

Authority: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99-80, 99 Stat. 183

2. Section 2204.107 is amended by revising the first sentence of paragraph (b) to read:

§ 2204.107 Allowable fees and expenses.

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(b) An award for the fee of an attorney or agent under these rules shall not exceed \$125 per hour, unless the Commission determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for Commission proceedings, justifies a higher fee. * * *

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3. Section 2204.301 is revised to read as follows:

§ 2204.301 Filing and service of documents.

An EAJA application is deemed to be filed only when received by the Commission. In all other respects, an application for an award and any other pleading or document related to an application shall be filed and served on all parties to the proceeding in accordance with §§ 2200.7 and 2200.8, except as provided in § 2204.202(b) for confidential financial information.

Dated: March 6, 1997.

Stuart E. Weisberg,
Chairman.

Dated: March 6, 1997.

Velma Montoya,
Commissioner.

Dated: March 6, 1997.

Daniel Guttman,
Commissioner.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN77-1; FRL-5709-2]

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

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve the ozone maintenance plan submitted as a State Implementation Plan (SIP) revision request and the redesignation request submitted by the

State of Indiana for the purpose of redesignating Vanderburgh County (Evansville) from marginal nonattainment to attainment for ozone. Ground-level ozone, commonly known as smog, is an air pollutant which forms on hot summer days and which harmfully affects lung tissue and breathing passages. The redesignation to attainment of the health-based ozone air quality standard is based on a request from the State of Indiana to redesignate this area and approve its maintenance plan, and on the supporting data the State has submitted in support of the requests. Under the Clean Air Act, a designation can be changed if sufficient data are available to warrant such a change, and a maintenance plan is put in place which is designed to ensure the area maintains the ozone air quality standard for the next ten years.

DATES: Comments must be received by May 13, 1997.

ADDRESSES: Copies of the revision request and USEPA's analysis (Technical Support Documents) 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.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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

SUPPLEMENTARY INFORMATION: On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 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 (Evansville) was designated as nonattainment for ozone and was classified as marginal (see 56 FR 56694 (November 6, 1991)).

I. Background

The Indiana Department of Environmental Management (IDEM) submitted an ozone redesignation request and maintenance plan for Vanderburgh County (Evansville) on November 4, 1993. On July 8, 1994 (59 FR 35044), the United States Environmental Protection Agency (USEPA) published a direct final rulemaking approving the redesignation

of Vanderburgh County to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. 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 direct final rulemaking, the USEPA would withdraw the direct final rulemaking and would address the adverse comments through a revised final rulemaking. The USEPA 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, the USEPA was informed by the IDEM that a possible violation of the ozone NAAQS had been monitored at a privately-operated industrial site owned by the Aluminum Corporation of America (Alcoa) in Warrick County. (At the time IDEM contacted the USEPA concerning the possible violation, the State had not yet completed quality assurance of the data. The violation, as noted below, was subsequently quality-assured.) 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, the USEPA questioned whether the monitored violation in Warrick County should be considered in any subsequent rulemaking on the redesignation of Vanderburgh County. The IDEM indicated its intent to investigate the high ozone values, and requested that the USEPA not act on the redesignation petition pending the outcome of that technical investigation. IDEM completed its investigation and submitted the results to the USEPA on June 5, 1995. IDEM's investigation concluded that the Alcoa data are unusual, are biased high (relative to peak ozone concentrations at other monitors in the area during the May through June, 1994 time period), and are not representative of the Vanderburgh County nonattainment area. IDEM recommended that the USEPA should proceed with the redesignation of Vanderburgh County to attainment so that the maintenance plan could become federally enforceable.

The USEPA Technical Support Document (TSD) for this proposed rulemaking: (1) summarizes and evaluates the redesignation request; (2) analyzes recent State data for monitors inside and outside of the Evansville nonattainment area; (3) responds to public comments on the July 8, 1994

rulemaking; and (4) reviews the State's and public's submittals and technical concerns regarding the monitored ozone NAAQS violation in Warrick County and its impact on the redesignation of Vanderburgh County.

This notice summarizes USEPA's review and analysis of the redesignation request. Details of the review and analysis are contained in USEPA's TSD. Comments received from the public with regard to the July 8, 1994 proposed rulemaking and received subsequent to that proposal are also addressed in this notice.

II. USEPA'S General Comments and Conclusions

After a review of all available information, the USEPA believes it is reasonable to repropose the redesignation of Vanderburgh County to attainment and, thus, allow for formal public review and comment on IDEM's technical support document and USEPA's evaluation. As described below, the redesignation request for Vanderburgh County satisfies the specific criteria of section 107(d)(3)(E). A critical issue, however, concerns the ozone monitoring data indicating a violation of the ozone standard in Warrick County, Indiana, a county that is part of the Evansville Metropolitan Statistical Area (MSA) but is not part of the Evansville ozone nonattainment area. (The Evansville MSA consists of Posey, Vanderburgh, and Warrick Counties in Indiana and Henderson County in Kentucky. The Evansville ozone nonattainment area consists solely of Vanderburgh County. For the Evansville area, which is classified as marginal nonattainment for ozone, the USEPA does not require the entire MSA to be designated as nonattainment for ozone.) Those data, which are discussed in detail later in this notice, demonstrate that Warrick County has experienced a current violation of the ozone NAAQS based on five exceedances of the ozone standard (0.12 parts per million, one-hour averaged, not to be exceeded on average more than one day per year at any monitoring site in the area under consideration) that were monitored in May and June of 1994. No violations of the ozone NAAQS have been monitored in Vanderburgh County itself since the 1988-1990 period.

The validity and significance of the monitoring data showing a violation at the Alcoa site in Warrick County has been the subject of much review and analysis by both the IDEM and the USEPA. In its TSD reviewing the Alcoa data and data from other ozone monitoring sites in the area during the

period of the 1990 ozone NAAQS violation, the IDEM contends that, although the Alcoa data have met quality assurance criteria, the data are unusual, are biased high, and are not representative of the Evansville nonattainment area. The USEPA, however, has reviewed the data and has concluded that the data have met the USEPA's quality assurance criteria, are valid, are acceptable for review of attainment status.

The USEPA has also reviewed the data and other pertinent information in an effort to determine whether and to what extent emissions from Vanderburgh County contributed to the ozone NAAQS violation in Warrick County. The USEPA conducted this evaluation because Warrick County adjoins Vanderburgh County and because section 107(d)(1)(A)(i) of the Clean Air Act defines a nonattainment area as an area that either itself violates a standard that contributes to a standard violation in a nearby area. If the USEPA were to conclude that Evansville does contribute significantly to nonattainment of the ozone standard in Warrick County, the language of section 107(d)(1)(A)(i) would present an obstacle to taking final action redesignating Vanderburgh County to attainment.

The USEPA intends to take final action approving the redesignation of Vanderburgh County to attainment if any of the following three events occur. First, if Warrick County attains the ozone standard prior to final action by the USEPA on this redesignation request, the USEPA would no longer need to consider the issue of any possible contribution of Vanderburgh County to violations in Warrick County. This could occur following the 1997 ozone season (April through October) as the standard violation in Warrick County was monitored in 1994; and USEPA's methodology for determining attainment of the ozone NAAQS involves the consideration of data only from the most recent three years. Second, the USEPA could take final action approving the Vanderburgh County redesignation request if it determines that Vanderburgh County does not significantly contribute to an ozone nonattainment problem in Warrick County. Third, the USEPA could approve the Vanderburgh County redesignation request if the USEPA determines that the information available is not sufficient to determine whether or not Vanderburgh County contributes significantly to a nonattainment problem in Warrick County.

To complete its review process, the USEPA also seeks comment on whether or not the Warrick County ozone standard violation data should be excluded from consideration of the Vanderburgh County ozone attainment status. Comments on this issue will allow the public to address IDEM's proposed basis for approval of the Evansville redesignation request. In addressing this issue, commenters should also take into consideration and respond to the facts that the Warrick County ozone standard violation has been quality assured and that the Clean Air Act and USEPA policy require the consideration of the ozone standard violation when reviewing the attainment status of Vanderburgh County.

The USEPA requests comment on all of these issues in light of the information and data in the docket, including the analyses of the data and other information performed by IDEM and USEPA. The USEPA will carefully and fully evaluate those comments and the issues they raise before taking final action regarding the Vanderburgh County redesignation request.

At this time, the state of the science of predicting and understanding the formation and transport of ozone in the Evansville MSA is incomplete. The USEPA does not have the benefit of ozone modeling information for the Evansville MSA, such as would be provided by the use of the Urban Airshed Model. The USEPA recognizes that the State of Indiana, along with 36 other states, is actively involved in the super-regional ozone modeling analyses being conducted through the Ozone Transport Assessment Group (OTAG). Although the Evansville MSA has been included in the national Regional Oxidant Modeling (ROM) modeling domain and in the OTAG modeling domain, the scope of these models is regional in nature and is not conclusive as to the impact of emissions from Vanderburgh County on ozone formation in the Evansville MSA.

