

not to be a significant regulatory action under Executive Order 12866.

### Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), the rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.106, Specially Adapted Housing for Disabled Veterans; and 64.118, Veterans Housing—Direct Loans for Certain Disabled Veterans.

### Lists of Subjects in 38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: September 15, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

■ For the reasons set out in the preamble, VA amends 38 CFR part 36 (Subpart C) as set forth below.

### PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

**Authority:** 38 U.S.C. 501 and as otherwise noted.

#### Subpart C—Assistance to Certain Disabled Veterans in Acquiring Specially Adapted Housing

■ 2. Add § 36.4412 to read as follows:

#### § 36.4412 Annual adjustments to the aggregate amount of assistance available.

(a) On October 1 of each year, the Secretary will increase the aggregate amounts of assistance available for grants authorized under 38 U.S.C. 2101(a) and 2101(b). Such increase will be equal to the percentage by which the Turner Building Cost Index for the most recent calendar year exceeds that of the next preceding calendar year.

(b) Notwithstanding paragraph (a) of this section, if the Turner Building Cost

Index for the most recent full calendar year is equal to or less than the next preceding calendar year, the percentage increase will be zero.

(c) No later than September 30 of each year, the Secretary will publish in the **Federal Register** the aggregate amounts of assistance available for the upcoming fiscal year.

(Authority: 38 U.S.C. 2102(e))

[FR Doc. E9-23022 Filed 9-23-09; 8:45 am]

**BILLING CODE 8320-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2009-0293; FRL-8961-6]

### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Lead (Pb) Maintenance Plan Update for Marion County

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a request submitted by the Indiana Department of Environmental Management (IDEM) on April 1, 2009, to revise the Indiana State Implementation Plan (SIP) for lead (Pb). The State has submitted an update to its Pb maintenance plan for Marion County for continued attainment of the 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) National Ambient Air Quality Standard (NAAQS) promulgated in 1978. This update satisfies section 175A of the Clean Air Act (CAA), and is in accordance with EPA's May 10, 2000, approval of the State's Redesignation Request and Maintenance Plan for the Marion County Pb nonattainment areas. Additionally, this Pb maintenance plan satisfies the requirements for maintenance plans contained in the September 4, 1992, EPA memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment."

**DATES:** This direct final will be effective November 23, 2009, unless EPA receives adverse comments by October 26, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0293, by one of the following methods:

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

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

3. *Fax:* (312) 692-2551.

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

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2009-0293. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886-0258 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**  
Andy Chang, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0258, [chang.andy@epa.gov](mailto:chang.andy@epa.gov).

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

- I. Background
  - A. Why did the State make this submittal?
  - B. Did the State hold public hearings for the maintenance plan update?
- II. What criteria is EPA using to evaluate this submittal?
- III. What is EPA’s analysis of this submittal?
  - A. Requirements of Section 175A of the CAA
  - B. Consistency With the September 4, 1992, Memorandum
    1. Emissions Inventory
    2. Maintenance Demonstration
    3. Monitoring Network
    4. Verification of Continued Attainment
    5. Contingency Plan
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

## I. Background

### A. Why did the State make this submittal?

On November 6, 1991, EPA designated a portion of Franklin Township in Marion County as a primary nonattainment area for Pb under section 107 of the CAA (56 FR 56694). On the same date, EPA designated a portion of Wayne Township in Marion County as an unclassifiable area for Pb.

On March 2, 2000, IDEM submitted a Redesignation Request and Maintenance Plan for the Marion County nonattainment areas. IDEM’s submittal included ambient monitoring data showing that the areas met the 1978 Pb NAAQS for the prior three years, air quality improvements that could be attributed to reductions in Pb emissions

which are permanent and enforceable, and a maintenance plan that assured continued attainment of the standard. As a result, on May 10, 2000 (65 FR 114223), EPA approved the request.

The State’s updated maintenance plan satisfies the requirements of section 175A(b) of the CAA, which mandates that the State shall submit an additional revision to the maintenance plan eight years after redesignation of any area as an attainment area. It is also consistent with the requirements for maintenance plan elements outlined in a September 4, 1992, memorandum from the Director of EPA’s Air Quality Management Division, entitled “Procedures for Processing Requests to Redesignate Areas to Attainment.” The State submitted the updated maintenance plan to EPA on April 1, 2009, and supplemented its submittal with two technical addenda on June 5, 2009, and July 6, 2009.

