

(4) State each reason why the troubled institution cannot meet the standard set forth in § 1231.3(e)(2).

(f) *Waiver of form or content requirements.* FHFA may waive or modify any requirement related to the form or content of a request or notice, in circumstances deemed appropriate by FHFA.

(g) *Additional information.* FHFA may request additional information at any time during the processing of the request or after receiving a notice.

Dated: August 20, 2018.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2018–18511 Filed 8–27–18; 8:45 am]

**BILLING CODE 8070–01–P**

## DEPARTMENT OF LABOR

### Wage and Hour Division

#### 29 CFR Part 541

#### White Collar Exemption Regulations; Public Listening Sessions

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Notification of public listening sessions.

**SUMMARY:** The Department of Labor will conduct public listening sessions to gather views on white collar exemption regulations. The Fair Labor Standards Act (FLSA) generally requires covered employers to pay their employees at least the federal minimum wage (currently \$7.25 an hour) for all hours worked, and overtime premium pay of not less than one and one-half times the employee's regular rate of pay for any hours worked over 40 in a workweek. The FLSA exempts from both minimum wage and overtime protection "any employee employed in a bona fide executive, administrative, or professional capacity" and delegates to the Secretary of Labor the power to define and delimit these terms through regulation.

**DATES:** The dates, locations, and times for the public listening sessions are listed below:

September 7, 2018, Atlanta, Georgia, 10 a.m.–12 p.m.

September 11, 2018, Seattle, Washington, 10 a.m.–12 p.m.

September 13, 2018, Kansas City, Missouri, 10 a.m.–12 p.m.

September 14, 2018, Denver, Colorado, 10 a.m.–12 p.m.

September 24, 2018, Providence, Rhode Island, 10 a.m.–12 p.m.

Members of the public may attend these listening sessions in person up to

the seating capacity of the room. The Department will not attempt to achieve a consensus view in these listening sessions, but rather is interested in hearing the views and ideas of participants.

**ADDRESSES:** To obtain specific location details and register to attend, please visit this link: <https://www.eventbrite.com/e/overtime-rule-outreach-sessions-tickets-49216139799>.

#### FOR FURTHER INFORMATION CONTACT:

Stephen Davis, Listening Session Coordinator, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

**SUPPLEMENTARY INFORMATION:** On July 26, 2017, the Department of Labor published a Request for Information (RFI), Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees. See 82 FR 34616. The RFI was one opportunity for the public to provide information to aid the Department in formulating a proposal to revise the white collar exemption regulations. Public listening sessions will provide further opportunity for the public to provide input on issues related to the salary level test, such as:

1. What is the appropriate salary level (or range of salary levels) above which the overtime exemptions for bona fide executive, administrative, or professional employees may apply? Why?

2. What benefits and costs to employees and employers might accompany an increased salary level? How would an increased salary level affect real wages (e.g., increasing overtime pay for employees whose current salaries are below a new level but above the current threshold)? Could an increased salary level reduce litigation costs by reducing the number of employees whose exemption status is unclear? Could this additional certainty produce other benefits for employees and employers?

3. What is the best methodology to determine an updated salary level? Should the update derive from wage growth, cost-of-living increases, actual

wages paid to employees, or some other measure?

4. Should the Department more regularly update the standard salary level and the total-annual-compensation level for highly compensated employees? If so, how should these updates be made? How frequently should updates occur? What benefits, if any, could result from more frequent updates?

Dated: August 23, 2018.

**Melissa Smith,**

*Director, Division of Regulations, Legislation and Interpretation.*

[FR Doc. 2018–18649 Filed 8–27–18; 8:45 am]

**BILLING CODE 4510–27–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2017–0147; FRL–9982–90—Region 5]

#### Air Plan Approval; Indiana; Reasonable Further Progress Plan and Other Plan Elements for the Chicago Nonattainment Area for the 2008 Ozone Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Indiana State Implementation Plan (SIP) to meet the base year emissions inventory, reasonable further progress (RFP), RFP contingency measure, nonattainment new source review (nonattainment NSR), volatile organic compound (VOC) reasonably available control technology (RACT), and motor vehicle inspection and maintenance (I/M) requirements of the Clean Air Act (CAA) for the Indiana portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin area (Chicago area) for the 2008 ozone national ambient air quality standard (NAAQS or standard). EPA is also proposing to approve the 2017 transportation conformity motor vehicle emissions budgets (MVEBs) for the Indiana portion of the Chicago area for the 2008 ozone NAAQS. EPA is proposing to approve the state's submission as a SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations because it satisfies the emission inventory, RFP, RFP contingency measure, nonattainment NSR, VOC RACT, I/M, and transportation conformity requirements for areas classified as moderate

nonattainment for the 2008 ozone NAAQS. Final approval of Indiana's SIP as meeting the nonattainment NSR requirements of the CAA for the 2008 ozone NAAQS will permanently stop the sanctions and Federal Implementation Plan (FIP) clocks triggered by EPA's February 3, 2017 finding that Indiana failed to submit a marginal ozone nonattainment NSR plan.

**DATES:** Comments must be received on or before September 27, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2017-0147, at <http://www.regulations.gov>, or via email to [Aburano.Douglas@epa.gov](mailto:Aburano.Douglas@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, [Dagostino.Kathleen@epa.gov](mailto:Dagostino.Kathleen@epa.gov).

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

- I. What is the background for this action?
- II. What is EPA's evaluation of Indiana's submittal?
- III. What action is EPA proposing?
- IV. Statutory and Executive Order Reviews

## I. What is the background for this action?

### A. Background on the 2008 Ozone Standard

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm).<sup>1</sup> Promulgation of a revised NAAQS triggers a requirement for EPA to designate all areas of the country as nonattainment, attainment, or unclassifiable for the NAAQS. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.<sup>2</sup> Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's "design value," which represents air quality in the area for the most recent 3 years). The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.<sup>3</sup>

Areas that EPA designates nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from stationary sources, and implement a nonattainment NSR program for the relevant ozone NAAQS.<sup>4</sup> For moderate areas, a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than 6 years after designation, the requirement to submit an RFP plan, the requirement to adopt and implement certain emissions controls, such as RACT and I/M, and the requirement for greater emissions offsets for new or modified major stationary sources under the state's nonattainment NSR program.<sup>5</sup>

<sup>1</sup> 73 FR 16436 (March 27, 2008), codified at 40 CFR 50.15.

<sup>2</sup> CAA sections 107(d)(1) and 181(a)(1).

<sup>3</sup> CAA section 181(a)(1).

<sup>4</sup> CAA section 182(a).

<sup>5</sup> CAA section 182(b).

### B. Background on the Chicago 2008 Ozone Nonattainment Area

On June 11, 2012,<sup>6</sup> EPA designated the Chicago area as a marginal nonattainment area for the 2008 ozone NAAQS. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and part of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and part of Kenosha County in Wisconsin. On May 4, 2016,<sup>7</sup> pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2015, marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for the state to submit all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas.

In addition, effective March 6, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain nonattainment plan requirements for the 2008 ozone NAAQS.<sup>8</sup> This finding established certain deadlines for the imposition of sanctions if a state does not submit a timely SIP revision addressing the requirements for which EPA made the finding and for EPA to promulgate a FIP to address any outstanding SIP requirements. As part of that action, EPA made a finding that Indiana failed to submit a SIP submission to meet the marginal nonattainment NSR requirements for the Indiana portion of the Chicago area.

