions of Vanderburgh County exceeded those of any of the surrounding counties at that time.

4. Comment

A commenter states that, according to section 107(d)(1)(A)(i) of the CAA, the State and the Administrator are required to find that an area is nonattainment if it does not meet (or contributes to ambient air quality in a nearby area that does not meet) an air quality standard. The commenter believes that clearly Posey, Gibson, and Warrick County emissions contributed to the ozone standard violation that occurred in Vanderburgh County. The entire area should have been designated as nonattainment for ozone.

Response

In addition to responses to similar comments above, it is noted that no modeling data or similar ozone production and transport analyses exist which would indicate that emissions from Posey, Gibson, and Warrick Counties contributed to the 1988–1989 ozone standard violation in Vanderburgh County. Until such data are made available, one can not draw this conclusion other than through speculation. Given the data available and the requirements of section 107(d)(4)(A)(iv) of the CAA (this section of the CAA only defines minimum nonattainment area sizes for areas classified as serious or above for ozone, the State is given more discretion in selecting the size of nonattainment areas for areas classified as marginal or moderate nonattainment), EPA believes that the State of Indiana acted in keeping with the requirements of the CAA in selecting only Vanderburgh County as the nonattainment area.

C. Ozone Transport Assessment Group

1. Comment

Commenters question the need for the EPA to rely on OTAG-related emission reductions (expected to be required through future rulemaking), since these emission reductions are not yet tangible and are not sufficient to avoid ozone problems during hot summers. Reliance

on “possible” future emission reductions from OTAG while ignoring the Alcoa ozone standard violation is incongruous and explains why poor air quality continues in the Evansville area.

Response

Although EPA mentioned the potential benefits from OTAG-related emission reductions in the proposed rulemaking, it did not rely on these future emission reductions as a basis for the proposed redesignation of Vanderburgh County. The Evansville area has attained the ozone standard without these emission reductions. In addition, the State’s maintenance plan for this area shows continued maintenance of the ozone standard without considering the impacts of these emission reductions.

In discussing the OTAG-related emission reductions expected in the near future, the EPA was simply noting that these emission reductions would lower the background ozone concentrations in the Evansville area, further lowering the ozone concentrations in the area. Such decreases in ozone concentrations would act to reduce the risk of future violations of the one-hour and eight-hour ozone standards. The State of Indiana actively participated in the OTAG process and is expected to reduce NO_x emissions to comply with the resulting NO_x emission budget. This NO_x emission reduction is expected to reduce area ozone levels and transport of ozone into downwind areas.

2. Comment

A commenter notes that EPA’s reliance on emission reductions resulting from OTAG is unacceptable until EPA is sure what rules will come out of the OTAG process. It is the commenter’s understanding that the OTAG process has nearly broken down. Deadlines have been missed. It is not clear what ozone precursor emission reductions will result from this process. In addition, EPA does not offer proof that OTAG controls will be implemented or that resulting emission reductions will be of sufficient quantity to achieve the ozone standard in the Evansville area. To rely on conjecture that OTAG emission reductions will occur is not consistent with the Congressional intent of making the air healthy in the Evansville area.

Response

As noted above, the EPA has not relied on OTAG-related emission reductions to attain the ozone standard in the Evansville area. The area has

attained the ozone standard without such future emission reductions.

The OTAG process has not broken down. The OTAG process has reached closure, and the OTAG States have recommended a range of possible NO_x emission reduction requirements to the EPA. EPA proposed a SIP-call on November 7, 1997 in response to the recommendations of OTAG. Therefore, it is likely, assuming that the rulemaking is finalized, that significant NO_x emission reductions in the eastern half of the United States will result from the OTAG process. These emission reductions should also lower ozone levels in the Evansville area in the future, but are not being relied on to meet or to maintain the one-hour ozone standard in the Evansville area.

D. Source Growth and the Maintenance Plan

1. Comment

Several commenters believe that the maintenance plan submitted with Indiana’s redesignation request is outdated and should be updated to reflect the emission increases that have occurred or are expected to occur in the region as a result of source growth. The commenters note the source impacts of new sources, such as A.K. Steel, the Casino Aztar River Boat (indirect traffic growth), and the Toyota truck plant to be located in neighboring Gibson County. The commenters believe that these new sources lead to increases in population, vehicle miles traveled, and industrial emissions, invalidating the existing maintenance plan. The commenters state that EPA should review the maintenance plan in light of these new emissions and that the maintenance plan submitted in 1993 is obsolete.