The USEPA encourages the State of Indiana to follow through on its commitment to implement early the contingency measures provided for in the maintenance plan for Vanderburgh County and to consider emission controls beyond the boundaries of Vanderburgh County as a means to assure future good air quality in Warrick County. The USEPA notes the commitment made by the State of Indiana to implement contingency measures even prior to their being triggered under provisions of the maintenance plan and to work with the local Evansville community and

surrounding areas to adopt additional emission control programs and regulations and to submit these regulations as a revision to the State implementation plan. The USEPA is relying on the State to follow through on that commitment in order to obtain additional emission reductions that will provide greater assurance of good air quality in the Evansville MSA in the future.

In support of this approach, the IDEM has attended meetings with the Evansville community to discuss the ozone concentrations in the area and appropriate control measures to reduce emissions of ozone forming chemicals. A broad-based community group called the Action Committee for Ozone Reduction Now (ACORN) has recommended four measures to be voluntarily adopted by the State and local authorities to reduce emissions. These four measures are: (1) high volume low pressure paint gun change outs for auto body refinishing and paint spraying operations; (2) Stage I gasoline vapor recovery; (3) pollution prevention and education task force; and (4) less polluting gasoline. ACORN suggests that all remedial ozone reduction measures shall apply to people and industry in Vanderburgh County and adjacent counties. The USEPA believes that these measures applied in the Evansville area will contribute to continued attainment of the ozone standard in Vanderburgh County and will contribute to improved air quality in the downwind communities.

The USEPA recently published an Advanced Notice of Intent (ANI) describing the OTAG process referred to above and setting forth USEPA's plans to take action in 1997 to require that control measures be adopted and implemented to reduce emissions that are transported to other areas and contribute to high ozone concentrations downwind of the emission sources (see 62 FR 1420 (January 10, 1997)). IDEM has committed to participate actively in this process and to implement emission control measures resulting from this process. This effort should lead to regional ozone precursor reductions that may significantly reduce the transport of ozone into the Evansville area and may result in further emission reductions within the Evansville area itself. A redesignation of Evansville to attainment would not impede the implementation of any emission controls resulting from the OTAG process or USEPA's anticipated actions.

The USEPA believes that emission reductions occurring as a result of USEPA's anticipated actions in 1997, early implementation of contingency

measures committed to by the State of Indiana, and implementation of measures proposed by ACORN will provide additional assurance that the air quality in Vanderburgh County and its downwind environs will be improved, and that future violations of the ozone NAAQS will not occur in these areas.

III. Technical Review

A. Redesignation Review Criteria

Under the CAA, designations can be changed if sufficient data are available to warrant such change. The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) provides for redesignation if: (1) the Administrator determines that the area has attained the National Ambient Air Quality Standard (NAAQS); (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) The State containing such area has met all requirements applicable to the area under section 110 and part D.

The USEPA has provided guidance on processing redesignation requests in documents including the following:

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

2. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

3. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.

4. "State Implementation Plan (SIP) Actions Submitted in Response to Clean

Air Act (ACT) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992.

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

6. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

7. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), April 16, 1992.

B. Review Of The Redesignation Request

1. The area must have attained the Ozone NAAQS.

For ozone, an area may be considered as attaining the NAAQS if there are no violations, as determined in accordance with the regulation codified at 40 CFR § 50.9, based on three (3) consecutive calendar years of quality assured monitoring data. A violation occurs when the ozone air quality monitoring data show greater than one (1.0) average expected exceedance per year at any site in the area. An exceedance occurs when the maximum hourly ozone concentration exceeds 0.12 parts per million (ppm). The data should be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS) in order for it to be available to the public for review.

The redesignation request for Evansville relies on ozone monitoring data for the years 1990 through 1996, to show that Evansville is attaining the NAAQS for ozone. IDEM has collected quality assured data in Vanderburgh County at two locations (or monitoring sites) for the period of 1990 through 1996 showing attainment of the ozone standard. In general, the USEPA considers the three most recent years of data for a redesignation request and the three most recent years of data from these two sites have no exceedances of the ozone standard. These data are quality assured and are recorded in the AIRS. In addition, ozone monitoring data has been collected at two sites in Warrick County as downwind monitoring sites for Evansville. The two monitors at Boonville and Tecumseh High Schools also demonstrate attainment of the ozone standard. The PSD industrial monitoring site at Alcoa has collected valid data which recorded a violation of the ozone standard for the

most recent three years of data (1994–1996).

As discussed above, there are issues concerning the role of emissions from Vanderburgh County in contributing to a violation of the ozone NAAQS monitored in 1994 in Warrick County. As stated there, the USEPA is requesting comment on these issues.

2. The Area must have a fully approved SIP under Section 110(k); and the Area must have met all applicable requirements under Section 110 and Part D.

Before Vanderburgh County (Evansville) may be redesignated to attainment for ozone, it must have fulfilled the applicable requirements of section 110 and Part D. USEPA interprets section 107(d)(3)(E)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that became applicable to the subject area prior to or at the time of the submission of the redesignation request.

Vanderburgh County is covered by a State Implementation Plan (SIP) approved under section 110 of the CAA. Indiana has implemented this SIP in Vanderburgh County.

In the case of marginal ozone nonattainment areas, such as Vanderburgh County, the section 172(c)(1) Reasonably Available Control Measures were superseded by section 182(a)(2) Reasonably Available Control Technology (RACT) requirements, which did not require newly-designated marginal ozone nonattainment areas to submit RACT corrections. See General Preamble for the Implementation of Title I, 57 FR at 13503, and the Volatile Organic Compound (VOC) RACT fix-up rulemaking published at 58 FR 49458. Thus, no additional RACT submissions were required for Vanderburgh County to be redesignated. Also, by virtue of provisions of section 182(a), marginal areas were not required to submit a demonstration that the SIP provides for attainment.

The section 172(c)(3) base year emissions inventory requirement has been met by the submission and approval of the 1990 base year inventory required under subpart 2 of part D, section 182(a)(1). (50 FR 31544, (June 20, 1994)). Indiana submitted a SIP revision covering regulations requiring the submittal of annual emission statements by facilities with potential VOC emissions equal to or exceeding 25 tons per year. A direct final rulemaking approving this SIP revision was published on June 10, 1994 (59 FR 29953).

As for the section 172(c)(5) New Source Review (NSR) requirement, USEPA has determined that areas being redesignated to attainment need not comply with the NSR requirement prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR in effect. A memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, titled "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," fully describes the rationale for this view, and is based on the Agency's authority to establish *de minimis* exceptions to statutory requirements. See *Alabama Power Co. v. Costle*, 636 F. 2d 323, 360–61 (D.C. Cir. 1979). Once the area is redesignated to attainment, the Prevention of Significant Deterioration (PSD) program, which has been delegated to Indiana, will become effective immediately. Additionally, the USEPA has approved a NSR revision to the Indiana SIP which meets the requirements of part D of the Act. See 59 FR 51108 (October 7, 1994). This NSR SIP revision became effective in December 1994.

(a) Section 176 Conformity Requirements

Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that, before they are taken, Federal actions conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the Act required the USEPA to promulgate. Congress provided for the State revisions to be submitted one year after the date of promulgation of final USEPA conformity regulations.

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated as nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to 40 CFR 51.396 of the transportation

conformity rule and 40 CFR 51.851 of the general conformity rule, the State of Indiana is required to submit a SIP revision containing conformity criteria and procedures consistent with those established in the Federal rule. However, the federal transportation conformity regulations are currently being amended for the third time. Indiana intends to submit transportation conformity regulations when the federal regulations complete rulemaking. Because the redesignation request was submitted before these SIP revisions came due, they are not applicable requirements under section 107(d)(3)(E)(v).

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, the USEPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

For the reasons just discussed, the USEPA believes that the ozone request for Vanderburgh County may be approved notwithstanding the lack of fully approved State transportation and general conformity rules. See also the Tampa, Florida ozone redesignation of December 7, 1995 (60 FR 62748).

(b) Subpart 2 Requirements

Marginal ozone nonattainment areas are subject to the requirements of section 182(a) of subpart 2. Indiana has met all of the applicable requirements of that subsection with respect to the Evansville area. The emissions inventory required by section 182(a)(1) has been approved. (See 59 FR 31544 (June 20, 1994)). The emission statement SIP required by section 182(a)(3)(B) has been approved. (See 59 FR 29953 (June 10, 1994)). As noted above, RACT corrections were not required under section 182(a)(2) for areas such as Vanderburgh County that were not designated nonattainment until after the 1990 CAA Amendments. Similarly, section 182(a)(2) does not require the submission of an Inspection and Maintenance (I/M) SIP revision for Vanderburgh County since the area was not required to have an I/M program before the enactment of the 1990 CAA Amendments. Finally, the State need not comply with the requirements of section 182(a) concerning revisions to the part D NSR program in order for the Vanderburgh County area to be redesignated for the reasons explained above in connection with the discussion of the section 172(c)(5) NSR requirement.

3. The improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from the SIP, federal measures and other permanent and enforceable reductions.

Implementation of VOC emission controls, such as the Federal Motor Vehicle Emission Control Program, and permanent, enforceable emission reductions from source closures have led to VOC emission reductions. A listing of major source VOC emissions for 1988 and 1990 shows that stationary source VOC emissions in Vanderburgh County declined by 339 tons per year (approximately 1.1 tons per day) between 1988 and 1990. Permanent VOC emission reductions due to source closures and implementation of emission controls totaled 570 tons per year in the same period (some of this emission reduction was offset by source growth). Indiana asserts that these point source emission reductions are permanent and enforceable. Indiana further states that it will not renew the permits of closed sources, will require these sources to undergo review under PSD or NSR requirements if they seek to restart, and will prohibit these facilities from banking the pre-closure emissions against future source growth.