### B. Did the State hold public hearings for the maintenance plan update?

Public notice was given on February 20, 2009, in the *Indianapolis Star News*.

## II. What criteria is EPA using to evaluate this submittal?

In addition to the general requirements in section 175A of the CAA, guidance for maintenance plans and maintenance plan updates are provided in the September 4, 1992, memorandum, which states that the following five components need to be addressed: Attainment Inventory, Maintenance Demonstration, Monitoring Network, Verification of Continued Attainment, and Contingency Plan.

## III. What is EPA’s analysis of this submittal?

### A. Requirements of Section 175A of the CAA

Section 175A contains four subsections pertaining to maintenance plans. Section 175A(a) establishes requirements for initial SIP redesignation request maintenance plans, as addressed in EPA’s May 10, 2000 approval of the Indiana plan. Section 175A(b) requires states to submit an update to the maintenance plan eight years following the original redesignation to attainment, and IDEM has satisfied the requirements of this element with its current submittal. It also requires that within this update, the State must outline methods for maintaining the pertinent NAAQS for ten years after the expiration of the ten-year period referred to in subsection (a), *i.e.*, Indiana’s maintenance plan update

must outline methods for maintaining the 1.5 µg/m<sup>3</sup> Pb NAAQS through 2020. In a June 5, 2009, technical addendum, Indiana provided Pb emissions projections that satisfy this requirement. Section 175A(c) does not apply to this rulemaking, given that EPA has previously redesignated Marion County to attainment for Pb. The contingency provisions requirements outlined in section 175A(d) will be addressed in detail in Section B5, below.

### B. Consistency With the September 4, 1992, Memorandum

As discussed above, EPA’s interpretation of section 175A of the CAA is contained in the September 4, 1992, memorandum. Indiana has addressed the five major elements of that policy, as follows:

#### 1. Emissions Inventory

The State is required to develop an attainment emissions inventory to identify a level of emissions in the area which is protective of the 1.5 µg/m<sup>3</sup> Pb NAAQS. In its submittal, IDEM provided a comprehensive emissions inventory of major and minor permitted sources in Marion County for the base year and attainment year (1996) compared to the most recent emissions inventory (2007). The State demonstrated that annual Pb emissions in Marion County from permitted sources have decreased by over 1.78 tons (61.58%) from 1996 to 2007. This decrease can be attributed to a number of factors, including Federally mandated programs, the closings of permitted stationary sources, and source-specific operating provisions. Additionally, the State demonstrated that the actual 2007 emissions were 2.032 tons less than the projected 2010 emissions. The State has satisfied the attainment inventory requirement for maintenance plan updates.

#### 2. Maintenance Demonstration

The State may generally demonstrate maintenance of the 1.5 µg/m<sup>3</sup> Pb NAAQS by either showing that future Pb emissions will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the Pb NAAQS. The demonstration should be for a period of ten years following the redesignation, *i.e.*, until 2020 for the maintenance plan update.

In its submittal, IDEM showed, using ambient monitoring data collected between 1999 and 2008, that the County is meeting the 1.5 µg/m<sup>3</sup> Pb NAAQS, which is based on a quarterly average. The highest quarterly average in this

time period was less than 0.20  $\mu\text{g}/\text{m}^3$ , which equates to 13% of the 1.5  $\mu\text{g}/\text{m}^3$  Pb NAAQS. Pb emissions are expected to decrease from 2.897 tons per year in 1996 to 0.63 tons per year in 2020. As 1996 was the base year for attainment with an emissions inventory of 2.897 tons, any projected emissions below that level will also lead to attainment. Therefore, the State has satisfied the maintenance demonstration requirement for maintenance plan updates.

### 3. Monitoring Network

Once an area has been redesignated, the State should continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. In its submittal, IDEM specifically identifies two monitoring sites located in Marion County, which are Air Quality Systems (AQS) I.D. 18-097-0063 (7601 Rockville Road) and AQS I.D. 18-097-0076 (230 South Girls School Road). The monitors have been in operation since January 1, 1984, and May 6, 1991, respectively. IDEM commits to continue monitoring Pb in these areas to ensure that Pb concentrations remain well below the 1.5  $\mu\text{g}/\text{m}^3$  Pb NAAQS. Furthermore, IDEM commits to consult with EPA should changes to the existing monitoring network be needed. The State has satisfied the monitoring network requirements for the maintenance plan update.