Response

Although the maintenance plan was submitted in 1993, prior to the source growth noted by the commenters, and uses 1990 as the attainment base year, EPA sees no reason to disapprove the maintenance plan based on source growth in recent years. This conclusion is based on several reasons. First, despite any source growth, Vanderburgh County is currently attaining the ozone standard and has continuously attained the standard throughout the period during which the redesignation request has been pending. To the extent that the Alcoa monitor indicated nonattainment during this period, the nonattainment problem was not monitored in Vanderburgh County itself, but rather in neighboring Warrick County (current data shows that Warrick County is also

attaining the one-hour ozone standard). Therefore, the source growth has not prevented attainment of the standard in Vanderburgh County. Second, in the case of the future emissions from the Toyota truck plant, IDEM, through the source permit development process, has evaluated the ozone impacts of these emissions on the Evansville area, including potential impacts on critical ozone monitoring sites in Warrick County. The State has concluded that increased ozone precursor emissions from this facility will not cause an ozone standard violation at any of the monitoring sites. Finally, the maintenance plan submitted by IDEM contains provisions for addressing unexpected emission increases. As noted in the March 14, 1997 proposed rulemaking (62 FR 12141), IDEM commits to periodically review area emissions and to conduct a review of the ozone impacts of increasing emissions if the VOC, NO_x, or Carbon Monoxide (CO) emissions in the area increase above the 1990 level. If the review indicates that the increased emissions have the potential to cause a violation of the ozone standard, IDEM would determine and adopt the emission controls needed to eliminate the potential air quality problem. Therefore, increasing emissions should not present a problem for maintenance of the ozone standard in this area as long as IDEM implements the maintenance plan.

As additional insurance toward maintenance of the standard, it should be noted that, based on the adopted maintenance plan, if increasing emissions do cause a future violation of the standard, IDEM is committed to select emission control measures from the contingency measure list for implementation toward attainment of the ozone standard.

Finally, it is noted that the commenters have presented no air quality analyses to demonstrate that the new sources (or indirect sources) in the area have the potential to cause future violations of the ozone standard. The EPA continues to find Indiana's maintenance plan to be acceptable.

2. Comment

Because of recent source growth in Vanderburgh County and in Southwestern Indiana, a commenter believes that the EPA should not redesignate Vanderburgh County to attainment of the ozone standard until the State implements an equitable program that regulates hydrocarbon emissions (VOC emissions) from industrial sources.

Response

Under section 107(d)(3)(E)(v) of the CAA, EPA may not approve the redesignation of an area to attainment of a standard until the State has met all requirements applicable to the area under section 110 and part D of the CAA. As stated in the proposed rulemaking for the Vanderburgh County redesignation, the EPA believes that the State of Indiana has complied with the requirements of the CAA as they pertain to the Evansville ozone situation (the CAA requirements, as noted above, do not require additional VOC emission controls for industrial sources in the Evansville area). In addition, as noted above, the area has attained the one-hour ozone standard without the implementation of additional VOC emission controls on industrial sources. Therefore, EPA has no basis for requiring additional emission controls on industrial sources.

3. Comment

A commenter notes that he had expected the 1990 ozone nonattainment designation for Vanderburgh County to have resulted in emission reductions in the area. Instead of emission reductions, the commenter believes that the available information points to industrial and mobile source growth. The commenter believes that local economic development efforts have increased since Vanderburgh County became nonattainment for ozone with resulting increases in the number of polluting industries.

Response

Responses to comments 1 and 2 of this subsection generally address this comment. With regard to the last point of the comment, there is no evidence that local economic development efforts have focused on attracting polluting industries to Vanderburgh County since Vanderburgh County became nonattainment for ozone. In fact, it should be noted that a Toyota truck plant has chosen to locate in Gibson County (an ozone attainment area) rather than in Vanderburgh County, where a larger labor force may be found. The nonattainment designation of Vanderburgh County, thus, may have been a factor in the location of this plant outside of Vanderburgh County. Therefore, the commenter's last point is not supported.

4. Comment

Commenters note that EPA's and IDEM's use of 1990 as a base year for the maintenance plan is not an accurate reflection of the current conditions. The commenters state that Evansville's

economy has significantly changed in the last few years, and it follows that ozone precursor emission data would be very different if data from 1994 and 1995 were used for decision making in 1997 and 1998. The commenters believe that the current data should be used as a matter of policy and common sense.

Response

As noted above, Indiana's maintenance plan for the Evansville area commits the State to periodically review the area's emissions and to take action if the VOC, NO_x, or CO emissions in Vanderburgh County increase to levels above those in 1990. If emissions have significantly increased in a manner previously not accounted for in the maintenance plan, a periodic review of the emissions should detect this growth and should lead to corrective actions, if determined to be needed to prevent an ozone standard violation. In addition, it should be noted that the choice of 1990 as the maintenance demonstration base year was appropriate when IDEM prepared the redesignation request in 1993.

Also as noted above, the area is currently attaining the ozone standard. If emissions have increased to above-1990 levels, this would imply that emission levels higher than those in 1990 could be sustained without violating the ozone standard. Requiring the maintenance plan to be revised to incorporate the higher emissions would not result in a requirement for additional emission controls to compensate for the increase in emissions, but would allow one to assume that emissions exceeding the 1990 levels (assuming emissions have increased to levels above the 1990 levels) would not cause a violation of the one-hour ozone standard. The current maintenance plan encourages the State to maintain lower emissions in the area.