## II. What is EPA's evaluation of Indiana's submittal?

Indiana submitted a SIP revision request on February 28, 2017, and submitted supplemental information on January 9, 2018, to address the moderate area requirements for the Indiana portion of the Chicago area for the 2008 ozone NAAQS. The submission contained a number of nonattainment plan elements, including a revised 2011 base year emissions inventory for VOC and oxides of nitrogen (NO<sub>x</sub>), a 15% RFP plan, a 3% RFP contingency measure plan, 2017 VOC and NO<sub>x</sub> motor vehicle emissions budgets, a nonattainment NSR certification, a VOC RACT certification, and an enhanced I/M certification. The nonattainment NSR certification included in the SIP submission addresses the deficiency that was the basis for the March 6, 2017,

<sup>6</sup> 77 FR 34221, effective July 20, 2012.

<sup>7</sup> 81 FR 26697.

<sup>8</sup> 82 FR 9158 (February 3, 2017).

finding; therefore, approval of this SIP revision would permanently stop the sanctions and FIP clocks triggered by EPA's February 3, 2017 finding that Indiana failed to submit a marginal ozone nonattainment NSR plan. The submission also included an attainment demonstration, which will be addressed in a separate action.

#### A. Revised 2011 Base Year Emissions Inventory

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as SIP revisions, comprehensive, accurate, and complete emissions inventories for all areas designated as nonattainment for the ozone NAAQS. An emissions

inventory for ozone is an estimation of actual emissions of VOC and NO<sub>x</sub> from all sources located in the relevant designated nonattainment area. For the 2008 ozone NAAQS, EPA has recommended that states use 2011 as a base year for the emissions estimates.<sup>9</sup> On April 7, 2017,<sup>10</sup> EPA approved the 2011 base year emissions inventory submitted by the Indiana Department of Environmental Management (IDEM) on June 15, 2016, for the Indiana portion of the Chicago area. IDEM included a revised 2011 base year emissions inventory in its February 27, 2017, submission. The revised 2011 base year emissions inventory only modifies the emissions estimates for the on-road mobile sector, with emissions estimates

for point, area, and non-road mobile sectors remaining unchanged from the inventory approved by EPA.

In the original 2011 base year emissions inventory approved by EPA, Indiana derived 2011 onroad mobile emissions by back-casting emissions estimates generated by the MOVES2014 model for 2015 and 2020. The revised onroad emissions estimates were generated by running the MOVES2014 model for 2011. This is a more accurate method for estimating 2011 onroad emissions. Thus, EPA is proposing to approve the 2011 base year emissions inventory the state submitted with the RFP plan as a revision to the Indiana SIP.

TABLE 1—REVISED 2011 BASE YEAR EMISSIONS INVENTORY IN TONS PER SUMMER DAY  
[tpsd]

Source sector	VOC			NO <sub>x</sub>		
	Lake County	Porter County	Total	Lake County	Porter County	Total
EGU Point .....	0.44	0.19	0.63	24.62	5.53	30.15
Point .....	15.39	1.68	17.07	43.10	23.36	66.46
Area .....	12.54	5.53	18.07	5.80	3.89	9.69
Non-road .....	7.55	6.64	14.19	8.07	4.62	12.69
On-road .....	6.92	2.66	9.58	17.85	6.85	24.70
Total .....	42.84	16.70	59.54	99.44	44.25	143.69

#### B. 15% RFP Plan and 3% Contingency Plan

##### 1. Background

The CAA requires that states with areas designated as nonattainment for ozone achieve RFP toward attainment of the ozone NAAQS. CAA section 172(c)(2) contains a general requirement that nonattainment plans must provide for emissions reductions that meet RFP. For areas classified moderate and above, section 182(b)(1) imposes a more specific RFP requirement that a state had to meet through a 15% reduction in VOC emissions from the baseline anthropogenic emissions within 6 years after November 15, 1990. The state must meet the 15% requirement by the end of the 6-year period, regardless of when the nonattainment area attains the NAAQS. As with other nonattainment plan requirements for more recent iterations of the ozone NAAQS, EPA has promulgated regulations and guidance to interpret the statutory requirements of the CAA.

EPA's final rule to implement the 2008 ozone NAAQS (SIP Requirements Rule),<sup>11</sup> addressed, among other things, the RFP requirements as they apply to areas designated nonattainment and classified as moderate for the 2008 ozone NAAQS.<sup>12</sup> EPA interprets the 15% VOC emission reduction requirement in CAA section 182(b)(1) such that a state that has already met the 15% requirement for VOC for an area under either the 1-hour ozone NAAQS or the 1997 8-hour ozone NAAQS would not have to fulfill that requirement through reductions of VOC again. Instead, EPA is interpreting CAA section 172(c)(2) to require states with such areas to obtain 15% ozone precursor emission reductions (VOC and/or NO<sub>x</sub>) over the first 6 years after the baseline year for the 2008 ozone NAAQS. The state previously met the 15% VOC reduction requirement of CAA section 182(b)(1) for the Indiana portion of the Chicago area under the 1-hour ozone NAAQS. Therefore, the state may rely upon both VOC and NO<sub>x</sub>

emissions reductions to meet the RFP requirement for the 2008 ozone NAAQS.

EPA's SIP Requirements Rule indicates the base year for the 2008 ozone NAAQS, for which areas were designated nonattainment effective July 20, 2012, can be 2011 or a different year of the states choosing. However, states selecting a pre-2011 alternate baseline year must achieve 3% emission reductions each year after the initial 6-year period has concluded up to the beginning of the attainment year. For a multi-state area, states must agree on the same base year. Wisconsin, Illinois, and Indiana have selected the EPA-recommended base year of 2011.<sup>13</sup>

States may not take credit for VOC or NO<sub>x</sub> reductions occurring from sources outside the nonattainment area for purposes of meeting the 15% ROP and 3% RFP requirements of CAA sections 172(c)(2), 182(b)(1) and 182(c)(2)(B). Indiana's 15% RFP represents emissions reductions which occurred in Indiana's portion of the nonattainment area from

<sup>9</sup> 78 FR 34178, 34190, (June 6, 2013).

<sup>10</sup> 82 FR 16934.

<sup>11</sup> 80 FR 12264, (March 6, 2015).

<sup>12</sup> *Ibid*, at 12271 and 40 CFR 51.1110.

<sup>13</sup> On February 16, 2018, the D.C. Circuit Court issued a decision in *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018), in which several parties challenged different aspects of EPA's SIP Requirements Rule for the 2008 Ozone NAAQS. In this decision, the

Court upheld 2011 as a reasonable baseline year for the 2008 ozone NAAQS but vacated the provision allowing for an alternate year. Because Wisconsin, Illinois, and Indiana have selected 2011 as the baseline year, the decision does not impact Indiana's ROP plan.

2011 to 2017, thereby satisfying this requirement.

Except as specifically provided in section 182(b)(1)(D) of the CAA, all state control measures approved into the SIP or Federal measures that provide emissions reductions that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements, provided that the reductions meet the standard requirements for creditability which include being enforceable, quantifiable, permanent, and surplus in terms of not having previously been counted toward RFP.