### 4. Verification of Continued Attainment

The State should ensure that it has the legal authority to implement and enforce all measures necessary to attain and to maintain the NAAQS. One such measure for maintaining the NAAQS is the acquisition of ambient and source emission data to demonstrate attainment and maintenance.

IDEM has included quality-assured data in its submittal in accordance with 40 CFR 58.10 (Subpart B—Monitoring Network) and the Indiana Quality Assurance Manual. The data were found to be valid, and was recorded in the AQS database, which is available to the public. IDEM commits to continue its quality assurance and validation processes in accordance with 40 CFR Part 58 and the Indiana Quality Assurance Manual. Furthermore, the State commits to enter all data in the AQS database in a timely basis in accordance with Federal guidelines. The State has satisfied the verification of continued attainment requirements for maintenance plan updates.

### 5. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of an area. The September 4, 1992, memorandum further requires that the contingency provisions identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State.

In its April 1, 2009, submittal, Indiana commits to the same contingency measures that EPA previously approved on May 10, 2000 (65 FR 11423). In a July 6, 2009, technical memorandum, the State added one new trigger and associated timeline for contingency measures: if the State determines that Pb levels and emissions are increasing and action is necessary to reverse that trend, IDEM will implement any necessary contingency measures within 18 months of the monitoring data being submitted to EPA's AQS database. The State has satisfied the contingency plan requirements pursuant to section 175A(d) of the CAA as well as those of the September 4, 1992, memorandum.

### IV. What action is EPA taking?

We are approving this update to the Pb maintenance plan for Marion County. The State of Indiana has complied with requirements of section 175A of the CAA, as interpreted by the guidance provided in the September 4, 1992, memorandum. Indiana has shown through its submittal that Pb emissions in Marion County have remained well under the level of the 1.5  $\mu\text{g}/\text{m}^3$  NAAQS, and that they are expected to remain so until at least 2020.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective November 23, 2009 without further notice unless we receive relevant adverse written comments by October 23, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period; therefore, any parties interested in

commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 23, 2009.

### V. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
  - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
  - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
  - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
  - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
  - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is

not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 23, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: September 14, 2009.

**Walter W. Kovalick Jr.,**

*Acting Regional Administrator, Region 5.*

■ 40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart P—Indiana

■ 2. Section 52.797 is amended by adding paragraph (e) to read as follows:

##### § 52.797 Control strategy: Lead.

\* \* \* \* \*

(e) On April 1, 2009, Indiana submitted an updated maintenance plan under section 175A of the CAA for Marion County for the continued attainment of the 1.5 µg/m<sup>3</sup> lead standard.

[FR Doc. E9-22922 Filed 9-23-09; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R05-OAR-2009-0512; FRL-8961-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Interim Final Determination That Lake and Porter Counties Are Exempt From NO<sub>x</sub> RACT Requirements for Purposes of Staying Sanctions

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

**ACTION:** Interim final rule.

**SUMMARY:** In the Proposed Rules section of this **Federal Register**, EPA is proposing approval of Indiana's request to exempt Lake and Porter Counties from the Nitrogen Oxides (NO<sub>x</sub>) Reasonably Available Control Technology (RACT) requirement under section 182(f) of the Clean Air Act (CAA) for the 1997 eight-hour ozone standard based on a proposed determination that the area has attained that standard. Based on the proposed approval, EPA is making an interim final determination by this action that, with respect to the NO<sub>x</sub> RACT requirement, the State, contingent upon continued monitored attainment of the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS), has corrected the deficiency which was the basis for a sanctions clock. This action will defer the application of the new source offset sanction, which would be imposed on September 24, 2009, and defer the application of the highway funding sanction, which would otherwise apply six months after imposition of the offset sanction. Although this action is effective upon publication, EPA will take comment on this interim final determination as well as on EPA's proposed determination of attainment

and proposed approval of the State's requested NO<sub>x</sub> RACT waiver. EPA will publish a new final action addressing sanctions at the time it takes further action regarding the proposed determination of attainment and proposed approval of the NO<sub>x</sub> waiver, taking into consideration any comments on EPA's proposed action and this interim final action.

**DATES:** This interim final determination is effective on September 24, 2009. However, comments will be accepted until October 26, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0512, by one of the following methods:

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

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

- *Fax*: (312) 692-2551.

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

- *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2009-0512. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment