

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State approval/submittal date	EPA approval date	Comments
Memorandum of Agreement between Texas Council on Environmental Quality and the North Central Texas Council of Governments Providing Emissions Offsets to Dallas Fort Worth International Airport.	Dallas-Fort Worth .....	01/14/04	10/29/04	

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BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52**

[R05-OAR-2004-IN-0002; FRL-7826-8]

**Approval and Promulgation of Plan Revisions; Indiana**

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving Indiana's February 10, 2004, and April 12, 2004, submittal of a revision to its existing emission reporting rule to be consistent with the emission statement program requirements for stationary sources in the Clean Air Act (CAA). On April 12, 2004, Indiana submitted its final rule as published in the Indiana Register. Indiana held a public hearing on the submittal on December 3, 2003. The rationale for the approval and other information are provided in this rulemaking action.

**DATES:** This "direct final" rule is effective on December 28, 2004 unless EPA receives adverse written comments by November 29, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit comments, identified by Regional Material in EDocket ID No. R05-OAR-2004-IN-0002 by one of the following methods: Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments. Agency Web site: <http://docket.epa.gov/rmepub/index.jsp>

material in Edocket(RME), EPA's electronic public docket and connect system, is EPA's preferred method for receiving comments. Once in the system, select "quick search" then key in the appropriate RME Docket identification number. Follow the on-

line instructions for submitting comments.

E-mail: [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov).

Fax: (312) 886-5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR-18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.

**Instructions:** Direct your comments to Regional Materials in Edocket (RME) ID No. R05-OAR-2004-IN-0002. EPA's policy is that all comments received will be included in the public docket without change, 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 Regional Material in Edocket (RME), [regulations.gov](http://regulations.gov), or e-mail. The EPA RME website and the federal [regulations.gov](http://regulations.gov) website are "anonymous access" systems, 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 RME or [regulations.gov](http://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. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

**Docket:** All documents in the electronic docket are listed in the Regional Materials in EDocket (RME) index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886-6031 before visiting the Region 5 office.) This Facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031. [hatten.charles@epa.gov](mailto:hatten.charles@epa.gov)

**SUPPLEMENTARY INFORMATION:**

- I. General Information
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## I. General Information

### A. Does This Action Apply to Me?

This rulemaking applies to stationary point sources located in areas designated nonattainment under subpart 2 of part D of Title I of the CAA. This requirement applies to all ozone nonattainment areas, regardless of classification (Marginal, Moderate, etc.). This rule requires sources to submit emission statement data to the Indiana Department of Environmental Management (IDEM) on an annual basis. This emission data collected can help the IDEM develop a complete and accurate emission inventory for air quality planning purposes at the State, and also meet emission reporting requirements to EPA.

### B. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an electronic public rulemaking file available for inspection on EDOCKET and a hard copy file which is available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under Regional Material in EdoCKET (RME) ID No. R05-OAR-2004-IN-0002. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

### B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 in Regional Material in EDOCKET "R05-OAR-2004-IN-0002" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

## II. What Is Required by the Clean Air Act and How Does It Apply to Indiana?

### Emission Statements (Annual Reporting)

Section 182(a)(3)(B) of the CAA requires stationary sources of air pollution in ozone nonattainment areas to prepare and submit emission statement data each year, to their States, showing actual emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>). This requirement applies to all ozone nonattainment areas, regardless of classification (Marginal, Moderate, etc.). In ozone nonattainment areas, facilities which emit VOC or NO<sub>x</sub> in amounts of 25 tons per year or more [plant-wide basis] into the ambient air must submit an emission statement to the State. Further, States with ozone nonattainment areas are required to submit a revision to their

SIPs by November 15, 1992, establishing this Emission Statement Program.

Facilities are required to submit their first emission statement within three years of promulgation of the CAA of 1990, and annually thereafter. If either VOC or NO<sub>x</sub> is emitted at or above the minimum reporting level that is established in its state Emission Statement Program, the other pollutant (NO<sub>x</sub> or VOC) from the same facility should be included in the emission statement, even if the pollutant is emitted at levels below the minimum reporting level.