4. The area must have a fully approved maintenance plan meeting the requirements of Section 175A.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. A September 4, 1992, USEPA memorandum from the Director of the Air Quality Management Division, Office of Air Quality Planning and Standards, to Directors of Regional Air Divisions regarding redesignation provides further guidance on the required content of a maintenance plan.

An ozone maintenance plan should address the following five areas: the attainment inventory, maintenance

demonstration, monitoring network, verification of continued attainment, and a contingency plan. The attainment emissions inventory identifies the emissions level in the area which is sufficient to attain the ozone NAAQS, and includes emissions during the period when the area attained the NAAQS (the first three year period when a violation of the NAAQS was not recorded). Maintenance is demonstrated by showing that future emissions will not exceed the level established by the attainment inventory. Provisions for continued operation of an appropriate air quality monitoring network are to be included in the maintenance plan. The State must show how it will track and verify the progress of the maintenance plan. Finally, the maintenance plan must include contingency measures which ensure prompt correction of any violation of the ozone standard. The Act also requires [section 175(b)] a second SIP revision eight years after an area is redesignated to attainment to assure maintenance of the NAAQS for an additional 10 years beyond the first 10 year maintenance period.

The details of the Evansville maintenance plan are reviewed in the April 26, 1994 TSD, which concludes that the maintenance plan meets all of the applicable requirements. The State commits to continue monitoring of ozone during the 10-year maintenance period. Any changes in the monitoring systems will be subject to USEPA approval.

To help verify maintenance of the standard, the State commits to require stationary sources to annually submit information on their emissions in accordance with the States emission statement rule (326 IAC 2-6). Data from these emission statements and other data sources will be used to determine if emissions have exceeded 1990 base year levels.

Finally, the State has selected a joint set of possible contingency emission control measures and a 2-level approach for triggering of contingency measures. A level I response occurs in the event that the ozone NAAQS is violated. This response entails conducting an analysis

to determine the level of control measures needed to assure expeditious future attainment of the ozone NAAQS. Measures that could be implemented quickly would be selected so as to be in place within 12 months after the State is aware of a NAAQS violation. (Note that the State has not preselected specific contingency measures to be implemented in case a level I response is required.) A level II response would be implemented in the event that: (a) The monitored ambient levels of ozone exceed 0.115 ppm more than once in any year at any site in the redesignated area; (b) the level of VOC, Oxides of Nitrogen (NO_x), or Carbon Monoxide (CO), emissions increase above the 1990 (attainment) emissions level; or (c) the level of total VOC emissions for any future year has increased above the level recorded in the prior year sufficiently so that an increase of the same magnitude in the following year could result in a level of emissions exceeding those recorded in 1990 by five percent or more. A level II response would consist of a study to determine whether the noted trends are likely to continue, and if so, to determine control measures necessary to reverse the trends, taking into consideration ease and timing of implementation as well as economic and social considerations. The contingency portion of the maintenance plan for the Evansville area was found to be acceptable. In addition, demonstration of maintenance was successfully made through emission projections through 2006. (Note that the use of 2006 covers a period extending for ten ozone seasons from now and complies with USEPA redesignation policy given the State's November 4, 1993 submittal date for a complete redesignation request and the State's assumption of a two-year period for USEPA's processing of the rulemaking on the redesignation request.) See the April 26, 1994 TSD for a summary of the contingency measures the State has identified.

The emissions summary for VOC and NO_x are provided below for the Vanderburgh County area:

TABLE 1.—VOC EMISSIONS IN TONS PER SUMMER DAY

Year	Point sources	Area sources	Mobile sources	Off-Road mobile	Biogenic	Totals
1990	12.76	12.46	25.25	7.50	8.37	66.34
1995	13.74	12.82	20.77	7.74	8.37	63.44
2000	14.73	13.18	16.29	8.00	8.37	60.57
2006	15.91	13.61	10.91	8.28	8.37	57.08
2007	16.11	13.68	10.01	8.33	8.37	56.50

TABLE 2. NO_x Emissions in Tons Per Summer Day

Year	Point sources	Area sources	Mobile sources	Off-Road mobile	Biogenic	Totals
1990	2.78	2.14	14.11	7.70	n.a.	26.73
1995	2.98	2.27	13.31	7.86	n.a.	26.42
2000	3.18	2.41	12.52	8.02	n.a.	26.13
2006	3.42	2.57	11.56	8.21	n.a.	25.76
2007	3.46	2.60	11.40	8.24	n.a.	25.70

Note that the 2007 emission estimates were derived by the USEPA using source growth rates provided by the State.

The State commits to continuing the operation of the monitors in the area. It will also track the maintenance of the area by regularly updating the emissions inventory for the area.

If the monitored air quality levels exceed the NAAQS, the contingency plan will be triggered. In addition, Indiana is required to submit a revision to the maintenance plan eight years after redesignation to attainment which demonstrates that the NAAQS will be maintained for a second 10 year period.

5. Implementation of All Requirements of Section 110 and Part D of the Act

As indicated above, all requirements of the Act applicable to this area have been met through SIP revision submittals. These SIP revisions have been approved through final rulemaking.

IV. Responses to Comments on the July 8, 1994 Direct Final Rulemaking

Five sets of comments were received concerning the July 8, 1994 direct final rulemaking on the redesignation of Vanderburgh County to attainment of the ozone standard. The summarized comments and USEPA's responses are presented below:

Comment: A commenter objects to redesignating Vanderburgh County to attainment because of Vanderburgh County's lack of past performance in dealing with the area's ozone problem. In support of this position, the commenter submitted several newspaper articles and an organization publication noting the lack of such action on the part of Vanderburgh County/Evansville officials. The commenter is concerned that designating Vanderburgh County to attainment of the ozone NAAQS will only exacerbate an already existing problem.

Response: During the years of 1990 through 1993, quality assured ozone monitoring data were collected at six sites in Indiana and at two sites in Kentucky within or in the proximity of

the Evansville nonattainment area. No violations of the ozone standard were monitored during this period. Therefore, the area's ozone levels have shown improvement over the 1987-1989 ozone standard violation levels, which were the basis for the nonattainment designation for Vanderburgh County. At the time of the redesignation request, sufficient "clean" air quality data existed to support the redesignation request. Air quality data through 1996 from monitors within the Vanderburgh County nonattainment area continue to show attainment of the ozone standard.

Vanderburgh County is currently a marginal ozone nonattainment area. The Act provides only minimal ozone precursor reduction requirements (the correction of deficient rules and 1.1 for 1 offsets for major new sources) for such an area. Since emission control rules, such as RACT for stationary sources, were not previously required and are not currently required for the Evansville area, leaving the nonattainment designation in place for the area would not result in significant new emission reduction requirements for this area.

Reductions in emissions have been gained through vehicle per mile emission rate decreases through the implementation of the Federal Motor Vehicle Emission Control Program (these emission rate decreases are offset in part by increases in vehicle miles traveled). In addition, permanent source closures have occurred in the area as noted in the State's demonstration of maintenance. The USEPA believes these emission reductions will tend to result in improved air quality.

Comment: A commenter objects to the redesignation because the commenter believes ozone levels in the vicinity of the Evansville area are higher than those reported for Vanderburgh County. The commenter, referencing several newspaper articles, believes that ozone levels are not measured in the areas of highest ozone concentrations.

Response: The USEPA has reviewed ozone data for the Vanderburgh County nonattainment area, as well as data from outside the nonattainment area in evaluating the redesignation request.

The ozone concentrations being reported to the public in the newspaper articles referenced by the commenter were only from Vanderburgh County monitors and did not include data from adjoining counties, outside of the nonattainment area. Ozone is also monitored at three sites in adjoining Warrick County. It is noted that higher peak ozone concentrations may be found in Warrick County. The extent, however, of the impact of emissions from Vanderburgh County on ozone concentrations in Warrick County is unclear.

Ozone, at relatively high concentrations, and its precursors, most notably VOC and NO_x, can be transported over considerable distances downwind of a precursor source area. Maximum ozone levels are generally found 15 to 30 (or more) miles downwind of the sources of ozone precursors. Given this, IDEM considered the 1990 through 1993 ozone data from Vanderburgh County and counties surrounding Vanderburgh County in the redesignation request submitted on November 4, 1993. These data showed no violation of the ozone NAAQS prior to the 1994 ozone season. The USEPA considers the area covered in IDEM's data analysis to be adequate.

Comment: A commenter objects to the redesignation of Vanderburgh County for two reasons. The first reason is the low use of Evansville buses. The commenter believes that improving the quality of the Evansville bus service will increase ridership and contribute to improving air quality. The second reason is based on the commenter's concerns about the chemicals being emitted by industries in the Evansville area. The commenter is concerned that some emissions are toxins and carcinogens and that this problem should be addressed before the area is redesignated to attainment of the ozone standard.