5. Comment

A commenter notes that, according to recent press releases, several firms, including GE Plastics in Posey County and American Steel Extrusion in Vanderburgh County, have applied to IDEM for permits to increase VOC emissions with no offsets from other sources as required by the Act.

Response

This is not an issue relevant to the redesignation at hand, but, instead, is relevant to new source review requirements. The commenters should address this issue through comments on the new source permits when they are reviewed under Indiana's source

permitting procedures. Indiana allows for public review of such new source permits.

In addition, if the emissions in the area do increase as result of the source permit revisions, IDEM would have to take these emission increases into account under the periodic emissions review covered by the maintenance plan. If the emissions increases are determined to have a potential to cause a future ozone standard violation, the State would have to activate emission control measures to mitigate the problem.

Finally, it should be noted that, since Vanderburgh County is being redesignated to attainment for ozone, new sources will not be required to obtain future offsets for new source growth.

6. Comment

A commenter notes that the EPA has failed to meet the tests required under section 107(d)(3)(E) of the Clean Air Act. The commenter believes that the EPA has erred in not meeting the test of section 107(d)(3)(E)(i) since there is a current (1994) violation of the ozone standard in the Evansville area. The EPA has also erred in not meeting the test of section 107(d)(3)(E)(iii), which sets the requirement that permanent and enforceable emission reductions be shown to be responsible for the observed improvement in air quality. The commenter questions how the EPA can make a declaration of the connection between emission reductions and air quality given that no SIP has ever been put into place for the Evansville area as was required by the Clean Air Act when Vanderburgh County was designated as nonattainment for ozone.

The commenter notes that during the years of 1988 through 1993, when the area was first recommended for redesignation to attainment, the only reductions in ozone precursors came about as a result of a serious economic slump. Several VOC emitters shut down, resulting in the improved air quality observed. As soon as the local economy rebounded, monitors in the area again showed exceedances of the standard, including the Warrick County ozone standard violation.

The commenter notes that, in the past several years, there has been a large economic development, which will cause further air quality deterioration. The Toyota truck plant in Gibson County has been permitted to emit 3,490 tons of VOC per year just seven miles north of Vanderburgh County. The General Electric facility in Posey County has undergone substantial growth. A

soybean processing plant is scheduled for construction in Posey County that will emit as much as 1,400 tons of VOC per year. In addition, in Posey County, the Countrymark Refinery is increasing emissions to near-capacity levels.

In Warrick County, the Alcoa facility has increased emissions significantly. In addition, a new cold rolled steel facility (A.K. Steel) is under construction with plans to add a hot rolled mill in the next phase of expansion.

Within Vanderburgh County, power plants which operated at limited capacity are gearing toward total capacity operation due to the deregulation of the electric utility industry. The Evansville area sports the largest concentration of coal-fired power plants in the United States, with 3 of the top 10 plants in the United States located within this area.

The Casino Aztar River Boat has led to significantly higher vehicle traffic within the last year. In addition, growth in the retail sector during the last two years has led to significant traffic growth.

All of these facts concerning source growth dispute any EPA declaration that reductions in ozone precursors have taken place in this area.

Response

At the time IDEM submitted the redesignation request in 1993, VOC and NO_x emission reductions had occurred, contributing to the air quality improvement observed subsequent to 1988. These emission reductions have occurred primarily through source closures, which IDEM has made permanent and enforceable through the termination of source permits, and through mobile source emission reductions pursuant to the Federal Motor Vehicle Emission Control Program (FMVCP). At the time of the redesignation request submittal, it was appropriate to give credit to these permanent and enforceable emission reductions as contributors to the observed air quality improvement in the Evansville area.

With regard to recent emission impacts from new source growth, it is acknowledged that such source growth has occurred. It is noted, however, that this does not constitute a problem for Indiana's maintenance plan. The maintenance plan for the area contains contingency measures triggered by increases in emissions exceeding the 1990 attainment year emissions levels. If the periodic review of VOC and NO_x emissions shows increases to levels exceeding the 1990 levels, IDEM has committed to initiate a study of the impact of the emissions increase on air

quality and to take action in terms of additional emission controls if the analyses indicate the emission increases have a potential to cause a future ozone standard violation. Therefore, the maintenance plan contains safeguards against the impacts of unexpected emission increases, and the EPA sees no reason at this time to disapprove the maintenance plan on the basis of any recent emission increases.

It is noted that the maintenance plan did assume some future growth in emissions would occur as a result of changes in the economy and, nonetheless, demonstrated maintenance of the ozone standard in Vanderburgh County for 10 years into the future. Moreover, despite any recent emission increases from new source growth, the 1995 through 1997 ozone data demonstrate continuing attainment of the ozone standard in Vanderburgh County and current attainment of the ozone standard in surrounding counties. Although part of this attainment may be due to favorable meteorology, it must be noted that this attainment period includes 1995, a year particularly noted for meteorological conditions favorable to high ozone concentrations. Despite this, ozone standard exceedances were not prevalent in the Evansville area during this period (a single ozone standard exceedance of 0.131 parts per million was recorded at the Booneville site in 1995, with no other exceedances in the area). Obviously, the growth in VOC emissions did not contribute to an ozone standard violation in 1995 despite favorable meteorological conditions. Equally important, despite new source growth, no ozone standard exceedances were recorded in the area during the 1995 through 1997 period. These observations argue against the concerns of the commenter regarding the impacts of new source growth.