States must also include contingency measures in their nonattainment plans. The contingency measures required for areas classified as moderate and above under CAA sections 172(c)(9) and 182(c)(9) must provide for the implementation of specific measures if the area fails to attain or to meet any applicable RFP milestone. The state must submit these measures for approval by EPA into the SIP as adopted measures that would take effect without further rulemaking action by the state or the EPA upon a determination that an area failed to attain or to meet the applicable milestone. Per EPA guidance for purposes of the ozone NAAQS, contingency measures should represent one year's worth of RFP progress, amounting to reductions of at least 3%

of the baseline emissions inventory for the nonattainment area.<sup>14</sup> The purpose of the contingency measures is to provide additional emission reductions in the event of a failure to attain or meet any applicable milestone, which would occur while the state is revising its SIP for the area to rectify the failure to attain or to meet RFP requirements.<sup>15</sup>

Regarding the contingency measures, EPA's prior guidance for purposes of the ozone NAAQS specifies that some portion of the contingency measures must include VOC reductions. This previous limitation is no longer necessary in all areas. In particular, EPA has concluded that states with nonattainment areas classified as moderate and above that have already completed the initial 15% VOC reduction required by CAA section 182(b)(1)(A)(i), can meet the contingency measures requirement based entirely on NO<sub>x</sub> controls if that is what the state's analyses have demonstrated would be most effective in bringing the area into attainment. There is no minimum VOC requirement. Also, EPA is continuing its long-standing policy that allows states to use promulgated Federal measures as contingency measures as long as they provide emission reductions in the relevant years in excess of those needed for attainment or RFP.<sup>16</sup>

## 2. Indiana's 15% RFP and 3% RFP Contingency Measures Plan

To demonstrate that the Indiana portion of the Chicago area has achieved 15% RFP over the 6-year attainment planning period, Indiana is using a 2011 base year inventory and a 2017 RFP inventory. To develop the 2017 inventory, Indiana calculated on-road emissions using EPA's MOVES2014 model and non-road emissions using EPA's National Mobile Inventory Model (NMIM). The MOVES model for the on-road sector and NMIM for the non-road sector incorporate a number of Federal emissions control programs into its projections. These emissions reduction measures are permanent and enforceable and are implemented in the nonattainment area. The MOVES and NMIM models assumed increases in vehicle or equipment population and usage while projecting decreases in ozone precursor emissions from 2011 to 2017. The estimated emissions reductions are therefore not due to reductions in source activity, but to the implementation of control measures. Tables 2 and 3 list the Federal permanent and enforceable control programs modeled by the MOVES model for the on-road sector and NMIM for the non-road sector, respectively.

TABLE 2—FEDERAL ON-ROAD EMISSION CONTROL PROGRAMS MODELED BY MOVES

On-road control program	Pollutants	Model year *	Regulation
Passenger vehicles, SUVs, and light duty trucks—emissions and fuel standards.	VOC & NO <sub>x</sub> .....	2004–09+ (Tier 2) 2017+ (Tier 3).	40 CFR parts 85 & 86.
Light-duty trucks and medium duty passenger vehicle—evaporative standards.	VOC .....	2004–10 .....	40 CFR part 86.
Heavy-duty highway compression engines .....	VOC & NO <sub>x</sub> .....	2007+ .....	40 CFR part 86.
Heavy-duty spark ignition engines .....	VOC & NO <sub>x</sub> .....	2005–08+ .....	40 CFR part 86.
Motorcycles .....	VOC & NO <sub>x</sub> .....	2006–10 (Tier 1 & 2) ..	40 CFR part 86.
Mobile Source Air Toxics—fuel formulation, passenger vehicle emissions, and portable container emissions.	Organic Toxics & VOC	2009–15 ** .....	40 CFR parts 59, 80, 85, & 86.
Light duty vehicle corporate average fuel economy standards .....	Fuel efficiency (VOC & NO <sub>x</sub> ).	2012–16 & 2017–25 ...	40 CFR part 600.

\* The range in model years affected can reflect phasing of requirements based on engine size or initial years for replacing earlier tier requirements.

\*\* The range in model years reflects phased implementation of fuel, passenger vehicle, and portable container emission requirements as well as the phasing by vehicle size and type.

TABLE 3—FEDERAL NON-ROAD EMISSION CONTROL PROGRAMS MODELED BY NMIM

Nonroad control program *	Pollutants	Model year **	Regulation
Compression Ignition .....	VOC & NO <sub>x</sub> .....	2000–2015+ (Tier 4) ..	40 CFR parts 89 & 1039.
Large Spark Ignition .....	VOC & NO <sub>x</sub> .....	2007+ .....	40 CFR part 1048.
Marine Spark Ignition .....	VOC & NO <sub>x</sub> .....	2010+ .....	40 CFR part 1045.
Recreational Vehicle .....	VOC & NO <sub>x</sub> .....	2006–2012 (Tiers 1–3)	40 CFR part 1051.
Small Spark Ignition Engine <19 Kw—emission standards .....	VOC & NO <sub>x</sub> .....	2005–2012 (Tiers 2 & 3).	40 CFR parts 90 & 1054.

<sup>14</sup> See the March 6, 2015 SIP Requirements Rule (80 FR 12264 at 12285) and April 16, 1992 General Preamble section III.A.3.c (57 FR 13498 at 13511).

<sup>15</sup> 80 FR 12264 at 12285.

<sup>16</sup> 80 FR 12264 at 12285.

TABLE 3—FEDERAL NON-ROAD EMISSION CONTROL PROGRAMS MODELED BY NMIM—Continued

Nonroad control program *	Pollutants	Model year **	Regulation
Small Spark Ignition Engine <19 Kw—evaporative standards .....	VOC .....	2008–2016 .....	40 CFR parts 1045, 54, & 60.

\*Compression ignition applies to diesel non-road compression engines including engines operated in construction, agricultural, and mining equipment. Recreational vehicles include snowmobiles, off-road motorcycles, and all-terrain vehicles. Small spark ignition engines include engines operated in lawn and hand-held equipment.

\*\*The range in model years affected can reflect phasing of requirements based on engine size or initial years for replacing earlier tier requirements.

Indiana used the 2017 EPA-projected National Emissions Inventory (NEI) to obtain estimated point and area source emissions. While EPA projected point and area source emissions to decrease between 2011 and 2017, Indiana did not document the control programs and

associated reductions in emissions for these sectors or determine to what extent any reduction may be attributed to reductions in source activity. Therefore, Indiana took no credit for emissions reductions from these source sectors in its RFP or RFP contingency

measures calculations. Table 4 shows Indiana's 2017 projected emissions inventory. Table 5 shows Indiana's 2017 RFP and RFP contingency emissions inventory, which assumes no reduction in emissions between 2011 and 2017 from the point and area source sectors.

TABLE 4—PROJECTED 2017 EMISSIONS INVENTORY

[tpsd]

Source sector	VOC			NO <sub>x</sub>		
	Lake County	Porter County	Total	Lake County	Porter County	Total
EGU Point .....	0.09	0.07	0.16	4.07	1.36	5.43
Non-EGU Point .....	15.34	1.67	17.01	42.44	23.10	65.54
Area .....	11.73	5.08	16.81	5.10	3.25	8.35
Non-road .....	5.03	4.44	9.47	5.59	3.48	9.07
On-road .....	4.33	1.63	5.96	10.15	4.35	14.50
Total .....	36.52	12.89	49.41	67.35	35.54	102.90

TABLE 5—2017 RFP AND RFP CONTINGENCY MEASURES EMISSIONS INVENTORY

[tpsd]

Source sector	VOC			NO <sub>x</sub>		
	Lake County	Porter County	Total	Lake County	Porter County	Total
EGU Point .....	0.44	0.19	0.63	24.62	5.53	30.15
Non-EGU Point .....	15.39	1.68	17.07	43.10	23.36	66.46
Area .....	12.54	5.53	18.07	5.80	3.89	9.69
Non-road .....	5.03	4.44	9.47	5.59	3.48	9.07
On-road .....	4.33	1.63	5.96	10.15	4.35	14.50
Total .....	37.73	13.47	51.20	89.26	40.61	129.87

Indiana submitted documentation showing that emission reductions in the Indiana portion of the Chicago area met the 15% RFP and 3% RFP contingency

measures requirements entirely through Federal permanent and enforceable control measures within the mobile source sectors. Table 6 shows the

calculations Indiana used to determine that the mobile source emissions reductions meet the RFP and RFP contingency measures requirements.