Response: The USEPA agrees with the commenter that improved bus service and increased citizen usage of buses would help to reduce the emission of ozone precursors. USEPA encourages improvements in bus service and greater

usage to reduce pollutant emissions. Such actions, however, cannot be mandated by the USEPA. State and local agencies are generally free to choose the mixtures of transportation control measures used to control pollutant emissions. In addition, since the Evansville area is classified as marginal nonattainment for ozone, the Act does not require such emission controls.

While the USEPA shares the commenter's concerns over chemicals emitted by industries (some of the VOC which act as ozone precursors are possible toxins and carcinogens), control of air toxins and carcinogens is addressed under separate provisions of the Act (section 112) and is expected to result in a decline in these emissions in the future. The designation of an area as attainment or nonattainment for ozone is only for the purpose of controlling ozone. For redesignation purposes, USEPA evaluates, among other factors, whether the State has met all applicable requirements for the area under Title I, section 110 (State Implementation Plans) and part D (nonattainment plan provisions under section 172(c)). USEPA has determined that the State has met these requirements. While the control of air toxins is the subject of section 112 of the Act, not the SIP program, the USEPA encourages States to take VOC and toxins/carcinogens into account when selecting control measures to help assure maximum environmental benefits from emission control measures. The USEPA, however, cannot compel such actions under the Act for the purposes of controlling ozone levels.

Comment: Commenters argue that the redesignation of Vanderburgh County to attainment is disapprovable on the following bases:

1. The State, at the time of the redesignation request submittal, had failed to correct the State's part D New Source Review (NSR) regulations. The State has failed to meet the Act's requirement that the SIP must comply with Act and be fully approved at the time the redesignation request is submitted;

2. The State has failed to demonstrate that the air quality improvements in the Evansville area are due to permanent and enforceable emission reductions. The commenters argue that a September 4, 1992 USEPA redesignation policy guidance is clear in requiring analysis of whether the improved air quality has resulted in part from either unique meteorological conditions or temporary changes in economic conditions. Air quality improvements due to these air quality impacts are not permanent, and, therefore, are not creditable;

3. The State has failed to fully predict the impacts of future transportation projects on growth in vehicle miles traveled and on mobile source emissions; and

4. The USEPA has failed to consider the impacts on downwind ozone transport caused by the redesignation and the associated loss of emission control requirements.

Response: The following presents USEPA's responses to each of the comments above in the order given:

1. USEPA believes that nonattainment areas can be redesignated to attainment of the ozone standard notwithstanding the lack of a fully approved NSR program meeting the requirements of the Act and the absence of such an NSR program from the contingency plan. USEPA believes that not requiring a fully approved NSR program as a prerequisite to the submittal of the State's request for redesignation is justifiable as an exercise of the USEPA's general authority to establish *de minimis* exceptions to statutory requirements. See *Alabama Power Co. v. Costle*, 636 F.2d 323, 360-61 (D.C. Cir. 1979). A memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, titled "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," fully describes the rationale for this view, and is based on the Agency's authority to establish *de minimis* exceptions to statutory requirements. Once the area is redesignated to attainment, the PSD program, which has been delegated to Indiana, will become effective immediately. Additionally, it is noted that the USEPA has approved a NSR revision to the Indiana SIP which meets the requirements of part D of the Act. See 59 FR 51108 (October 7, 1994). This NSR SIP revision became effective in December 1994.

2. The September 4, 1992 USEPA policy guidance referred to by the commenter states that "attainment resulting from temporary reduction in emission rates (e.g., reduced production or shutdowns due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions." Neither the State nor the USEPA has neglected these issues in preparing and analyzing Indiana's redesignation request. Rather, the USEPA believes that the State has adequately demonstrated that the improvement in air quality was not due to temporary economic downturn or unusually favorable meteorology.

With respect to the issue of temporary emission reductions due to economic downturn, the USEPA noted in this rulemaking and the July 8, 1994 direct final rulemaking (59 FR 35048) that the State has shown that attainment of the ozone standard is attributable to permanent and enforceable emission reductions. These emission reductions have resulted from permanent source closures and implementation of the Federal Motor Vehicle Emission Control Program. These emission reductions are permanent and enforceable. In the case of source closures, the source permits associated with these sources have been terminated and will not be reissued. Reopening of these sources would involve subjecting these sources to new source review requirements. It is USEPA's judgment that these emission reductions have contributed to the air quality improvement observed prior to the redesignation request submittal.

With respect to the issue of unusual meteorology, the State has compared the average meteorological parameters of maximum daily temperature, daily mean wind speed, percent of possible sunshine, and relative humidity for the periods of May through August, 1990 through 1992, with the 30-year (1961-1990) averages for these parameters. The 1990-1992 averages were found to be equivalent to the 30-year averages with only minor differences. Based on a comparison of these average parameters, it was concluded that the 1990-1992 period was not atypically non-conducive to ozone formation.

3. The USEPA conformity rule (58 FR 62218) requires the States to conduct conformity analyses for both nonattainment areas and attainment areas subject to maintenance plans. The State of Indiana is preparing its conformity rule to comply with USEPA's conformity rule. Therefore, any major federally funded and State funded projects in the redesignated area would be addressed through State conformity analyses and would be subject to the emissions budget established by the maintenance plan. Minor changes in the public transportation system would not be subject to the conformity analyses. The State's predictions of future year emissions did assume growth in mobile source activity. Moreover, the review required by the maintenance plan if ozone levels over 115 ppb are monitored gives the State the opportunity to adjust those predictions in light of transportation projects that were not known at the time of submission of the maintenance plan.

4. As discussed above, in accord with section 107(d)(1)(A), the USEPA is

considering information regarding the extent of the contribution of sources in Vanderburgh County to its downwind environs and is requesting comment on that issue in this notice. The USEPA notes, however, that this redesignation would not result in an increase in emissions from Vanderburgh County. Existing emission controls will not be dropped or relaxed as a consequence of the redesignation. Indeed, the maintenance demonstration projects stable or declining emissions from Vanderburgh County sources during the 10-year maintenance period, which means that any emission reduction contribution from Vanderburgh County sources would not be expected to decline after redesignation. Furthermore, as Vanderburgh County itself is attaining the ozone NAAQS, even if it remained designated nonattainment, under section 181(b)(2) of the Act, it would not be "bumped-up" to a moderate classification, and no new emission controls would be required to be adopted. Thus, additional emission controls would not be required as a consequence of a disapproval of the Vanderburgh County redesignation. The USEPA further notes that, if it concludes, on the basis of the OTAG modeling results or otherwise, that additional controls are needed in upwind areas to reduce transported emissions having effects on other states, a SIP-call to require such measures would be based on section 110(a)(2)(D) of the Act and could apply to areas regardless of whether they are designated attainment or nonattainment of the ozone NAAQS. Therefore, the redesignation of Vanderburgh County to attainment for ozone will not preclude the USEPA from obtaining emission reductions if needed to prevent excessive ozone transport from this area to other states.

V. IDEM Technical Support Document

Additional comments were submitted by IDEM during the comment period for the direct final rulemaking. These comments were primarily directed to the unusual nature of the 1994 ozone standard violation recorded in Warrick County. The validity of this ozone standard violation and its impacts on Indiana's redesignation request are discussed in the TSD for this proposed rulemaking. The State's comments submitted during the public comment period are addressed through that discussion.

VI. Public Comments Subsequent to the 1994 Ozone Standard Violation in Warrick County, Indiana

Subsequent to the 1994 ozone standard violation discussed above, a number of public comments were received by the USEPA regarding the redesignation of Vanderburgh County to attainment of the ozone standard. These comments can be divided into two main subgroups. The first subgroup of comments from United States Congressmen, the State of Indiana, Evansville and Vanderburgh County local agency representatives, and business and industrial representatives favor the redesignation of Vanderburgh County to attainment. Many of these commenters are concerned about the possible economic impacts of Vanderburgh County remaining a nonattainment area. These commenters raised the following general comments in support of the redesignation:

Comment: Many commenters support IDEM's analysis of the 1994 ozone data and the IDEM conclusion that the Alcoa data may reflect a positive bias during the April 22 through June, 1994 period.

Response: IDEM's review of the 1994 ozone data is discussed in detail above. The USEPA's conclusions regarding this analysis and the validity of its conclusions are contained in the Background and Conclusion section of the TSD for this rulemaking.

Comment: Some commenters have noted that the Warrick County ozone standard violation, having occurred outside of Vanderburgh County, should not be used to disapprove the redesignation of Vanderburgh County.

Response: The USEPA believes that a thorough review of all data is necessary before taking final action on the State's request. Among other factors, the Evansville nonattainment area is attaining the ozone standard based on quality assured data from monitors located within Vanderburgh County. On the other hand, even though the Alcoa monitor is located outside the Evansville nonattainment area, the USEPA also considered the data from this monitor in reviewing and evaluating the State's request.