Although the emission increases resulting from source growth bear watching through the maintenance plan, the fact that these emission increases exist does not lead to the conclusion that the maintenance plan is flawed or should be disapproved.

E. Action Committee for Ozone Reduction Now

The proposed rulemaking described a public forum process used in the Evansville area to select contingency measures for possible adoption and implementation. Although this public forum has resulted in the selection of possible emission control measures which may further improve ozone levels in the Evansville area, it should be noted that the State has not relied on these measures to attain the one-hour

standard, the EPA has not relied on these measures as a basis for its approval of Indiana's redesignation request for Vanderburgh County.

The group formed to carry out the selection of possible control measures was given the title of the Action Committee for Ozone Reduction Now (ACORN). The following comments relate to EPA's discussion of ACORN and the selected emission control measures.

1. Comment

A commenter notes that, through participation in the ACORN process, the following concerns may be raised with regard to the resulting emission control measures:

- a. There are no requirements for enforcement of the proposed emission reductions;
- b. The proposed emission reductions do not address the regional nature of the ozone problem in Vanderburgh County. The commenter believes that the high ozone levels monitored in Vanderburgh County may be attributed to ozone precursor emissions outside of Vanderburgh County; and,
- c. The proposed emission reductions do not address the ozone impacts of the area's expanding population, increasing traffic, and increasing industrial emissions.

Response

The following addresses the three issues:

- a. The ACORN process, as discussed in the proposed rulemaking led to recommendations for the following four emission control measures: (1) High volume low pressure (HVLP) paint gun change outs for autobody refinishing and paint spraying operations; (2) Stage I gasoline vapor recovery during loading of underground storage tanks at gasoline service stations; (3) establishment of a pollution prevention and education task force; and (4) use of less polluting gasoline. To implement measures (1), (2), and (4) in an enforceable manner, the State must adopt the measures in the form of enforceable regulations. IDEM has informed the EPA that the State is in the process of adopting measures (1) and (2), and are giving further consideration to measure (4), which is not being processed for adoption at this time. Implementation and enforcement of the measures in the future will help maintain the ozone concentrations in the area at below-standard levels.

The third measure, establishment of a pollution prevention and education task force, may not lead to specific regulations, but will probably lead to a list of suggested pollution prevention

procedures. Since pollution prevention procedures may be applied to many sources and source categories, it is impossible for the State to develop emission control regulations for all or most source categories. The State, however, may take an active role in promoting the use of such procedures. It is not clear at this time whether the pollution prevention task force has actually been established or, if so, whether the task force has made specific recommendations for pollution prevention measures. In addition, it should be noted that this process may be community-based, with local residents and industries taking the lead rather than the State;

- b. See responses to comments in subsection B. above; and
- c. See responses to comments in subsection D. above.

2. Comment

A commenter notes that, since Vanderburgh County was redesignated as nonattainment for ozone, no formal program was implemented to reduce ozone levels, and nothing has been done to implement the ACORN proposals.

Response

As noted in the proposed rulemaking, since Vanderburgh County is classified as a marginal ozone nonattainment area and since the area was not subject to RACT rule correction requirements or to vehicle inspection/maintenance program correction requirements, the State is not required by the CAA to develop new emission control regulations for this area. The State has met all requirements relevant to the marginal nonattainment status of this area.

With regard to the implementation of the ACORN proposals, see the response above.

3. Comment

A commenter notes that reliance on IDEM, local officials, and ACORN for local controls is unacceptable for several reasons. First, the ACORN proposals are minimal in scope and the ACORN process has broken down. Second, the ACORN emission reductions, if they occur, are voluntary pollution prevention techniques. Although the voluntary approach has been available in the past, industries have failed to reduce emissions. The commenter believes that the voluntary emission reductions must be backed by RACT requirements on any industry that fails to make a documented effort to reduce emissions.

Response

The ACORN process has not broken down and has reached conclusion with the recommendation of the four emission control measures discussed above. These measures have the potential to produce significant emission reductions. Stage I emission controls, use of cleaner fuels, and use of HVLP spray guns have the potential to produce significant emission reductions if supported by State adopted regulations. Pollution prevention, if aggressively pursued and promoted, also has a potential for significant emission reductions. Regardless of the emission controls selected, the emission controls will be useful in offsetting the impacts of source growth and will lower the potential for future ozone standard exceedances. (These emission reductions will contribute toward attainment of the eight-hour ozone standard.)

With regard to RACT, because of the marginal ozone nonattainment classification of Vanderburgh County and section 182(a) of the CAA, RACT is not required in Vanderburgh County. In addition, because of the attainment of the ozone standard during the 1995 through 1997 period, the implementation of RACT is not needed to attain the one-hour ozone standard.