TABLE 6—2017 RFP AND CONTINGENCY TARGET LEVEL CALCULATIONS

[emissions in tpsd]

Description	Formula	VOC	NO <sub>x</sub>
A. 2011 RFP Base Year Inventory .....	.....	59.54	143.69
B. RFP Reductions totaling 15% .....	.....	9%	6%
C. RFP Emissions Reductions Required Between 2011 & 2017 .....	A * B	5.36	8.62
D. RFP Target Level for 2017 .....	A – C	54.18	135.07
E. Contingency Percentage .....	.....	2%	1%
F. Contingency Emission Reduction Requirements .....	A * E	1.2	1.44
G. RFP + Contingency Target Level .....	A – C – F	52.99	133.63
H. 2017 Projected Emissions (2017 RFP & Contingency Inventory) .....	.....	51.20	129.87
I. Compare RFP & Contingency Target with 2017 Projected Emissions to determine if RFP and Contingency Measure Requirements Are Met .....	H<G?	Yes	Yes

TABLE 6—2017 RFP AND CONTINGENCY TARGET LEVEL CALCULATIONS—Continued  
[emissions in tpsd]

Description	Formula	VOC	NO <sub>x</sub>
J. Total Surplus Reductions .....	G – H	1.79	3.76

Indiana has demonstrated that emission reductions attributable to permanent and enforceable measures will result in at least an 18% reduction (15% for RFP and 3% for contingency measure requirements) in the Indiana portion of the Chicago area over the 6-year attainment planning time period, starting with the 2011 base year. Thus, EPA is proposing to approve Indiana's 15% RFP and 3% contingency measure plan for the Indiana portion of the Chicago area for the 2008 ozone standard.

EPA notes that the control measures Indiana is relying upon to meet the RFP contingency measures requirement are already implemented. Contingency measures may include Federal measures and local measures already scheduled for implementation, as long as the resulting emission reductions are in excess of those needed for attainment or to meet other nonattainment plan requirements. EPA interprets the CAA not to preclude a state from implementing such measures before they are triggered by a failure to meet RFP or failure to attain. For more information on contingency measures, see the General Preamble (57 FR 13510) and the 2008 Ozone Implementation Rule (80 FR 12264, 12285).

The appropriateness of relying on already-implemented control measures to meet the contingency measures requirement has been addressed in two Federal circuit court decisions. See *Louisiana Environmental Action Network (LEAN) v. EPA*, 382 F.3d 575, 586 (5th Cir. 2004), *Bahr v. United States EPA*, 836 F.3d 1218 (9th Cir. 2016), *cert. denied*, 199 L. Ed. 2d 525, 2018 U.S. LEXIS 58 (Jan. 8, 2018). EPA believes that the language of section 172(c)(9) and 182(c)(9) is ambiguous with respect to this issue, and that it is reasonable for the agency to interpret the statutory language to allow approval of already implemented measures as contingency measures, so long as they meet other parameters such as providing excess emissions reductions that the state has not relied upon to meet other nonattainment plan requirements or in the modeled attainment demonstration in the nonattainment plan for the NAAQS at issue. Until the *Bahr* decision, under EPA's longstanding interpretation of CAA section 172(c)(9)

and 182(c)(9), states could rely on control measures that were already implemented (so called "early triggered" contingency measures) as a valid means to meet the Act's contingency measures requirement. The Ninth Circuit decision in *Bahr* leaves a split among the Federal circuit courts, with the Fifth Circuit upholding the Agency's interpretation of section 172(c)(9) to allow early triggered contingency measures and the Ninth Circuit rejecting that interpretation. The Seventh Circuit in which Indiana is located has not addressed the issue, nor has the Supreme Court or any other circuit court other than the Fifth and Ninth.

Because there is a split in the Federal circuits on this issue, EPA expects that states located in circuits other than the Ninth may elect to rely on EPA's longstanding interpretation of section 172(c)(9) allowing early triggered measures to be approved as contingency measures, in appropriate circumstances. EPA's revised Regional Consistency regulations pertaining to SIP provisions authorize the Agency to follow this interpretation of section 172(c)(9) in circuits other than the Ninth. See 40 CFR part 56. To ensure that early triggered contingency measures appropriately satisfy all other relevant CAA requirements, EPA will carefully review each such measure, and intends to consult with states considering such measures early in the attainment plan development process.

As shown above, the emissions reductions projected through 2018 are sufficient to meet the requirements for RFP contingency measures, consistent with EPA's interpretation of the CAA to allow approval of already implemented control measures as contingency measures in states outside the Ninth Circuit. Therefore, we propose approval of the contingency measures submitted by the state in the nonattainment plan for the Wisconsin portion of the Chicago area.

#### C. 2017 Motor Vehicle Emissions Budgets (MVEBs)

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (*i.e.*, be

consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

Under the CAA, states are required to submit, at various times, control strategy plans for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas.<sup>17</sup> These control strategy plans (including reasonable further progress plans and attainment plans for purposes of the ozone NAAQS) and maintenance plans must include MVEBs for the relevant criteria pollutant or its precursor pollutants (VOC and NO<sub>x</sub> for ozone) to address pollution from on-road transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will meet an RFP milestone or provide for attainment or maintenance of the NAAQS.<sup>18</sup> The MVEB serves as a ceiling on emissions from an area's planned transportation system.<sup>19</sup>

When reviewing control strategy or maintenance plan submissions, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process

<sup>17</sup> See the SIP requirements for the 2008 ozone standard in EPA's March 6, 2015 implementation rule (80 FR 12264).

<sup>18</sup> 40 CFR 93.101.

<sup>19</sup> The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

for determining adequacy consists of three basic steps: Public notification of a SIP submission; provision for a public comment period; and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process 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," on July 1, 2004.<sup>20</sup> Additional information on the adequacy process for

transportation conformity purposes is available in a June 30, 2003, proposed rule titled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes."<sup>21</sup>

Indiana's RFP and contingency measure plan includes VOC and NO<sub>x</sub> MVEBs for the Indiana portion of the Chicago area for 2017. EPA reviewed the VOC and NO<sub>x</sub> MVEBs through the adequacy process. Indiana's February 28, 2017, RFP and contingency measure SIP submission (as supplemented on January 9, 2018), including the VOC and NO<sub>x</sub> MVEBs for the Indiana portion of the Chicago area, was available for public comment on EPA's adequacy website on February 2, 2018, found at: <http://www.epa.gov/otaq/stateresources/transconf/currrips.htm>. The EPA public comment period on

adequacy of the 2017 MVEBs for the Indiana portion of the Chicago area closed on March 5, 2018. No comments on the submittal were received during the adequacy comment period. The submitted RFP and contingency measure plan, which included the MVEBs, was endorsed by the Governor's designee and was subject to a state public hearing. The MVEBs were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBs were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with the 15% RFP and 3% RFP contingency measures requirements of the 2008 8-hour ozone standard.