As explained above, on the basis of both section 107(d)(1) of the Act and USEPA's written redesignation policy (September 4, 1992 memorandum titled "Procedures for Processing Requests to Redesignate Areas to Attainment" from John Calcagni to Air Division Directors), ozone data from all ozone monitors in an area and its downwind environs are to be considered when reviewing a redesignation request. This means that ozone data from Warrick County and

other counties surrounding Vanderburgh County must be considered when reviewing the redesignation request for Vanderburgh County. Of course, these analyses must also consider wind directions leading to high ozone levels in these outlying areas. The temporal and meteorological aspects of ozone formation typically produce peak ozone concentrations 15 to 30 miles downwind (or farther for large source areas) of the ozone precursor source area. This means that peak ozone concentrations can be produced outside of a single county source/nonattainment area. Since Warrick County is downwind of Vanderburgh County on some high ozone days, the USEPA is technically justified in considering ozone data from this County when evaluating the attainment status of Vanderburgh County.

Comment: Many commenters note that IDEM has developed a viable maintenance plan to deal with emission increases above the 1990 emission total (the attainment emissions level) and to deal with future violations of the ozone standard.

Response: USEPA concurs with this comment as reflected in the April 26, 1994 TSD and believes that the State's maintenance plan shows continued attainment of the standard through the year 2006. (USEPA has projected continued attainment through 2007 using source growth rates provided by the State. Although the State, in compliance with USEPA maintenance demonstration policy, projects continued attainment through 2006, the timing of rulemaking on this issue led the USEPA to consider projection of emissions through 2007.) Permanent and enforceable controls such as the Federal motor vehicle control program are in place and should ensure that emissions will not exceed the level of the 1990 attainment base year during the 10-year maintenance period. Furthermore, the maintenance plan contains contingency measures in the event of a violation of the ozone NAAQS.

The maintenance plan has not accounted for the emissions increases resulting from traffic growth associated with the operation of a proposed floating casino in the area or with traffic that will be drawn to the new Toyota truck plant planned for Gibson County, which adjoins Vanderburgh County to the north. The State and USEPA currently lack data to assess the impacts of these traffic impacts. Consequently, the USEPA is proposing approval at this time. The USEPA also notes that the maintenance plan provides additional

protection against unanticipated emission increases as it contains triggers for assessment of the need for additional emission controls if the emissions are subsequently projected to increase above the 1990 base year emissions level. Through this process, previously unanticipated emission increases could trigger the need for additional emission controls. It should also be noted that if the emission increases resulting from the traffic growth of concern here cause a future violation of the ozone NAAQS, the maintenance plan will obligate the State to select additional emission control measures to eliminate the air quality problem. In addition, the State will revise the maintenance plan within eight years and can include the additional emissions resulting from the traffic growth at that time.

Comment: Commenters in favor of the redesignation claim that Vanderburgh County has been singled out for nonattainment status even though emissions from Posey and Warrick Counties, Indiana and Henderson and Daviess Counties, Kentucky may have also contributed to the ozone standard violation at the Alcoa site and the elevated ozone levels at the other monitoring sites in the Evansville area.

Response: The USEPA does not believe that Vanderburgh County is being singled out. It was initially designated as nonattainment in 1991 as a consequence of an ozone standard violation within its boundaries, and the USEPA is now proposing to redesignate it to attainment. The USEPA has evaluated the available information concerning the meteorology and the sources of the emissions that led to the ozone standard violation in Warrick County, and is requesting comment on issues regarding the effect of the contribution of Vanderburgh County emissions to that violation. The meteorological data indicate that emissions from other areas may have contributed to the exceedances monitored in Warrick County.

Comment: Several commenters assert that never before has one single monitor been used to override the evidence of all remaining monitors in a region. The commenters believe the evidence in favor of redesignating Vanderburgh County to attainment is overwhelming and that the USEPA should not base a decision with such economic impact on questionable information when all other information points toward attainment of the ozone standard.

Response: When an area's attainment status is determined, each monitor in the area is judged independently. Ozone is not directly emitted into the atmosphere, but results from complex

photochemical reactions involving organic compounds, oxides of nitrogen and solar radiation. The relationships between primary emissions and ozone formation tend to produce large separations spatially and temporally between the major precursor emission sources and the areas of high ozone pollution. This suggests that the meteorological transport process and relationships between sources and sinks (reactions with airborne chemicals or reactions with surfaces that locally reduce ozone levels) need to be considered in the placement of monitoring stations and in the evaluation of the monitoring data.

USEPA's redesignation policy requires attainment of the ozone standard at *all* ozone monitors in an area seeking redesignation to attainment. Each monitor in an area is judged independently because ozone formation, transport, and sinks can lead to spatial differences in monitoring results. Nonetheless, monitoring results at a given site can represent the impact of emissions from a large upwind source area. In addition, each monitor represents a geographic region within a community. Therefore, USEPA believes it is appropriate and necessary for each monitor in the area to meet the standard to ensure people in these areas are not being exposed to levels above the standard. Because of distribution of sources within an area, the nature of ozone formation and the effects of meteorology, it is not expected that all monitors will show equivalent readings. Within a nonattainment area, if any one monitor shows a violation of the standard, the area is considered to be in nonattainment of the standard. The USEPA has always considered ozone on a per monitor basis, refusing to redesignate an area to attainment if the ozone standard is violated at any monitoring site in the nonattainment area. Monitors outside of the nonattainment area are evaluated for impacts from the area under consideration. The CAA in section 107(d)(1)(A)(i), as noted above, defines nonattainment as "any area that does not meet (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant, * * *".

The USEPA promulgated federal monitoring regulations that established minimum monitor requirements and criteria for uniform monitor siting and quality assurance procedures (40 CFR part 58). Only data meeting these siting and quality control requirements are used in regulatory decisions. The valid, quality assured violation of the ozone

standard recorded in Warrick County thus must be considered by the USEPA when considering the redesignation of Vanderburgh County.

Comment: Several commenters believe that the Alcoa monitoring site, as a special purpose/prevention of significant deterioration monitor site, has not ever been part of Evansville's ambient monitoring system, and, therefore, data from this site should not be considered when reviewing the designation of Vanderburgh County.

Response: The IDEM has never formally identified the monitors belonging in the monitoring network for each nonattainment area. In IDEM's March 15, 1991, submittal to support the State's proposal for the classification and designation of Vanderburgh County as marginal nonattainment for ozone and to exclude surrounding counties from this designation, IDEM included ozone data from the Alcoa site as part of the monitoring system used to judge the attainment status of Vanderburgh County and to justify the exclusion of Warrick County from the nonattainment area. The CAA requires nonattainment areas with moderate and above classifications to include the entire MSA to assure that the entire source area is included in the nonattainment area. In the case of marginal ozone nonattainment areas, such as the Evansville area, the CAA gives the States and USEPA discretion in determining the size of the nonattainment area. In 1991, the USEPA accepted IDEM's recommendation to restrict the nonattainment area to only Vanderburgh County.

The Alcoa monitor has historically been used to make decisions about the Evansville area. There is, however, no "official" monitoring system declared by Indiana for the Evansville area. The USEPA has in the past considered data from PSD monitors when making designation decisions as long as the data met the quality assurance standards for ambient air networks. The quality assurance tests conducted on the Alcoa monitor were all well within the required limits. All data in the AIRS data system have been quality assured by the State air agencies as having met the requirements for valid data to be used in the decision-making process.

Comment: A commenter notes that, on two of the exceedance days at the Alcoa site, winds were from the east placing this site upwind of the Evansville area not downwind of it.

Response: The USEPA agrees with the commenter. It is apparent from the meteorological data that emissions from areas other than Vanderburgh County may have contributed to the 1994 ozone

standard violation at the Alcoa site. Emissions from other areas also appear to have contributed to the ozone standard exceedances on the days on which the Alcoa site was downwind of Vanderburgh County (the IDEM has noted relatively high background ozone concentrations on these days), as well as on the other two exceedance days.

Comment: Commenters note that Evansville industries have spent millions of dollars to reduce emissions, particularly emissions of VOC, NO_x, and chlorofluorocarbons to improve air quality and protect the environment. They believe the redesignation of Vanderburgh County to attainment would recognize this effort and encourage further progress.

Response: It is acknowledged that the Evansville industries have implemented emission controls to comply with various requirements of the Clean Air Act. Some of these controls probably have contributed to lower VOC emissions (the controls mentioned by the commenter, however, were implemented to reduce chlorofluorocarbon emissions, which are nonreactive and have little or no impacts on ground level ozone concentrations). To this extent, these facilities are recognized for contributing to lower ozone concentrations. Without these controls, the ozone levels could have been even higher in 1994. It should be noted that industries in Vanderburgh County are not required to have VOC RACT emission controls because Vanderburgh County was attainment prior to the enactment of the 1990 CAA.

Comment: A commenter, noting the recent public discussions of the Evansville redesignation and the possible inadequacy of the current ozone standard to protect public health, questions the ability of the area to attain a tighter standard. This commenter also questions the assertions of local physicians blaming ozone levels for triggering many asthma attacks during the summer months. The commenter believes the physicians should consider the fact that Evansville area is located amidst an agricultural area and that the resulting particulates and pollen along with ozone, heat, and humidity may play a role in these asthma attacks at this time of the year.

Response: The standard against which Evansville's attainment is judged is the current 0.12 parts per million ozone standard. The USEPA is not basing its decision on a possible, future tighter ozone standard, and the ability or inability of the Evansville area to attain a tighter standard is not an issue in this proposal.