4. Comment

A commenter notes that EPA's proposed redesignation is loaded with supposition, hope, and wishes that the paper pushing of industries and ACORN will pay off in attaining and maintaining the standard. The proposed redesignation, however, misses the point of the CAA which is to improve the health of humans. No amount of wishing will change the ill health that local residents experience in the summer months, when industrial emissions are trapped by the meteorological inversions that are common in the area. Calling the area "attainment" will not reduce one pound of pollution and will hasten degradation of the region's air by allowing massive increases in pollution in the one county that is nonattainment.

Response

The Clean Air Act, in part D, specifies the minimum requirements for State ozone control plans for various ozone classifications. The State of Indiana has met the requirements for marginal areas in Vanderburgh County. Given the 1995 through 1997 attainment of the ozone standard and the State's compliance with SIP requirements, Vanderburgh

County qualifies for the designation of attainment.

5. Comment

While the commenter participated in the ACORN process and endorses the recommendations it has made, the commenter notes that it was the belief of the ACORN participants that the proposals that came out of the process would do little to actually reduce ozone precursors. In addition, nowhere in EPA's notice of proposed rulemaking nor in its associated technical support document does the EPA offer any concrete evidence that the air quality will be improved to healthful levels as a result of the recommendations of ACORN, even if fully implemented.

The commenter notes that ACORN provided only the "lowest common denominator" approach and offered a bare minimum emission control proposal on which the group could reach consensus. The commenter believes this allowed the industry to write its own regulations because the industrial sector of the ACORN group stifled the solutions offered by the citizen representatives.

For EPA to claim that ACORN's recommendations reflect the desire of the community is dishonest. It was apparent to the commenter that ACORN was used by IDEM to achieve a no-action, minimal result that would satisfy the industry and appease the public.

Response

As noted above, the 1995 through 1997 ozone data demonstrate that the Evansville area has attained the ozone standard without the implementation of the ACORN recommendations. EPA is not relying on the impacts of the ACORN-related controls to justify the redesignation of Vanderburgh County to attainment of the ozone standard. Nonetheless, it must also be noted that source growth is anticipated in this area. (EPA sees no data countering IDEM's source growth estimates for Vanderburgh County contained in the maintenance plan. Much of the large source growth has occurred outside of Vanderburgh County. The maintenance plan only deals with emission changes within Vanderburgh County. EPA does not require the State to consider source growth outside of the existing nonattainment area as part of the maintenance plan.) Although not yet quantified, it must be recognized that the ACORN measures, if implemented, have the potential to offset source growth impacts.

Insufficient data are available to allow the EPA or IDEM to determine the full extent of the emission impacts of

ACORN's recommendations. Until adopted regulations are in place and pollution prevention recommendations have been selected, it is impossible to determine all of the emission impacts. Nonetheless, assuming that emission control regulations are adopted, it must be concluded that the ACORN recommendations could lead to significant emission reductions.

EPA has never stated that the ACORN recommendations represent the wishes of the entire public in the Evansville area. Since ACORN had wide representation from government, industry, and the public, it must be assumed that some people involved in the ACORN process may have raised some objections to the recommended emission control measures or may have recommended emission controls not finally selected. The indication that the ACORN recommendations are a consensus opinion implies some level of dissent on selected emission control measures as well as on the emission control measures not selected.

6. Comment

A commenter notes that the reliance on Pollution Prevention (P2), if it is ever implemented, as a voluntary measure to gain nearly two-thirds of the total ACORN-recommended emission reduction is very suspect. Throughout the ACORN process, proponents of the P2 approach informed the officials that P2 is purely "market driven" and would carry no cost to anyone except the cost to local government for staffing a P2 office to provide education and support for P2 efforts. The commenter believes that this supposition can not be supported.

It is obvious that market driven P2 has been available in the area's history to cure the area's air pollution problem. If P2 can be achieved at no cost to industry, it would have already been in place for economic reasons. The fact is that P2 is little more than a hope, wish, and dream for most of the area's industry and it will require substantial capital investment for whomever takes this path.

The commenter believes EPA's reliance on a voluntary emission reduction program in an area with a history of resisting air pollution controls does not comply with the intent of the CAA. The commenter believes that P2 should be backed up with a requirement for the implementation of RACT for sources that fail to make a good faith effort to reduce their emissions using P2 techniques. The imposition of RACT gives industries incentives to implement P2 techniques.

Response

P2 programs are designed to reduce emissions through process changes that should be economically advantageous to the industries, such as process changes to reduce waste and the need for raw materials, lowering production costs. If P2 programs are successfully established, some industries should take advantage of the programs from an economic standpoint.