### Indiana's Current SIP

On June 10, 1994, EPA approved rule 2-6 of Title 326 of the Indiana Administrative Code (IAC), as meeting the "Emission Statement" program requirements of section 182(a)(3)(B) of the CAA. See 59 FR 29956. Under the existing federally approved SIP for Indiana, the emission statement program requirements apply to stationary sources in ozone nonattainment areas. In Indiana, this consists of Clark, Elkhart, Floyd, Lake, Marion, Porter, St. Joseph, and Vanderburgh counties.

## III. What Change Is Indiana Requesting?

Indiana is requesting that EPA approve the revisions to the existing emission reporting rule, 326 IAC 2-6, to be consistent with the current emission statement program requirements for stationary sources in section 182(a)(3)(B) of the CAA. Since the original approval of its plan, IDEM has made a number of changes to its rule, discussed more in detail below, and has resubmitted the new version of its rule for approval.

### How Did IDEM Change Its Rule?

The major change deals with the applicability of the rule. In ozone nonattainment areas, facilities which emit VOC or NO<sub>x</sub> in amounts of 25 tons per year or more into the ambient air must submit an emission statement to IDEM. Once an area meets the national ambient air quality standard and is redesignated to attainment, sources in the area are no longer subject to the emission statement requirements of the CAA. In the State of Indiana, a number of counties subject to the emission statement program have been redesignated as attainment with the one-hour ozone standards, and the State has revised regulation 326 IAC 2-6 to discontinue the requirement in these redesignated areas. Emission statements requirements originally applied to sources in Clark, Elkhart, Floyd, Lake,

Marion, Porter, St. Joseph, and Vanderburgh counties. Due to redesignations, however, they now only need apply to sources in Lake and Porter counties.

In addition, the State has required reporting of emissions from major stationary sources in the State to meet other requirements of the CAA. The EPA has long required States to provide for the submission of emission data collected for major stationary sources to EPA under 40 CFR 51. Thus, while some parts of the State sources are required to report their emissions data under section 182 of the CAA to the State, EPA is also approving this rule as it applies to all major stationary sources state-wide.

Administratively, in this SIP revision there were other changes to the emission reporting requirements of 326 IAC 2–6 not considered to be significant. The key definitions, compliance schedule, and specific reporting requirements that Indiana included in its Emission Statement Program are consistent with EPA guidance.

EPA's detailed review of Indiana's Emission Statement Program is contained in a technical support document available from EPA Region 5 according to previously described procedures in "Section I. B." of this notice.

#### IV. Why Is the Request Approvable?

EPA has concluded that the Indiana program contains the necessary applicability, definitions, compliance schedule and specific reporting provisions to meet the requirements for an Emission Statement Program. Therefore, EPA is approving the revisions to the emission reporting requirements of 326 IAC 2–6, to satisfy the Federal requirement of section 182(a)(3)(B) of the CAA for an Emission Statement Program as part of the SIP for Indiana.

#### V. Statutory and Executive Order Review

##### *Executive Order 12866: Regulatory Planning and Review*

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.

##### *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

For this reason, this action is also not subject to Executive Order 13211,

"Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

##### *Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule 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.*).

##### *Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

##### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also 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 (65 FR 67249, November 9, 2000).

##### *Executive Order 13132: Federalism*

This action also 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 action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

##### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also 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.

##### *National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

##### *Paperwork Reduction Act*

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.*).

##### *Congressional Review Act*

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 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 action is not a "major rule" as defined by 5 U.S.C. section 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 December 28, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by

reference, Intergovernmental relations, Volatile organic compounds, Ozone.

Dated: September 24, 2004.

**Norman Niedergang,**

*Acting Regional Administrator, Region 5.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 52—[AMENDED]**

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

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

#### **Subpart P—Indiana**

■ 2. Section 52.770 is amended by adding paragraph (c)(166) to read as follows:

#### **§ 52.770 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(166) On February 10, 2004, Indiana submitted final adopted revisions to its emission reporting rule as a requested revision to the Indiana State Implementation Plan. On April 12, 2004, Indiana submitted its final rule as published in the Indiana Register.

(i) Incorporation by reference. Indiana Administrative Code Title 326: Air Pollution Control Board, Article 2: Permit Review Rules, Rule 6: Emission Reporting. Adopted by the Air Pollution Control Board on December 3, 2003, filed with the Secretary of State on February 26, 2004 and effective on March 27, 2004. Adopted at 27 Indiana Register 2210–2215.