With regard to impacts of other factors in causing respiratory problems, it is agreed that such factors may have caused some of the respiratory problems observed in the area. It is noted that many health studies have confirmed the negative health impacts that ozone has on the respiratory system. These studies were the basis of the current ozone standard. Recent health studies further elaborate on these impacts and are the subject of USEPA's current proposal to revise the ozone standard. See 61 FR 65716, December 13, 1996. The connection between ozone and asthma attacks is discussed in that proposal and is not further discussed here.

Comment: A commenter believes the siting of the Alcoa monitor is incorrect since this site may be impacted by particulate emissions from the Alcoa plant and the local coal-fired power plant and by ozone generated locally by high power lines carrying electricity from the power plant and to the Alcoa plant.

Response: As noted in the June 5, 1995 TSD submitted by IDEM, IDEM did consider the factors mentioned by the commenter. These factors were ruled out as significant contributors to the high ozone levels monitored at the Alcoa site. The USEPA agrees with IDEM's analysis.

Comment: A commenter questions the quality assurance of the Alcoa monitor. This commenter also wants to know why, if the Alcoa monitor was part of the monitoring system used to evaluate Evansville air quality, were no industrial representatives or the public previously aware of its existence?

Response: Review of the quality assurance records in AIRS and the June 5, 1995 IDEM TSD show that Alcoa and the State actively participated in the quality assurance of the Alcoa monitor. Quality assurance records show that the monitor was performing well within acceptable quality assurance limits during the period with the 1994 ozone standard violation. This monitor recorded ozone concentrations with very small error levels (small percentage differences from calibration and precision check ozone input levels) during this period. In addition, the State has quality assured Alcoa's ozone calibrator unit, removing this as a significant source of ozone concentration errors.

As evidenced in the March 15, 1991 ozone designation/classification submittal, IDEM has been aware of the Alcoa ozone monitor for some time. In fact, IDEM has supplied Alcoa ozone data for inclusion in AIRS since 1988. The AIRS data are available to the public.

Comment: A commenter is concerned that retaining the marginal nonattainment status for Vanderburgh County will ultimately result in its being bumped up to moderate nonattainment with serious economic consequences. The commenter believes that local environmental groups are not aware of this possibility nor thoroughly understand the consequences of such an action.

Response: The USEPA evaluated the attainment status of Vanderburgh County at the end of 1993 as required by the CAA. Monitors in Vanderburgh County were indicating attainment of the ozone standard in 1993 and continue to record attainment of the ozone standard. As noted above, this fact provides a basis for not bumping up Vanderburgh County to the classification of moderate nonattainment.

The local environmental groups are aware of the impacts of a bump-up of the area to moderate nonattainment. As evidenced by the comments addressed elsewhere in this proposed rulemaking, some environmental groups have requested such a bump-up of the area.

Comment: A commenter asserts that local environmental groups err in believing that the Evansville ozone problem is primarily due to industrial emissions. The environmental groups fail to recognize that 38 percent of the VOC emissions originate from mobile sources and that 19 percent of the emissions come from area sources. With the future emission controls required under other portions of the Clean Air Act, such as Maximum Available Control Technology (MACT) for sources of toxic emissions and New Source Performance Standards (NSPS), the relative emissions contributions from industrial sources will decline. This means that control of other sources should be considered.

Response: The commenter is correct that sources other than industrial sources may also share in contributing to the 1994 ozone standard violation. As evidenced in IDEM's 1990 base year inventory for Vanderburgh County (the source of the emission percentages expressed by the commenter), many sources contribute to this problem. It is reasonable to request that control of these emissions be considered along with the control of emissions from industrial sources.

Comment: A commenter states that USEPA should not revise the ozone standard as recommended by the environmental groups in the Evansville area. The commenter believes that tightening of the standard would make it very difficult for the area to achieve

the goals of the State's maintenance plan. The commenter recommends that the 0.12 parts per million ozone standard remain in effect.

Response: The revision of the ozone standard is not an issue in this action. In this action, USEPA is solely concerned with the attainment and maintenance of the current ozone standard.

The second subgroup of comments was submitted by environmental groups and residents of the Evansville metropolitan area. These comments generally recommend disapproval of the redesignation of Vanderburgh County to attainment or criticize the USEPA for not following appropriate procedures in rulemaking and making decisions on this issue. These comments are summarized below:

Comment: Commenters object to USEPA's October 11, 1995 decision to redesignate Vanderburgh County to attainment based on the following facts/points:

a. The Alcoa ozone standard violation has been quality assured by the State of Indiana as being valid;

b. The Alcoa monitor has been and continues to be part of the Evansville area monitoring system;

c. Redesignating Vanderburgh County in light of the 1994 ozone standard violation violates USEPA's own guidelines;

d. No public hearing in Vanderburgh County was held to address the impacts of the 1994 ozone standard violation; and,

e. Negative health impacts from ozone can occur at levels well below the current standard.

Response: The overall responses to these comments are reflected in this entire proposed rulemaking. The following responses, however, are made to respond to the commenter's specific points:

a. USEPA and IDEM agree that the data establishing the Alcoa ozone standard violation have been quality assured and are valid. IDEM, however, believes that a significant monitor bias can exist even when the monitor is producing quality assured results. IDEM's assertion of monitor bias is supported by the daily maximum ozone concentrations at the Alcoa site as compared to those for the other monitors in the area for the April-June, 1994 period and review of similar data for other periods.

The USEPA has determined that the Alcoa data are valid and quality assured. The quality assurance data demonstrate that the monitor was performing correctly. The source of the high ozone concentrations measured at

the Alcoa site is unclear. Source areas outside of Vanderburgh County appear to be contributing to the high ozone concentrations observed at the Alcoa site.

b. As noted above, the IDEM has never formally identified the monitors belonging in the monitoring network for each nonattainment area. In IDEM's March 15, 1991, submittal to support the State's proposal for the classification and designation of Vanderburgh County as marginal nonattainment for ozone and to exclude surrounding counties from this designation, IDEM included ozone data from the Alcoa site as part of the monitoring system used to judge the attainment status of Vanderburgh County and to justify the exclusion of Warrick County from the nonattainment area.

As noted above, the Alcoa monitor has historically been considered when making decisions about the Evansville area. There is, however, no "official" monitoring system declared by Indiana for the Evansville area. It should be noted that an IDEM monitor at the Alcoa site has replaced the Alcoa monitor.

c. As explained earlier in this notice, consistent with its existing guidance, the USEPA has evaluated the 1994 exceedances monitored at the Alcoa site and the information available concerning the sources of the emissions resulting in those exceedances. The USEPA believes that this proposal is consistent with USEPA's existing guidance regarding redesignations and the consideration of downwind monitored ozone concentrations. As stated earlier, the USEPA is requesting comment on this issue.

d. The comment is correct. It should be noted that the USEPA is reopening the comment period for the rulemaking on this redesignation and allowing an extended 60 day comment period.

e. On December 13, 1996, the USEPA proposed to revise the current ozone standard (61 FR 65716). The health effects of ozone concentrations below the current ozone standard are an issue being addressed in that rulemaking proceeding and are beyond the scope of this action, which is limited to whether or not the current ozone standard has been attained in Vanderburgh County.

Comment: A number of commenters have requested the reopening of a public review, including public hearings and a public comment period, of the redesignation request, USEPA's decision on this issue, and the implications of the 1994 ozone standard violation. Some commenters have recommended that this issue be the subject of judicial review.

Response: The USEPA will reopen the public comment period on this issue. The 1994 ozone standard violation, June 5, 1995 IDEM technical analysis submittal, and December 7, 1995 IDEM supplemental data all add significant new information to the data and information discussed in the July 8, 1994 USEPA rulemaking. On this basis and given the public interest in this issue, it is appropriate for the USEPA to repropose the rulemaking and to reopen the public comment period for this rulemaking.

Comment: Commenters question the validity of the maintenance demonstration submitted with the redesignation request and the prospects for continued maintenance of the ozone standard. These commenters point out the initiation of river boat gambling in Evansville will draw in excess of 2 million additional cars or vehicle trips to the area per year. It is assumed that this growth in vehicle emissions was not factored into the State's maintenance plan.

Response: The maintenance plan submitted by IDEM was complete and approvable at the time it was submitted on November 4, 1993. A public hearing on the maintenance plan was held by IDEM on August 24, 1993, in Evansville, Indiana. There was one person who commented on the maintenance plan and expressed concerns about a lack of sanctions in the plan should it not be properly implemented. IDEM's response was that, if the State fails to implement the plan, the USEPA may impose sanctions allowed under the CAA, such as withholding federal highway funds.

The maintenance plan does take into account a measure of growth in mobile source emissions. To the extent that the maintenance plan does not include traffic growth due to the casino river boat and to the new Toyota truck plant in Gibson County, it may need to be reviewed when data on the traffic growths become available to determine the effect of these developments on the maintenance plan predictions. As noted elsewhere in this proposed action, this will be the case if the emission increases cause the Vanderburgh County VOC or NO_x emissions to increase above attainment year base levels. Also, the transportation conformity process should prevent growth in mobile source emissions from exceeding the "budget" in an approved maintenance plan.