The EPA has never placed significant reliance on voluntary programs in areas with continuing air quality problems and ozone classifications requiring definitive emission controls under the CAA. Nonetheless, the EPA has seen the merit in promoting P2 programs as supplements to other controls. Since P2 programs are intended to provide industries with economic incentives to reduce emissions, one can assume that the industries will adopt such programs if the programs are implementable and well understood by the industrial representatives. P2 implementation does require significant efforts to document P2 approaches and to properly educate the applicable industries. Significant up-front investments may be needed, but should result in long term payoffs through lowered production costs. EPA acknowledges that such efforts may not be easy or quickly embraced by the industries.

Again, as already indicated above, RACT cannot be required in the Evansville area given the area's marginal ozone classification.

7. Comment

With regard to the proposal of ACORN relative to paint spray guns, a commenter notes that, according to local automobile refinishing shop owners, the proposal to require HVLP painting guns is virtually unenforceable. The commenter believes that the proposed ordinance will simply require such establishments to have only one HVLP apparatus in each of the refinishing shops with no requirement for the complete conversion of the painting operations.

Response

The EPA has been informed by IDEM that the State of Indiana is in the process of developing a regulation to require the use of HVLP units in the larger automobile refinishing shops. The EPA sees no reason why the State would be unable to produce a regulation requiring the use of HVLP units for all applicable coating operations. Naturally, the State may wish to exclude smaller shops from the application requirements of such a rule.

F. New Ozone Standard

1. Comment

Commenters question the need for a redesignation now just prior to promulgation of a new ozone standard (this comment was prepared prior to the July 18, 1997 promulgation of the revised ozone standard). The commenters question whether this is to permit new industries to develop before the new standard goes into effect.

Response

The designation being considered in this action is pertinent to only the one-hour standard. Designations for the eight-hour standard will be made in the future in accordance with the process for designating areas under the new standard and this redesignation rulemaking action has no relevance for that future designation action. Moreover, it would be inappropriate to maintain the one-hour nonattainment designation, if no longer applicable, on the assumption that the Evansville area might be designated as nonattainment for the eight-hour ozone standard in the future.

2. Comment

A commenter states that, taken within the context of the proposed (now promulgated) ozone standard, it does not make sense to proceed with the redesignation of Vanderburgh County under the one-hour standard. It appeared to the commenter that the EPA was proposing the redesignation so that it could occur prior to the implementation of the new ozone standard, providing the EPA with an additional three years of time before strict enforcement of whatever changes in the ozone standard are made. The commenter notes that this undermines the efforts of local citizens to clean up the air quality in the area.

Response

As noted above, the original one-hour ozone standard and the new eight-hour ozone standard are considered to be separable in terms of requiring emission controls and determining the area's attainment status. To do otherwise would result in the Evansville area being arbitrarily treated differently than other areas in the country which are currently attaining the one-hour standard or for which the one-hour standard may be revoked on the basis of air quality data attaining the one-hour standard (see discussion below regarding the revocation of the one-hour standard).

G. Toxics and Health Concerns

1. Comment

A resident, who lives close to the Alcoa facility in Warrick County, believes that the toxic emissions from this company are very harmful and detrimental to the local environment, including causing pitting and dark spots on building surfaces. The commenter believes that many residents in the area suffer with breathing problems.

Response

The EPA is very concerned about breathing problems caused by toxic emissions and other air pollutants. It is recommended that the commenter contact both EPA and IDEM with specific information on this problem to allow further considerations. Nonetheless, it should be noted here that the issue at hand is the ozone attainment status of Vanderburgh County. The EPA is unaware of any data linking air pollutant emissions from the Alcoa facility with an ozone standard violation in the Evansville area (including Warrick County) during the 3 most recent years.

2. Comment

A commenter notes that evidence of increased respiratory distress is mounting in area residents and that there is evidence that air quality is often the cause of a sickness that crosses the socioeconomic and age related population strata. This sickness is referred to by area doctors as the "Evansville Crud," an upper respiratory malady that depletes body energy and causes coughing and fluid drainage from the respiratory system.

Response

EPA acknowledges that air pollution may be causing some respiratory problems in residents in this area. It is not clear that these problems are due to the impacts of ozone, which is the focus of this rulemaking. The commenter provides no data linking elevated ozone concentrations to the observed health problems. The EPA sees no reason to delay the redesignation based on the summarized health problems. The commenter is encouraged to work with health experts and IDEM to determine the actual pollutants responsible for the health problems and to determine the appropriate emission control measures.

3. Comment

A commenter believes that EPA and IDEM have failed to demonstrate that the respiratory health of Vanderburgh County residents has improved due to improved air quality. Although the

commenter realizes that such a test is not required by the CAA, the commenter believes that, since the ozone standard is health-based, some criteria for assessing the impact of unhealthy air on a population could be warranted in lieu of proof that emissions have been reduced. Since it is clear that emissions have not been reduced in and around Evansville, some quantitative criteria based on health impacts should be offered to justify the redesignation to attainment.

Response

A redesignation action requires EPA to determine that certain statutory criteria have been met. EPA has made those findings here, including the finding that the one-hour standard has been attained. Monitoring attainment of the one-hour standard is an indicator of improved air quality. Given that the ozone monitors in the Evansville area, including all ozone monitors in Posey, Vanderburgh, and Warrick Counties, have indicated attainment of the ozone standard, one can conclude, based on the one-hour standard, that ozone levels are lower now than in 1988 or 1994, when violations of the one-hour standard were monitored in the area.