TABLE 7—2017 VOC AND NO<sub>x</sub> MVEBs FOR THE INDIANA PORTION OF THE CHICAGO AREA

[tpsd]

	2017 On-road emissions	RFP + Contingency plan surplus reductions	Allocation of surplus reductions to on-road mobile sector	2017 MVEBs
VOC .....	5.96	1.79	0.89	6.85
NO <sub>x</sub> .....	14.50	3.65	2.18	16.68

As shown in Table 7, the 2017 MVEBs exceed the estimated 2017 on-road sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, Indiana allocated a portion of the surplus RFP and contingency plan reductions to the mobile sector. Indiana has demonstrated that the Indiana portion of the Chicago area can meet the 15% RFP and 3% RFP contingency measure requirements of the 2008 ozone NAAQS with mobile source emissions of 6.85 tpsd of VOC and 16.68 tpsd of NO<sub>x</sub> in 2017, because despite partial allocation of the RFP and RFP contingency measures plan surplus reductions, emissions will remain under 2017 RFP plus contingency measure target levels. EPA has found adequate and is thus proposing to approve the 2017 VOC and NO<sub>x</sub> MVEBs for use to determine transportation conformity in the Indiana portion of the Chicago area under the 2008 ozone NAAQS because EPA has determined that the area can

meet the 15% RFP and 3% RFP contingency measure requirements of the 2008 ozone NAAQS with mobile source emissions at the levels of the MVEBs.

#### D. VOC RACT Certification

Sections 172(c)(1) and 182(b)(2) of the CAA require states to implement RACT in ozone nonattainment areas classified as moderate (and higher). Specifically, these areas are required to implement RACT for all major VOC and NO<sub>x</sub> emissions sources and for all sources covered by a Control Techniques Guideline (CTG). A CTG is a document issued by EPA which establishes a "presumptive norm" for RACT for a specific VOC source category. States must submit rules, or negative declarations when no such sources exist for CTG source categories.

EPA's SIP Requirements Rule for the 2008 ozone NAAQS indicates that states may meet RACT through the establishment of new or more stringent

requirements that meet RACT control levels, through a certification that previously adopted RACT controls in their SIPs approved by EPA for a prior ozone NAAQS also represent adequate RACT control levels for attainment of the 2008 ozone NAAQS, or with a combination of these two approaches. In addition, a state must submit a negative declaration in instances where there are no CTG sources.

In its February 28, 2017 submission, Indiana certified that the existing VOC rules contained in 326 Indiana Administrative Code (IAC) 8 satisfy the VOC RACT requirements of Section 182(b)(2) of the CAA and have been approved into the SIP by EPA. Indiana also certified that the negative declaration approved into the SIP by EPA for the fiberglass boat manufacturing materials CTG is still current.<sup>22</sup> Table 8 lists these state regulations and identifies the associated SIP approvals by EPA.

<sup>20</sup> 69 FR 40004.

<sup>21</sup> 68 FR 38974, 38984.

<sup>22</sup> The NEI, the Harris Manufacturing Directory and the Manta small business directory were reviewed to spot check the validity of the

previously approved negative declaration for this category. No fiberglass boat manufacturing facilities subject to the CTG were identified.

TABLE 8—VOC RACT REGULATIONS APPROVED INTO THE INDIANA SIP

CTGs and ACTs <sup>1</sup>	Applicable Indiana regulation	EPA approval into the SIP
EPA 453/R-08-004 2008/09—Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials.	Negative Declaration Letter—06/05/2009.	75 FR 8246 (02/24/2010).
EPA 453/R-08-006, 2008/09—Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings and EPA 453/R-08-002, 2008/09—Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat Operations.	326 IAC 8-2-2—Automobile and Light Duty Truck Coating Operations.	
EPA 453/R-07-003, 2007/09—Control Techniques Guidelines for Paper, Film, and Foil Coatings.	326 IAC 8-2-5—Paper Coating Operations.	
EPA 453/R-07-005, 2007/09—Control Techniques Guidelines for Metal Furniture Coatings.	326 IAC 8-2-6—Metal Furniture Coating Operations.	
EPA 453/R-07-004, 2007/09—Control Techniques Guidelines for Large Appliance Coatings.	326 IAC 8-2-7—Large Appliance Coating Operations.	
EPA 453/R-08-003, 2008/09—Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings.	326 IAC 8-2-9—Miscellaneous Metal and Plastic Parts Coating Operations.	75 FR 8246 (02/24/2010) <i>Revision</i> : 76 FR 63549 (10/13/2011).
EPA-453/R-06-004 2006/09—Control Techniques Guidelines for Flat Wood Paneling Coatings.	326 IAC 8-2-10—Flat Wood Panels; Manufacturing Operations.	75 FR 8246 (02/24/2010).
EPA-453/R-06-003 2006/09—Control Techniques Guidelines for Flexible Package Printing.	326 IAC 8-5-5—Graphic Arts and Graphic Arts Operations.	63 FR 35141 (06/29/1998) and 75 FR 8246 (02/24/2010).
Non-CTG .....	IAC 326 8-7—Specific VOC Reduction Requirements for Lake, Porter, Clark, and Floyd Counties.	60 FR 34856 (07/05/1995).
EPA-453/R-06-002 2006/09—Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing.	326 IAC 8-16—Offset Lithographic Printing and Letterpress Printing.	75 FR 8246 (02/24/2010).
EPA-453/R-06-001, 2006/09—Control Techniques Guidelines for Industrial Cleaning Solvents.	326 IAC 8-17—Industrial Solvent Cleaning Operations.	
EPA-450/3-84-015 1984/12—Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry and EPA-450/4-91-031 1993/08—Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.	326 IAC 8-18—Synthetic Organic Chemical Manufacturing Industry Air Oxidation, Distillation, and Reactor Processes.	
EPA-453/R-93-020, 1994/02—Control of Volatile Organic Compound Emissions from Batch Processes ACT (Note—also released as EPA-453/R-93-017).	326 IAC 8-19—Control of Volatile Organic Compound Emissions from Process Vents in Batch Operations.	
EPA-453/D-93-056, 1992/09—Control of Volatile Organic Compound Emissions from Industrial Wastewater CTG (draft). <i>Note—CTG not finalized but issued as ACT in 1994.</i> .....	326 IAC 8-20—Industrial Wastewater.	
(No Report ID) 1994/04 Industrial Wastewater Alternative Control Technology.. <i>Note—ACT consists of cover memo with option tables + CTG (draft) EPA-453/D-93-056.</i>		
59 FR-29216, 6/06/94—1994/06 Aerospace MACT and EPA-453/R-97-004, 1997/12 Aerospace (CTG & MACT).	326 IAC 8-21—Aerospace Manufacturing and Rework Operations.	
EPA 453/R-08-005, 2008/09—Control Techniques Guidelines for Miscellaneous Industrial Adhesives.	326 IAC 8-22—Miscellaneous Industrial Adhesives.	

<sup>1</sup> ACTs describe available control technologies and their respective cost effectiveness but do not establish presumptive RACT.

EPA has reviewed Indiana's certification that it has adopted VOC control regulations for stationary sources that constitute RACT, and determined that the set of regulations cited by the state and negative declaration for fiberglass boat manufacturing constitute RACT for purposes of the 2008 ozone NAAQS in this nonattainment area. Therefore, EPA is proposing to approve the state's submission as meeting the VOC RACT requirements for the Indiana portion of the Chicago area for the 2008 ozone NAAQS.