The maintenance plan also has a margin of safety to allow for future growth in mobile sources as well as other sources. The Evansville maintenance plan has an extra 9 tons per day of VOC safety margin in 2006 and in 2007, and 1 ton per day NO_x

safety margin in 2006 and in 2007. It should also be noted that the maintenance plan does contain a trigger requiring extra analyses based on VOC emissions exceeding the 1990 base year level. In addition, the requirements for additional emission controls would be triggered should the increased VOC emissions cause a future violation of the ozone NAAQS. In the event of a future ozone standard violation, contingency measures would be invoked to correct the violation and bring the area back into attainment.

Comment: One commenter stated that preparation of the USEPA TSD after the October 11, 1995 USEPA decision to redesignate Vanderburgh County is, at best, superfluous, and, at worse, a direct disregard of the rules and laws under which USEPA is supposed to operate.

Response: The October 11, 1995, letter referred to by the commenter did not serve to redesignate Vanderburgh County; this can only be done through a rulemaking action such as this, with opportunity for public comment. It should also be recognized that the October 11, 1995 letter was not developed without considerable review of the available data by IDEM (as evidenced by IDEM's June 5, 1995 technical support document) and USEPA (USEPA had already given considerable thought to this issue in preparing to respond to comments on the July 8, 1994 direct final rulemaking). Many hours were spent before October 11, 1995, by both agencies reviewing the data and drawing initial conclusions regarding the merits of the 1994 ozone standard violation at the Alcoa site as well as other issues raised by the public. It should also be recognized that the USEPA believed it was appropriate to move ahead with rulemaking to redesignate Vanderburgh County to attainment despite the violation of the ozone standard at the Alcoa site in Warrick County. As noted in the October 11, 1995 letter, this decision was based in part on a commitment by the IDEM to implement its maintenance plan. USEPA is relying on this commitment to implement one or more measures contained in the maintenance plan and others that are as needed to address any ozone air quality problem in the Evansville MSA. Finally, as noted elsewhere in this proposed rulemaking, the USEPA is taking public comments for another 60 days from the date of this proposed action before making a final decision on redesignation request. Submitted comments will be addressed in a future final rulemaking action. Obviously, the October 11, 1995 letter does not represent a final conclusion on this issue.

Comment: Some commenters recommend, based on 1994 and 1995 data, that Vanderburgh County remain designated as nonattainment for the ozone standard and bumped up to a classification of moderate.

Response: When the USEPA evaluated marginal areas for attainment status at the end of 1993, Vanderburgh County and surrounding areas were demonstrating attainment of the ozone standard. The 1994 and 1995 data for monitors in Vanderburgh County continue to show attainment of the standard. Consequently, bump up of Vanderburgh County to a classification of moderate is not justified.

Comment: A commenter notes that the Alcoa monitor recorded 14 hours of ozone standard exceedances in 1994 and that additional exceedances of the standard were recorded in Boonville in 1995.

Response: USEPA's TSD for this proposed rulemaking thoroughly discusses the ozone standard exceedances at the Alcoa monitor. With regard to the 1995 ozone standard exceedance at the Boonville site, it must be noted that this site has not recorded a violation of the ozone standard given the small number of exceedances recorded at this site in the last three years of data collection; the site has recorded less than one ozone standard exceedance per year during the last three years.

Comment: A commenter objects to the fact that IDEM's June 5, 1995 TSD was never subjected to a public review or a public hearing. IDEM's TSD is viewed as being seriously flawed as to its application of science. IDEM's conclusions in the TSD conflict with the conclusion (in the June 5, 1995 TSD and elsewhere) that the Alcoa data are quality assured. The commenter finds IDEM's conclusion of "unexplained monitor bias" to be scientifically unfounded.

Response: As noted above and below, USEPA agrees that the June 5, 1995 IDEM technical analysis and other related data should be subjected to public review. This is part of the basis for USEPA repropounding rulemaking on this action and reopening the public comment period on this issue.

Comment: A commenter notes that USEPA's monitoring staff have indicated through internal USEPA memoranda that, as indicated by AIRS data, if there was monitor bias, it is more important to note that significant negative monitor biases are indicated for the Boonville, Tecumseh High School, and Scott School monitors during the April 20 through June, 1994 period. The commenter interprets USEPA

memoranda as indicating that these monitors may have been subject to - 11 percent biases. The commenters note that this level of bias was sufficient to explain the concentration differences between the Alcoa monitored ozone concentrations and the ozone concentrations monitored at the other "downwind" monitoring sites. In addition, the commenter notes that increasing ozone levels by 11 percent at the negatively biased monitors would add 2 days of ozone standard exceedance to the Boonville site (three exceedances in two years considering the 0.131 parts per million exceedance in 1995 at this site) and 1 day of ozone standard exceedance to the Tecumseh High School site.

Response: The August 18, 1995 USEPA memorandum referred to by the commenter presents the annual precision upper and lower 95 percent confidence limits for the four sites operated by Indiana in the Evansville area. These data present ranges of precision data, but by no means imply that the monitors were operating with specific biases during the May through June, 1994 episodes. Although the data imply, for example, that the Boonville monitor tested lower than the actual test concentration, the data do not imply that the Boonville monitor operated at a - 11 percent bias. The precision estimates for the Boonville monitor implied only a - 1.2 to - 3.6 percent difference between the actual concentration and the monitored concentration. The small size of the precision and audit data set led to the relatively large negative precision estimate at the lower end of the 95 percent confidence limit. The precision data do not indicate that the differences in ozone concentrations between the Alcoa and Boonville monitors during the April 22 through June, 1994 period can be simply or entirely explained on the basis of differences in quality assurance for the two monitors.

It should also be noted that the use of the precision data in a manner as used by the commenter to draw conclusions regarding derived non-biased ozone concentrations is technically unacceptable. If the ozone monitors meet quality assurance limits, as all monitoring data included in AIRS have, it is inappropriate to modify the ozone concentrations based on precision data.

Comment: Commenters note that Vanderburgh County has been designated as nonattainment for ozone for a number of years and that the USEPA, State, and local agencies have done little or nothing to correct this problem. One commenter believes that the State's and local agency's attempts

to deal with the ozone problems through an Ozone Action Days program are inconsequential. Therefore, the commenters believe that the area does not deserve a redesignation to attainment of the ozone standard and that a redesignation to attainment will assure that no effective actions are taken.

Response: Initially, it should be noted that although Vanderburgh County has been designated as nonattainment, it has in fact been attaining the ozone standard since 1990 because no monitors in Vanderburgh County have recorded a violation of the ozone standard during that time period. Furthermore, it is incorrect to conclude that no emission reductions have been implemented in the Evansville area. Through the Federal Motor Vehicle Emission Control Program, the USEPA has brought about reductions in vehicle per mile emission rates. The Vanderburgh County maintenance plan estimates a 14% reduction in VOCs during the 1990 to 2006 time period because of cleaner automobiles. The maintenance plan in conjunction with other Act requirements, such as conformity, should prevent these reductions from being negated by increases in vehicle miles of travel and other emission increases. The State has adopted the general and transportation conformity rules, and submitted these rules to the USEPA on January 23, 1997. In addition, the State has terminated certain source permits subsequent to source closures to gain permanent emission reductions. All of these actions have reduced emissions in a permanent manner.

It should be noted that Vanderburgh County is classified as a marginal ozone nonattainment area. Under the Clean Air Act, such an area is required to do little in the way of additional emission reductions beyond the impacts of the national programs, such as the Federal Motor Vehicle Emissions Control Program. In terms of emission reductions, the State has complied with the Clean Air Act redesignation requirements. It should also be noted that, as discussed earlier, VOC RACT emission controls on stationary sources are not required in Vanderburgh County.

Comment: A commenter notes that IDEM has correctly asserted that the Evansville ozone problem is regional in nature and that the problem should be dealt with on a regional basis. It is noted that, besides the regional nature of VOC emissions, the Evansville area is impacted by NO_x emissions from significant sources in a much larger area. In addition, the commenter

believes that mobile source emissions must be dealt with over a larger geographical area (the commenter, nonetheless, believes that Vanderburgh County should remain designated as nonattainment for ozone).

Response: The USEPA agrees with many of these comments. The ozone data, both the Alcoa monitor ozone standard exceedances and the elevated ozone levels at other monitors, under various meteorological conditions imply that the high ozone levels in the Evansville area may originate from an area significantly larger than just Vanderburgh County. The State is encouraged to consider emission controls from a larger area to help maintain the ozone standard and to lower peak ozone levels if necessary to eliminate a future ozone standard violation.

The USEPA also agrees that NO_x emissions and motor vehicle emissions contribute to the elevated ozone concentrations. Control of these emissions will help maintain the ozone standard.

Comment: A commenter, noting that no ozone standard violations have been recently recorded in Vanderburgh County, recommends that the nonattainment designation of Vanderburgh County be retained to protect the air quality in the lower Ohio Valley area. This commenter believes that, at minimum, the USEPA should redesignate Warrick County to nonattainment of the ozone standard even if the USEPA is "forced" to redesignate Vanderburgh County to attainment.

Response: It is correct that no ozone standard violations have been recorded in Vanderburgh County during the most recent three years (1994-1996), thus demonstrating that Vanderburgh County is attaining the ozone standard. Furthermore, for the reasons explained above regarding the uncertainties connected with the determination of the extent of Vanderburgh County's contribution to the ozone concentrations monitored in Warrick County, the USEPA believes it is appropriate to propose approval of the Vanderburgh County redesignation request at this time.