4. Comment

A commenter notes that, if the EPA and IDEM had done their jobs eight years ago when Vanderburgh County went out of compliance with the ozone standard in 1988, her daughter and thousands of others may not have developed asthma in the first place. She notes that RACT on industrial sources should have been put in place under the pre-1990 Clean Air Act and thinks that, if this had been done, air quality would have been better by now. She thinks EPA and IDEM have stalled in enforcing emission controls to benefit polluting industries and only respond favorably to the wishes of the industries.

Response

The EPA and IDEM have sought to comply with the current requirements of the CAA. Because of the time involved in redesignating areas to nonattainment of the standard, and the additional time for the State to develop air quality plans and regulations and to implement those regulations, RACT rules could not have been adopted until well after the 1990 revision of the CAA. The revised CAA set forth limited emission control requirements for marginal ozone nonattainment areas, such as Vanderburgh County, eliminating the requirement to implement new RACT rules in this area. In any event, Vanderburgh County is currently in

attainment of the standard and qualifies for redesignation to attainment.

5. Comment

A commenter asserts that the EPA is not using current data in the determination of the amount of pollution in the area. The commenter questions what EPA thinks the TRI database is for, and wants to know if the EPA is familiar with the thousands of journals which are reporting alarming increases in many diseases related to pollution. The commenter asserts that EPA and IDEM are violating the rights of citizens by not cleaning up pollution.

Response

The Toxic Release Inventory (TRI) database identifies the sources and emission rates of known hazardous compounds and heavy metals. Only to the extent that some of these compounds are VOC does the TRI database provide information relating to ozone precursor emissions. TRI-based VOC emissions are only a subset of the total VOC emissions involved in the formation of ozone. Generally, TRI-VOC emissions are already incorporated into the larger ozone-related VOC emission inventories maintained by the State and by the EPA.

The EPA is aware of the growing number of journal entries indicating adverse health effects due to various pollutants. Several thousand articles and study reports were reviewed in conjunction with the recent tightening revisions of the ozone and fine particulate standards. Within the constraints of the CAA, the EPA is taking action to provide additional protection for individuals subject to the harmful effects of air pollution. Nonetheless, the issue here is whether or not Vanderburgh County (and its downwind environs) continues to violate the one-hour ozone standard. The data indicate that this is not the case. With regard to the tightened standards, the Evansville area will be independently evaluated for attainment of these standards in the future. If the area is found to be violating one or both of these standards, additional emission control measures may be warranted at that time.

H. Miscellaneous Comments

1. Comment

A commenter contends that the maintenance plan seems to lack concrete plans of action and is not legally enforceable. The commenter doubts the merits of such a plan and fails to see how it will protect the

public's health from future ozone standard violations.

Response

The maintenance plan outlines the procedures that the State will take if a future violation of the one-hour ozone standard occurs or if the VOC emission total in Vanderburgh County increases to a level exceeding the 1990 attainment year level (see a discussion later in this rulemaking for possible impacts of an anticipated revocation of the one-hour ozone standard). In the event of an ozone standard violation, it is clear that the State, within one year of the determination of the ozone standard violation, must select additional emission reduction controls sufficient to prevent future ozone standard violations. The maintenance plan lists a number of emission control measures that the State will consider for implementation and elimination of the air quality problem. The State is free to select the appropriate emission control strategy, but must demonstrate to the EPA that the emission controls will be adequate to prevent future ozone standard violations, and must adopt such measure or measures within the year following the confirmation of the ozone standard violation. In the case of emission increases above the attainment year level, the State must initiate a study to determine if additional emission controls are needed to prevent a future ozone standard violation. EPA views these commitments to be adequate and enforceable.

2. Comment

A commenter states that putting Vanderburgh County on the attainment list is "false advertisement." This implies that Vanderburgh County could continue ignoring its air quality problems. Controlling emissions from gasoline and use of low pressure paint shop sprayers may be well and good, but industry should also clean up its emissions. These emissions reductions should occur throughout the entire region.

Response

The regional control component of this comment has been dealt with in responses to regional control comments above.

Again, it is noted that the CAA does not require RACT controls in the Evansville area. This is due to the fact that Vanderburgh County has been classified as a marginal ozone nonattainment area.

Redesignating Vanderburgh County to attainment is not "false advertisement," since it recognizes the improvement in

ozone levels in the Evansville area. It should also be noted that the redesignation does not send the signal that the State or local officials can simply forget about the impacts of the area's emissions on ozone levels. The State will need to continue to track ozone levels and VOC emissions in the area and will need to take corrective actions if future ozone standard violations occur or if future VOC emissions climb above attainment levels.

3. Comment

A commenter notes that neither IDEM nor EPA has done anything to require further NO_x emission reductions (beyond those required under title IV of the CAA) from coal-fired electric power plants both in the immediate region as well as in downwind areas in southern Illinois and Kentucky.