#### *E. Motor Vehicle I/M Program Certification*

The requirement to adopt a motor vehicle I/M program for moderate ozone nonattainment areas is described in CAA section 182(b)(4), and the regulations for basic and enhanced I/M programs are found at 40 CFR part 51, subpart S. Under these cumulative requirements, states with areas classified as moderate nonattainment for ozone with 1990 Census-defined urbanized populations of 200,000 or more are required to adopt basic I/M programs, while serious and higher

classified ozone nonattainment areas outside of the northeast ozone transport region with 1980 Census-defined urbanized populations of 200,000 or more are required to adopt enhanced I/M programs. The Chicago area meets the criteria for mandatory I/M under the 2008 ozone NAAQS.

The Indiana portion of the Chicago area was required to adopt an enhanced I/M program under the 1-hour ozone NAAQS. EPA approved Indiana's enhanced I/M program on March 19, 1996 (61 FR 11142). Indiana's I/M program is authorized by state statute



Indiana Code (IC) 13–17–5, paid through the general funds, and implemented through rules promulgated by the Indiana Environmental Rules Board at 326 IAC 13. These requirements remain in place in Indiana's ozone SIP. In its February 28, 2017, submission, Indiana certified that the existing enhanced I/M program continues to satisfy the I/M requirements of the CAA for the Indiana portion of the Chicago area. Therefore, EPA is proposing to find that Indiana has met the I/M requirement for its portion of the Chicago area for the 2008 ozone NAAQS.

#### F. Nonattainment New Source Review

##### 1. Background

CAA sections 110(a)(2) and 172(c)(5) require permits for the construction of new or modified major stationary sources anywhere in a nonattainment area in accordance with CAA section 173. CAA section 182 contains additional requirements applicable to ozone nonattainment areas. Nonattainment NSR requirements are codified at 40 CFR 51.165.

On March 6, 2017, EPA found that Indiana failed to submit marginal ozone nonattainment NSR rules for the Indiana portions of the Chicago area and Cincinnati<sup>23</sup> 2008 ozone nonattainment areas.<sup>24</sup> On February 28, 2017, Indiana submitted its nonattainment NSR

certification to address nonattainment NSR requirements for marginal and moderate ozone nonattainment areas.<sup>25</sup>

Indiana has certified that specific sections of its nonattainment NSR rules at 326 IAC 2–3 continue to meet the nonattainment NSR program requirements for ozone nonattainment areas under the 2008 ozone NAAQS. Table 9 provides the sections of Indiana's nonattainment NSR rule corresponding to the relevant requirements at 40 CFR 51.165. 326 IAC 2–3 was originally approved into the SIP effective December 6, 1994,<sup>26</sup> with revisions subsequently approved into the SIP effective September 6, 2011.<sup>27</sup> Each requirement identified in Indiana's certification has been unchanged since EPA last approved it.

TABLE 9—NONATTAINMENT NSR RULES INDIANA CERTIFIED AS MEETING FEDERAL RULES

Federal rule	Indiana rule
40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iii)	326 IAC 2–3–1(z)(1) and (2).
40 CFR 51.165(a)(1)(iv)(A)(2)	326 IAC 2–3–1(z)(1) and (2).
40 CFR 51.165(a)(1)(iv)(A)(3)	326 IAC 2–3–1(z)(5).
40 CFR 51.165(a)(1)(v)(E)	326 IAC 2–3–1(y)(1).
40 CFR 51.165(a)(1)(x)(A)–(C)	326 IAC 2–3–1(pp).
40 CFR 51.165(a)(3)(ii)(C)(1)–(2)	326 IAC 2–3–3(b)(5).
40 CFR 51.165(a)(8)	326 IAC 2–3–1(y); 326 IAC 2–3–2(a) and (b).
40 CFR 51.165(a)(9)(ii)–(iv)	326 IAC 2–3–3(a)(5)(B).

For the following reasons, we are proposing to approve Indiana's certification that 326 IAC 2–3 is consistent with 40 CFR 51.165 and meets the requirements of CAA sections 172(c)(5), 173, 110(a)(2), 182(a)(4), and 182(b)(5) under the 2008 ozone standard for the Indiana portion of the Chicago area ozone nonattainment area. Approval of Indiana's nonattainment NSR certification would address the deficiency that was the basis for the March 6, 2017 finding. Therefore, final approval of this SIP revision will permanently stop the sanctions and FIP clocks triggered by EPA's February 3, 2017 finding that Indiana failed to submit a marginal ozone nonattainment NSR plan.

#### 2. Extreme Ozone Nonattainment Area and Ozone Transport Region Nonattainment NSR Requirements

In its February 28, 2017 submission, Indiana states that its nonattainment NSR rules do not include extreme ozone

nonattainment requirements because Indiana has never had an extreme ozone nonattainment area. We concur with the statement that Indiana has never had an extreme ozone nonattainment area. Further, the finding of failure to submit applies to marginal ozone nonattainment NSR requirements, not extreme. Finally, the Chicago area ozone nonattainment area was reclassified to a moderate ozone nonattainment area which requires moderate, not extreme, ozone nonattainment NSR requirements. For these reasons, Indiana's nonattainment NSR program does not require extreme ozone nonattainment requirements at this time. The following extreme ozone nonattainment NSR requirements are not included as part of Indiana's nonattainment NSR rules: 40 CFR 51.165(a)(1)(iv)(A)(1)(iv), 40 CFR 51.165(a)(1)(iv)(A)(2)(ii), 40 CFR 51.165(a)(1)(v)(F), 40 CFR 51.165(a)(1)(x)(E), and 40 CFR 51.165(a)(9)(ii)(E).

Indiana's submission does not address ozone transport region requirements. However, no portion of Indiana is currently part of an ozone transport region; therefore, ozone transport region nonattainment NSR requirements do not apply in Indiana. The following ozone transport region nonattainment NSR requirements are not included as part of Indiana's nonattainment NSR rules: 40 CFR 51.165(a)(1)(iv)(A)(1)(ii), 40 CFR 51.165(a)(1)(iv)(A)(2)(ii), 40 CFR 51.165(a)(1)(v)(E), 40 CFR 51.165(a)(1)(x)(C), 40 CFR 51.165(a)(8), and 40 CFR 51.165(a)(9)(iii).

Extreme ozone nonattainment area and ozone transport region nonattainment NSR requirements will not be addressed further in this analysis of Indiana's ozone nonattainment NSR program certification because they do not apply to Indiana at this time. If, in the future, Indiana has an extreme ozone nonattainment area or becomes part of an ozone transport region, then

<sup>23</sup> The Cincinnati, Ohio-Kentucky-Indiana 8-hour ozone nonattainment area has since been redesignated to attainment effective April 7, 2017. See 82 FR 16940.

<sup>24</sup> See 82 FR 9158.

<sup>25</sup> The Chicago-Naperville 2008 8-hour ozone nonattainment area was reclassified to moderate

nonattainment effective June 3, 2017. See 81 FR 26697.

<sup>26</sup> See 59 FR 51108. In its submittal, Indiana cites 94 FR 24838 as the initial approval for each requirement. The **Federal Register** Document Number of the initial approval is 94–24838 and corresponds to the proposed Approval and Promulgation of a New Source Review Implementation Plan; Indiana. **Federal Register**

Document Number 94–24837 is the direct final Approval and Promulgation of a New Source Review Implementation Plan; Indiana. The direct final rule can be found at 59 FR 51108. Throughout today's proposed rule, the direct final approval of Indiana's NSR program will be cited as 59 FR 51108.

<sup>27</sup> See 76 FR 40242.

