

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]

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**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

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 and 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 U.S. 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 Edward Doty at (312) 886-6057 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6057.

**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
- II. EPA Action
- III. Statutory and Executive Order Reviews

### I. Background

On March 17, 2008, EPA sent a letter to Thomas W. Easterly, Commissioner, Indiana Department of Environmental Management (IDEM) stating that, under section 179 of the CAA, EPA had determined that Indiana failed to submit a State Implementation Plan (SIP) revision for NO<sub>x</sub> RACT in Lake and Porter Counties. EPA formalized this finding by taking final action in the **Federal Register** on March 24, 2008 (73 FR 15416), and that action started the sanctions process outlined in section

179 of the CAA and 40 CFR 50.31. The two-to-one (2:1) new source offset sanction was set to take effect on September 24, 2009, in Lake and Porter Counties as the result of the March 24, 2008, finding of failure to submit.

On June 5, 2009, IDEM submitted an ozone redesignation request for Lake and Porter Counties, which included a petition pursuant to section 182(f) of the CAA to exempt Lake and Porter Counties from the NO<sub>x</sub> RACT requirement. The petition is based on ambient air monitoring data for 2006–2008 which shows that the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) ozone nonattainment area is meeting the 1997 eight-hour ozone NAAQS. In the Proposed Rules section of today’s **Federal Register**, EPA has proposed a determination that the area has attained the 1997 eight-hour ozone NAAQS and has proposed approval of the NO<sub>x</sub> RACT waiver request contingent on continued monitored attainment of the 1997 eight-hour ozone NAAQS in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area and at the Chiwaukee Prairie monitoring site in Kenosha County, Wisconsin (a peak ozone downwind impact site for emissions originating in the Chicago-Gary-Lake County, IL-IN area).

### II. EPA Action

Based on the proposed approval of the NO<sub>x</sub> RACT waiver request set forth in today’s **Federal Register**, EPA believes that it is more likely than not that Indiana (and Lake and Porter Counties) has met the NO<sub>x</sub> RACT requirement under section 182(f) of the CAA. Therefore, EPA is making this interim final determination finding that the State, contingent on continued monitored attainment of the ozone NAAQS, has corrected the deficiency of failing to submit NO<sub>x</sub> RACT rules.

Because EPA has preliminarily determined that the State has corrected the deficiency identified in EPA’s promulgated finding of failure to submit required NO<sub>x</sub> RACT rules for Lake and Porter Counties, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA’s determination after the effective date, and EPA will consider any comments received in determining whether to reverse this action.

EPA believes that notice-and-comment rulemaking before the

effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State’s NO<sub>x</sub> RACT waiver petition, and, through its proposed action, is indicating that it is more likely than not that the State has corrected the SIP deficiency that started the sanctions clock for Lake and Porter Counties. It is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the rulemaking approving the State’s submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to defer the imposition of sanctions while EPA completes its rulemaking process on the approvability of the State’s submittal. Furthermore, because this rule relieves a restriction, EPA is providing that it will be effective upon publication. (5 U.S.C. 553(d)(1).)

### III. Statutory and Executive Order Reviews

This action stays and defers Federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and, therefore, is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons thereof, and established an effective date of September 24, 2009. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, 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 rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: September 16, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E9-23044 Filed 9-23-09; 8:45 am]

**BILLING CODE 6560-50-P**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 09-2057; MB Docket No. 09-142; RM-11552]

#### Television Broadcasting Services; Boston, MA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by WHDH-TV, the licensee of station WHDH-TV, channel 7, Boston, Massachusetts, requesting the substitution of its pre-transition DTV channel 42 for its post-transition DTV channel 7 at Boston.

**DATES:** This rule is effective September 24, 2009.

**FOR FURTHER INFORMATION CONTACT:** Joyce L. Bernstein, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09-142, adopted September 15, 2009, and released September 16, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the

Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Massachusetts is amended by adding channel 42 and removing channel 7 at Boston.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E9-23061 Filed 9-23-09; 8:45 am]

**BILLING CODE 6712-01-P**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 09-2058; MB Docket No. 08-110; RM-11453]

#### Television Broadcasting Services; Flagstaff, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by Multimedia Holdings Corporation ("MHC"), the permittee of station