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### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Parts 52 and 81**

[R07–OAR–2004–MO–0003; FRL–7831–1]

#### **Approval and Promulgation of Implementation Plans; State of Missouri; Designation of Areas for Air Quality Planning Purposes, Iron County; Arcadia and Liberty Townships**

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

**ACTION:** Final rule and notice of administrative change.

**SUMMARY:** EPA is announcing the redesignation of the lead nonattainment area in Iron County, Missouri, to attainment of the National Ambient Air Quality Standard (NAAQS) for lead. We are approving the maintenance plan for

this area including a settlement agreement which was submitted with the redesignation request. This final rule addresses a comment submitted in response to EPA's direct final rule published previously for this action on June 30, 2004. The effect of the state implementation plan (SIP) approval is to ensure Federal enforceability of the state air program plan to provide for maintenance of the lead NAAQS. The effect of the redesignation is to recognize that the area has attained the lead NAAQS and to focus future air quality planning efforts on maintenance of the lead NAAQS in the area. EPA is also providing notice of an administrative change to a table in the Code of Federal Regulations which identifies the Missouri SIP.

**DATES:** This final rule will be effective November 29, 2004.

**ADDRESSES:** Copies of documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or by going to the Regional Material in EDocket index at <http://docket.epa.gov/rmepub/> and doing a quick search on "R07–OAR–2004–MO–0003."

**FOR FURTHER INFORMATION CONTACT:** Joshua Tapp at (913) 551–7606, or by e-mail at [tapp.joshua@epa.gov](mailto:tapp.joshua@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On June 30, 2004, EPA simultaneously published a proposed rule (69 FR 39382) and a direct final rule (69 FR 39337) to approve the redesignation of the nonattainment area in Iron County, Missouri, bounded by Arcadia and Liberty Townships, to attainment for lead and to take final action to approve the submission for the Doe Run Primary Smelting Facility near Glover, Missouri, as an amendment to the SIP.

The basis for our approval of this redesignation and maintenance plan is described in more detail in the direct final rule (69 FR 39337). The Missouri Department of Natural Resources (MDNR) met the criteria under section 107(d)(3)(E) of the Clean Air Act Amendments (CAAA) for redesignation of the nonattainment area in Iron County to attainment for the lead standard as described in detail in the direct final rule.

The area was designated as nonattainment for lead in January 1992. The nonattainment area includes the portion of Iron County, Missouri, bounded by Arcadia and Liberty

Townships. The major source of lead emissions in this nonattainment area is the Doe Run Primary Smelting Facility, near Glover, Missouri.

Primary smelting of lead began at this location in 1968. Currently the facility has ceased production and has been operating on a care and maintenance schedule since December 1, 2003. The state submittal provided ambient air monitor data showing that this area has consistently shown compliance with the NAAQS for lead since the first quarter of 1997, well before the recent shutdown of the facility. Ambient monitoring for lead has shown compliance with the NAAQS for 28 consecutive calendar quarters. The NAAQS for lead is 1.5 micrograms per cubic meter (1.5 µg/m<sup>3</sup>), maximum quarterly average. A quarterly average is considered a violation of the standard if it is at least 1.6 µg/m<sup>3</sup> when rounded to tenths from the hundredths place when monitored.

EPA guidance provides that, for lead, attainment should be demonstrated by modeling as well as monitoring. Air dispersion modeling using the ISCST Version 3 dated February 4, 2002, was used to evaluate the concentration of lead resulting from operations at the Doe Run Primary Lead Smelting Facility. The maximum concentration predicted by the model was a value of 1.252 µg/m<sup>3</sup> which is in compliance with the lead standard. This maximum modeled value was obtained by incorporating the plume depletion, dry removal option in the ISCST model.

The facility is currently in a non-production mode, but attainment had been shown for several years prior to this change in operation in December 2003. EPA has determined that the improvement in air quality is due to permanent and enforceable SIP controls. EPA has also determined that the area has a fully approved SIP for the area meeting the requirements of section 110 and Part D of Title I of the CAA. The maintenance plan submitted as part of the SIP revision provides for maintenance of the relevant NAAQS in the area for at least ten years after the approval of redesignation to attainment and provides for adequate contingency measures to address any future violations. The basis for these determinations is described in detail in the direct final rule (69 FR 39337, 39339).

EPA received an adverse comment during the 30-day comment period and therefore withdrew the direct final rule on August 24, 2004 (69 FR 51956).