With respect to the status of Warrick County itself, USEPA notes that it has several options available to it in dealing with a violation in an attainment area, USEPA may: choose to redesignate the area to nonattainment; issue a SIP call; take enforcement action if the violation appears to be caused by compliance failures; or encourage the State to require more controls in the area (without an official SIP call).

Currently, there is a stakeholders process underway to determine what controls are needed to address the Warrick County violation. The USEPA believes it is appropriate to give the stakeholders group (composed of representatives from the State, local officials, local industry, environmental groups, academia, and private citizens) an opportunity to solve the local air quality problems. If this process fails, USEPA can then use its authority, e.g., to issue a SIP call to the area or redesignate the area to nonattainment. The USEPA also notes that it expects to be taking steps in 1997 to require reductions in regional emissions as a response to the OTAG conclusions that will reduce ozone transport into the Evansville area. This may help to correct the Warrick County air quality violation.

Comment: A commenter believes that it is USEPA's policy to consider all ozone monitors in an area to determine the attainment status of the area. Therefore, the commenter believes USEPA must consider the data from the Alcoa site in reviewing the attainment status of Vanderburgh County and surrounding counties.

Response: The USEPA agrees with this comment. See the response to comments above.

Comment: Several physicians object to the redesignation of Vanderburgh County based on concerns over chronic effects produced by ozone during the peak ozone periods and observations of increased pulmonary hospital admissions during these periods. These physicians urge the USEPA to not ignore the high ozone levels at the Alcoa monitoring site.

Response: The USEPA believes that, if Vanderburgh County satisfies the statutory criteria for redesignation, including attainment of the current standard, it should be redesignated to attainment. In proposing this redesignation, the USEPA has not ignored the high ozone levels at the Alcoa monitoring site but has carefully analyzed those monitored concentrations and attempted to determine the sources of the ozone precursors that resulted in those monitored readings. This action is premised on the 0.12 ppm one-hour standard, which is the standard now in effect and which was established in accordance with sections 108 and 109 of the Act to protect public health. The USEPA, however, has recently proposed revising the current ozone standard (61 FR 65716). That rulemaking is the appropriate forum for the submission of comments regarding the health

protections afforded by the ozone standard.

Comment: A group of physicians and college professors have evaluated the Alcoa 1994 ozone data and have determined that the data are valid for purposes of evaluating the area's attainment status. They believe that the May 23, June 20, and June 21, 1994 data confirm that Vanderburgh County emissions have contributed to an ozone standard violation and that Vanderburgh County should retain its ozone nonattainment status.

Response: As noted in this notice, the USEPA considers the data from the Alcoa site to be valid and relevant to the redesignation review. The good performance of the Alcoa monitor in quality assurance tests support the validity of the Alcoa ozone standard exceedances. However, the USEPA has also considered the meteorological patterns during this time period. As discussed above, the USEPA is requesting comment on the issues related to the potential contribution of emissions from Vanderburgh County to the violation in neighboring Warrick County in light of the data and information in the Docket.

The USEPA encourages the State of Indiana to implement emission controls over an area larger than Vanderburgh County, and to follow through on its commitment to implement its maintenance plan contingency measures and to work with the local Evansville community and surrounding areas to adopt emission control programs and regulations, and submit these regulations as part of a State implementation plan revision.

Comment: Commenters believe that the Alcoa monitor is located in an area where one may expect ozone levels resulting from Evansville area emissions to maximize. They believe the USEPA intends to ignore the Alcoa data and this fact of typical ozone formation, thus violating USEPA procedures.

Response: The USEPA agrees with the commenters that the Alcoa monitor is in a location where relatively high ozone levels may be expected. Since this monitor is approximately 15 miles from Evansville, this site is a good choice for a peak downwind ozone site for the Evansville area. As should be evident from today's notice, USEPA has no intention of ignoring the Alcoa data. The validity of these data and their implications in this matter have been given very serious consideration. Even though the Alcoa monitor is located outside the Evansville nonattainment area, the USEPA did consider the data from this monitor in reviewing and evaluating the State's request.

Comment: A commenter notes that he has seen recent indications of degraded air quality at sporting events attended by his child. During softball games on warm days, he has observed an increased incident of itchy, irritated eyes, and breathing difficulties, such as coughing and breathlessness. A particular incident, in which a player had to leave the field due to breathing difficulties, was not preceded by strenuous activity and resulted in the child being taken to a local hospital for observation. The child's breathing difficulties could not be attributed to any preexisting condition and her condition improved after she was removed from contact with the outside air. For the future of the children in the area, the commenter believes Vanderburgh County should remain marginal nonattainment for ozone.

Response: The USEPA acknowledges the commenter's observations of possible negative health effects from air pollution. Unfortunately, the commenter has not equated these observations with the peak ozone concentrations on the days when these health effects were observed. It is not clear that they were observed in an area and at a time with high ozone concentrations.

Comment: Several citizens have expressed concern that the USEPA has simply given in to political pressure to redesignate Vanderburgh County to attainment to support future industrial growth. Several of these citizens have children who suffer from allergies and respiratory problems. Other citizens are concerned about a high number of cancer-related deaths and the dying of trees.

Response: The USEPA recognizes that there may be illness associated with exposure to high levels of ozone. The current ozone standard (0.12 ppm) is a health-based standard which the Agency has proposed to revise, as noted above. Concerns over public health have been heard; the State and the local community are committed to adopting additional controls in Evansville and the surrounding areas above and beyond those already being implemented in order to further reduce emissions.

The USEPA has seriously considered the data in this issue. The USEPA, while weighing the various issues in this case, is very concerned about the impacts of its decisions on public health, as well as establishing the proper source-receptor relations to assess accountability for measured air quality levels.

Comment: Several commenters have expressed an interest in the placement of ozone monitors in Posey County or, more specifically, in Mt. Vernon.

Response: In the present rulemaking, USEPA must base its decision on the monitoring data available. Additionally, USEPA notes that IDEM has indicated a willingness to expand its ozone monitoring network to include Posey County.

VII. Proposed Action

The USEPA proposes to approve the redesignation of Evansville (Vanderburgh County) to attainment for ozone and to approve the maintenance plan for the area.

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

VIII. Interim Implementation Policy (IIP) Impact

On December 13, 1996, USEPA published proposed revisions to the ozone and particulate matter NAAQS (61 FR 65716 and 61 FR 65638). Also on December 13, 1996, USEPA published its proposed policy (61 FR 65752) regarding the interim implementation requirements for ozone and particulate matter during the time period following any promulgation of a revised ozone or particulate matter NAAQS. This IIP includes proposed policy regarding ozone redesignation actions submitted to and approved by the USEPA prior to the promulgation of a new ozone standard, as well as those submitted prior to and approved by the USEPA after the promulgation of a new ozone standard.

Complete redesignation requests submitted and approved by EPA prior to the promulgation date of the revised ozone standard will be allowed to stand based on the maintenance plan's ability to demonstrate attainment of the current one-hour standard and compliance with existing redesignation criteria. Any redesignation requests submitted prior to promulgation of the revised ozone standard, but which are not approved by the USEPA prior to that promulgation date, must also include a maintenance plan which demonstrates attainment of both the current one-hour standard and the revised ozone standard to receive final approval by the USEPA of redesignation to attainment.

As discussed above, the USEPA proposes to approve the Evansville redesignation request as demonstrating attainment under the current one-hour ozone standard. If the USEPA does not take final action prior to the

promulgation of the revised ozone standard and the request is otherwise approvable, the USEPA will work with the IDEM to as quickly as possible to supplement the maintenance plan to demonstrate attainment and maintenance of the revised ozone standard.

IX. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the USEPA 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 CAA 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. The Administrator 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, the USEPA 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, the USEPA 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 the USEPA to

establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action proposed 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 pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Dated: March 5, 1997.
Valdas V. Adamkus,
Regional Administrator.
[FR Doc. 97-6510 Filed 3-13-97; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-88; RM-9031]

Radio Broadcasting Services; Centennial, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Red Rock Broadcasting proposing the allotment of Channel 224A at Centennial, Wyoming, as the community's first local aural transmission service. Channel 224A can be allotted to Centennial in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) east to avoid a short-spacing to the licensed site of Station KIQZ(FM), Channel 224A, Rawlins, Wyoming. The coordinates for Channel 224A at Centennial are North Latitude 41-19-03 and West Longitude 105-59-55.

DATES: Comments must be filed on or before April 28, 1997, and reply comments on or before May 13, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Pamela C. Cooper, Roberts & Eckard, P.C., 1150 Connecticut Ave., NW., Suite 1100, Washington DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-88, adopted February 26, 1997, and released March 7, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97-6430 Filed 3-13-97:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 96-127; RM-8805]

Radio Broadcasting Services; Kula, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed by Sonia A. Humphrey seeking the allotment of FM Channel 244A to Kula, Hawaii, based upon the lack of interest by the petitioner or any other interested party to provide information, as requested in the *Notice of Proposed Rule Making* to establish that Kula constitutes a *bona fide* "community", as that term is defined for purposes of Section 307(b) of the Communications Act, as amended by the Telecommunications Act of 1996,