Response

This is the purpose of the OTAG-related SIP-call referenced in the proposed rulemaking and earlier in this final rulemaking. To reduce the impacts of ozone and ozone precursor transport, such NO_x emission reductions will be required in the near future. As noted above, on November 7, 1997 EPA published a proposed rulemaking that will require States in the eastern half of the United States to reduce NO_x emissions to achieve prescribed NO_x budgets. The State of Indiana was an active participant in the OTAG process, which led to the NO_x emission budget proposed for Indiana.

IV. Ozone Standard Revocation

On July 16, 1997, President Clinton concurred with the EPA on the revision of the ozone standard to an eight-hour averaged level. As part of that concurrence, President Clinton requested the EPA to revoke the one-hour standard for areas currently attaining the ozone standard. This standard revocation was to occur within a 90 day period following the concurrence (the standard revocation had not occurred at the time of the publication of the current action).

The revocation, as planned by the EPA, will consider 1994 through 1996 data in selecting appropriate areas for revocation.

Based on 1994 through 1996 data, Vanderburgh County may be subject to revocation of the one-hour standard.

If the revocation of the one-hour standard becomes effective for Vanderburgh County, the attainment status designation for this area will be replaced by a notification of the revocation of the one-hour standard.

Future rulemaking and guidance on EPA's transition policy (policy addressing the transition from the application of the one-hour ozone standard to the eight-hour ozone standard) will address the implications of this standard revocation for the area's maintenance plan and other ozone-related emission control requirements.

V. Conclusions

None of the public comments reviewed here warrants reversal of EPA's proposed approval of the redesignation of Vanderburgh County to attainment of the one-hour ozone standard and approval of the State's maintenance plan for this area as a SIP revision. Monitoring of ozone for the 1995 through 1997 period in Vanderburgh County and its adjoining Posey and Warrick Counties shows no violations of the one-hour ozone standard, demonstrating that this area has attained the one-hour ozone standard.

As noted above, on July 18, 1997 the EPA promulgated a revised eight-hour standard for ozone. The current rulemaking makes no judgments regarding the attainment of the revised ozone standard in the Evansville area. The attainment status of this area relative to the new ozone standard will be addressed in a future rulemaking.

VI. Final Rulemaking Action

EPA is approving the ozone redesignation request and the ozone maintenance plan submitted by Indiana on November 4, 1993 as they apply to Vanderburgh County. EPA is, therefore, redesignating Vanderburgh County to attainment of the one-hour ozone standard. The EPA has completed its analysis of the redesignation request and SIP revision request based on a review of the materials presented and in consideration of the current, 1995 through 1997, ozone data in the area, including ozone monitoring data in Posey, Vanderburgh, and Warrick Counties.

In taking this action, the EPA has taken into consideration all relevant public comments on the March 14, 1997 proposed rulemaking. None of the public comments were found to form the basis for a reversal of the proposed approval.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the 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 regulatory requirements on sources. EPA certifies that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated here does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Volatile Organic Compounds, and Nitrogen dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 2, 1997.

David A. Ullrich,

Acting Regional Administrator.

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.*

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

§ 52.777 Control Strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(s) Approval—On November 4, 1993, the State of Indiana submitted a maintenance plan and a request that Vanderburgh County be redesignated to attainment of the one-hour National Ambient Air Quality Standard for

ozone. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) of the Clean Air Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as

a revision to the Indiana ozone State Implementation Plan.

* * * * *

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.315 the ozone table is amended by revising the entry for “Evansville Area: Vanderburgh County” to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—OZONE

Designated areas	Designation		Classification	
	Date	Type	Date	Type
Evansville area: Vanderburgh County.	December 9, 1997	Attainment.		

¹ This date is November 15, 1990, unless otherwise noted.

* * * * *
[FR Doc. 97–32188 Filed 12–8–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5933–6]

RIN 2060–AC28

National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Today’s action suspends, on an interim final basis, the National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations (EO NESHAP). The suspension allows affected sources subject to the EO NESHAP to defer compliance with the NESHAP for one year until December 6, 1998. This action does not change the level of the standards or the intent of the NESHAP promulgated in 1994.

DATES: This action is effective December 4, 1997.

Under section 307(b)(1) of the Clean Air Act (Act), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today’s publication of this interim final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of

today’s document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: Docket. Docket No. A–88–03, category VIII Amendments, containing information considered by the EPA in developing this rule, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA’s Air and Radiation Docket and Information Center, room M1500, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying. This docket also contains information considered by the EPA in proposing and promulgating the original EO NESHAP.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact the appropriate EPA regional or Office of Enforcement and Compliance Assurance (OECA) representative:

Region I: Greg Roscoe, Air Programs Enforcement Office Chief, U.S. EPA, Region I, JFK Federal Building (SEA), Boston, MA 02203, Telephone number (617) 565–3221

Region II: Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007, Telephone number (212) 637–4080, Fax number (212) 637–3998

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