Indiana's SIP would need to be revised to establish the appropriate nonattainment NSR requirements.

3. 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2)—Major Source Thresholds for Ozone

40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2) defines the major source thresholds for the ozone precursors VOC and NO<sub>x</sub>. The major source threshold for both VOC and NO<sub>x</sub> vary depending on the classification of the ozone nonattainment area. For marginal and moderate ozone nonattainment areas, a major stationary source of ozone is a source that emits, or has the potential to emit, 100 tons per year or more of VOC or NO<sub>x</sub>. Different emissions thresholds apply for serious, severe, and extreme ozone nonattainment areas and areas in an ozone transport region.

326 IAC 2–3–1(z)(1) generally defines a major stationary source as a stationary source that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, with an exception for ozone provided in 326 IAC 2–3–1(z)(2). 326 IAC 2–3–1(z)(2) defines a major stationary source for ozone nonattainment areas, specifying that the major source threshold is 100 tons per year or more of VOC or NO<sub>x</sub> in marginal and moderate ozone nonattainment areas. 326 IAC 2–3–1(z)(1) and (2) remain consistent with 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2) for marginal and moderate ozone nonattainment areas.

4. 40 CFR 51.165(a)(1)(iv)(A)(3)—Change Constitutes Major Source by Itself

40 CFR 51.165(a)(1)(iv)(A)(3) requires any physical change that would constitute a major stationary source by itself to be treated as a major stationary source if the stationary source does not qualify as a major stationary source. 326 IAC 2–3–1(z)(5) requires the same and remains consistent with 40 CFR 51.165(a)(1)(iv)(A)(3).

5. 40 CFR 51.165(a)(1)(v)(E)—Significant Net Emissions Increase of NO<sub>x</sub> is Significant for Ozone

40 CFR 51.165(a)(1)(v)(E) requires significant net emissions increases of NO<sub>x</sub> to be considered significant for ozone. For major modifications, 326 IAC 2–3–1(y)(1) requires significant net emissions increases of NO<sub>x</sub> to be considered significant for ozone in ozone nonattainment areas. 326 IAC 2–3–1(y)(1) exempts NO<sub>x</sub> when the Administrator has granted a NO<sub>x</sub> waiver pursuant to CAA section 182(f) and 40 CFR 51.165(a)(8). As a result, 326 IAC

2–3–1(y)(1) remains consistent with 40 CFR 51.165(a)(1)(v)(E).

6. 40 CFR 51.165(a)(1)(x)(A)–(C)—Significant Emission Rates for VOC and NO<sub>x</sub> as Ozone Precursors

40 CFR 51.165(a)(1)(x)(A) defines the significant emission rate for ozone as 40 tons per year of VOC or NO<sub>x</sub>. 326 IAC 2–3–1(pp) defines the significant emission rate for ozone in marginal and moderate nonattainment areas as 40 tons per year of VOC or NO<sub>x</sub> (unless a NO<sub>x</sub> waiver is in effect). 326 IAC 2–3–1(pp) remains consistent with 40 CFR 51.165(a)(1)(x)(A) for marginal and moderate ozone nonattainment areas.

40 CFR 51.165(a)(1)(x)(B) and (C) define the significant emission rate for ozone in serious or severe nonattainment areas as 25 tons per year of VOC or NO<sub>x</sub>. For the purpose of implementing nonattainment NSR in marginal and moderate ozone nonattainment areas, serious and severe ozone significant emission rates are not required.

7. 40 CFR 51.165(a)(3)(ii)(C)(1)–(2)—Provisions for Emissions Reduction Credits

40 CFR 51.165(a)(3)(ii)(C)(1) and (2) are the requirements that make emission reductions achieved by shutting down an existing emission unit or curtailing production or operating hours creditable. Such reductions must be surplus, permanent, quantifiable, and federally enforceable. Shutdowns or curtailments must have occurred after the last day of the base year for the SIP planning process. Reviewing authorities may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes emissions from the previously shutdown or curtailed emissions units, but in no event may credit be granted for shutdowns that occurred prior to August 7, 1977. Shutdown or curtailment reductions occurring before the last day of the base year for the SIP planning process may also be generally credited if the shutdown or curtailment occurred on or after the date the construction permit application is filed or if the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emission unit and the emission reductions that result are surplus, permanent, quantifiable, and federally enforceable. 326 IAC 2–3–3(b)(5) remains consistent with 40 CFR 51.165(a)(3)(ii)(C)(1)(i) and 40 CFR 51.165(a)(3)(ii)(C)(2)(ii).

326 IAC 2–3–3(b)(5)(A) credits emission reductions from emission unit shutdowns and curtailments if they occurred on or after the date of the most recent emissions inventory or attainment demonstration. Prior shutdown or curtailment emission reductions may be considered to have occurred after the date of the most recent emissions inventory if the inventory explicitly includes the emissions from the previously shutdown or curtailed emissions units. 326 IAC 2–3–3(b)(5)(A) remains consistent with 40 CFR 51.165(a)(3)(ii)(C)(1)(ii).

326 IAC 2–3–3(b)(5)(B) allows reductions to be credited absent an approved attainment demonstration if the shutdown or curtailment occurred on or after the date the new source permit application is filed or if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed emissions unit, with the exception of shutdowns occurring prior to August 7, 1977. 326 IAC 2–3–3(b)(5)(B) remains consistent with 40 CFR 51.165(a)(3)(ii)(C)(2)(ii).

8. 40 CFR 51.165(a)(8)—Requirements for VOC Apply to NO<sub>x</sub> as Ozone Precursors

40 CFR 51.165(a)(8) requires that all requirements applicable to major stationary sources and major modifications of VOCs shall apply to NO<sub>x</sub> except where the Administrator has granted a NO<sub>x</sub> waiver applying the standards set forth under CAA section 182(f) and the waiver continues to apply. In its submittal, Indiana certifies that 326 IAC 2–3–1(y) and 326 IAC 2–3–2(a) and (b) meet this requirement.

326 IAC 2–3–1(y) defines major modification. As discussed above, 326 IAC 2–3–1(y)(1) is consistent with 40 CFR 51.165(a)(8) since it considers increases in both VOC and NO<sub>x</sub> unless a NO<sub>x</sub> waiver is in effect. 326 IAC 2–3–1(y) considers, in serious and severe ozone nonattainment areas, increases in VOC or NO<sub>x</sub> unless a NO<sub>x</sub> waiver is in effect and is consistent with 40 CFR 51.165(a)(8). 326 IAC 2–3–1(y) remains consistent with the definition of major modification at 40 CFR 51.165(a)(1)(v)(A) through (E) for marginal and moderate ozone nonattainment areas.

326 IAC 2–3–2(a) states that ozone nonattainment NSR applies to new major stationary sources or major modifications in an area designated as nonattainment for which the stationary source or modification is major. As previously discussed, 326 IAC 2–3–1(z)(1), (2), and (5) and 326 IAC 2–3–1(y) define major source and major

modification, respectively, as they relate to ozone nonattainment areas and remain consistent with 40 CFR 51.165(a)(8).

326 IAC 2–3–2(b) applies to modifications of VOC and NO<sub>x</sub> major stationary sources in serious and severe ozone nonattainment areas. 326 IAC 2–3–2(b)(1) through (3) remain consistent with CAA sections 182(c)(6) through (8) and 182(d).

#### 9. 40 CFR 51.165(a)(9)(ii)–(iv)—Offset Ratios for VOC and NO<sub>x</sub> for Ozone Nonattainment Areas

40 CFR 51.165(a)(9)(ii)(A)–(D) requires the VOC offset ratio to be 1.1:1 in marginal ozone nonattainment areas, 1.15:1 in moderate ozone nonattainment areas, 1.2:1 in serious ozone nonattainment areas, and 1.3:1 in severe ozone nonattainment areas. 326 IAC 2–

3–3(a)(5)(B) requires offset ratios for both VOC and NO<sub>x</sub> that are consistent with 40 CFR 51.165(a)(9)(ii)(A)–(D).

40 CFR 51.165(a)(9)(iv) requires, for ozone nonattainment areas subject to CAA Title I, Part D, Subpart 1 but not Subpart 2, an offset ratio of at least 1:1. All of the current ozone nonattainment areas in Indiana were designated pursuant to CAA Title I, Part D, Subpart 2, so this requirement does not apply to Indiana at this time.

#### 10. 40 CFR 51.165(a)(12)—Anti-backsliding Provisions

40 CFR 51.165(a)(12) requires anti-backsliding requirements at 40 CFR 51.1105 to apply in any area designated nonattainment for the 2008 ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015. Indiana certified that there were

no areas designated as nonattainment for the 1997 8-hour ozone NAAQS on April 6, 2015.

40 CFR 81.315 provides the attainment status designations for Indiana. For the 1997 8-hour ozone NAAQS, 40 CFR 81.315 codifies the fact that all areas in Indiana attained the 1997 8-hour ozone NAAQS prior to April 6, 2015. Table 10 includes relevant information about the 1997 8-hour ozone NAAQS, including the date that areas previously designated as nonattainment under the 1997 8-hour ozone NAAQS were redesignated to attainment. All other areas in Indiana that are not listed in the table were designated unclassifiable/attainment for the 1997 8-hour ozone standard on June 15, 2004.<sup>28</sup>

TABLE 10—1997 8-HOUR OZONE NAAQS REDESIGNATION DATES AND Federal Register CITATIONS

Designated areas	Counties	Redesignation date	Federal Register citation
Chicago-Gary-Lake County, IL-IN .....	Lake, Porter .....	5/11/2010	75 FR 26113
Cincinnati-Hamilton OH-KY-IN .....	Dearborn (part) .....	5/11/2010	75 FR 26118
Evansville, IN .....	Vanderburgh, Warrick .....	1/30/2006	70 FR 77026
Fort Wayne, IN .....	Allen .....	2/12/2007	72 FR 1292
Greene Co., IN .....	Greene .....	12/29/2005	70 FR 69085
Indianapolis, IN .....	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby.	10/19/2007	72 FR 59210
Jackson Co., IN .....	Jackson .....	12/29/2005	70 FR 69085
LaPorte Co., IN .....	LaPorte .....	7/19/2007	72 FR 39574
Louisville, KY-IN .....	Clark, Floyd .....	7/19/2007	72 FR 39571
Muncie, IN .....	Delaware .....	1/3/2006	70 FR 69443
South Bend-Elkhart, IN .....	Elkhart, St. Joseph .....	7/19/2007	72 FR 39577
Terre Haute, IN .....	Vigo .....	2/6/2006	71 FR 541

Since all areas in Indiana were designated as attainment or unclassifiable/attainment on April 6, 2015 for the 1997 8-hour ozone NAAQS, the anti-backsliding requirements of 40 CFR 51.165(a)(12) do not apply for the 2008 8-hour ozone NAAQS.

#### 11. Conclusion

Indiana's nonattainment NSR rules, codified at 326 IAC 2–3, remain consistent with Federal marginal and moderate ozone nonattainment NSR rules codified at 40 CFR 51.165. Therefore, EPA is proposing to approve Indiana's certification that its nonattainment NSR rules at 326 IAC 2–3 meet the requirements of 40 CFR 51.165 and CAA sections 172(c)(5), 173, 110(a)(2), 182(a)(4), and 182(b)(5) for the Indiana portion of the Chicago area ozone nonattainment area. EPA's final approval of Indiana's nonattainment NSR certification will permanently stop the sanctions and FIP clocks triggered

by EPA's February 3, 2017 finding that Indiana failed to submit a marginal ozone nonattainment NSR plan.

#### III. What action is EPA proposing?

EPA is proposing to approve revisions to Indiana's SIP pursuant to section 110 and part D of the CAA and EPA's regulations because Indiana's February 28, 2017, nonattainment plan submission and January 1, 2018, supplement satisfy the emissions inventory, RFP, RFP contingency measures, transportation conformity, VOC RACT, I/M, and nonattainment NSR requirements of the CAA for the Indiana portion of the Chicago area for the 2008 ozone NAAQS. Final approval of Indiana's SIP as meeting the nonattainment NSR requirements of the CAA for the 2008 ozone NAAQS will permanently stop the sanctions and FIP clocks triggered by EPA's February 3, 2017 finding that Indiana failed to

submit a marginal ozone nonattainment NSR plan.

#### IV. Statutory and Executive Order Reviews

Under the CAA the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

<sup>28</sup> See 69 FR 23857.

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 16, 2018.

**Cathy Stepp,**

*Regional Administrator, Region 5.*

[FR Doc. 2018–18640 Filed 8–27–18; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2017–0633; FRL–9982–79—Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revisions to Regulation for Control of Ozone Season Nitrogen Oxide Emissions

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve two state implementation plan (SIP) revisions submitted by the State of West Virginia. The revisions pertain to a West Virginia regulation that established the nitrogen oxides (NO<sub>x</sub>) ozone season trading program under the Clean Air Interstate Rule (CAIR), which implemented requirements for NO<sub>x</sub> reductions necessary to reduce interstate transport of pollution. The EPA-administered trading programs under CAIR were discontinued upon the implementation of the Cross-State Air Pollution Rule (CSAPR), which was promulgated by EPA to replace CAIR. CSAPR established federal implementation plans (FIPs) for 28 states, including West Virginia, and applied to electric generating units (EGUs) as defined. The SIP submittals are comprised of revisions to the West Virginia regulation that implemented the CAIR ozone season NO<sub>x</sub> trading program and that had previously been included in the West Virginia SIP. The revised West Virginia regulation removed the CAIR ozone season NO<sub>x</sub> trading program provisions, which also addressed certain large non-electric generating units (non-EGUs), established new requirements for these large non-EGUs, included a state-wide NO<sub>x</sub> emissions cap, and recodified certain other provisions that address the NO<sub>x</sub> emission reductions required for cement kilns and internal combustion engines. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before September 27, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0633 at <http://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted,

comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814–2308, or by email at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** On July 13, 2016, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted a revised version of West Virginia Regulation 45CSR40—*Control of Ozone Season Nitrogen Oxides Emissions* for inclusion in the West Virginia SIP. The revised 45CSR40 made the following changes—(1) removed the provisions that implemented the CAIR ozone season trading program, (2) added new requirements to address the NO<sub>x</sub> reduction obligations for non-EGUs in the State that were trading under the CAIR ozone season trading program but are no longer part of a trading program, and (3) recodified the requirements that applied to cement kilns and internal combustion engines. On October 13, 2017, WVDEP provided a supplemental SIP submission comprised of a demonstration showing that NO<sub>x</sub> emissions from applicable non-EGUs do not exceed the West Virginia NO<sub>x</sub> budget under the NO<sub>x</sub> SIP Call.

#### I. Background

On October 27, 1998 (63 FR 57356), EPA finalized the “Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone”—commonly called the NO<sub>x</sub> SIP Call. The