

purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislative and Congressional Affairs, Social Security Administration.

For the reasons set out in the preamble, we are amending appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a) and (h)–(j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising items 1, 10, and 14 of the introductory text before Part A to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

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1. Low Birth Weight and Failure to Thrive (100.00): August 12, 2022.

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10. Endocrine Disorders (9.00 and 109.00): August 12, 2022.

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14. Cancer (Malignant Neoplastic Diseases) (13.00 and 113.00): August 12, 2022.

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[FR Doc. 2020–10506 Filed 5–20–20; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2017–0462; FRL–10008–35–Region 5]

Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Indianapolis Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In accordance with the Clean Air Act (CAA), the Environmental

Protection Agency (EPA) is redesignating the Indianapolis, Indiana area from nonattainment to attainment for the 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). The area is comprised of Perry, Wayne, and Center Townships in Marion County, Indiana. EPA is also approving, as a revision to the Indiana State Implementation Plan (SIP), Indiana's maintenance plan for this area. EPA proposed to approve Indiana's redesignation request and maintenance plan on April 30, 2019 and received two public comment submissions.

DATES: This final rule is effective on May 21, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0462. All documents in the docket are listed on the www.regulations.gov website. 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. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or 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 and facility closures due to COVID 19. We recommend that you telephone Mary Portanova at (312) 353–5954 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, portanova.mary@epa.gov.

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

- I. What is being addressed by this document?
- II. What comments did we receive on the proposed action and what are EPA's responses to those comments?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is being addressed by this document?

On April 30, 2019 (84 FR 18195), EPA proposed to redesignate the

Indianapolis SO₂ nonattainment area to attainment of the 2010 SO₂ NAAQS. The Indianapolis SO₂ nonattainment area is comprised of Perry, Wayne, and Center Townships in Marion County, Indiana. An explanation of the CAA requirements for redesignation, a detailed analysis of Indiana's July 10, 2017 redesignation request, and a discussion of EPA's reasons for proposing to redesignate were provided in the notice of proposed rulemaking (NPRM) and will not be restated here.

II. What comments did we receive on the proposed action and what are EPA's responses to those comments?

The public comment period for EPA's proposed redesignation closed on May 30, 2019. EPA received two public comment submissions, which are addressed below.

Comment: The Indiana Department of Environmental Management (IDEM) commented that it supported the proposed redesignation. IDEM also commented that EPA's proposed redesignation omitted Center Township from its description of the Indianapolis SO₂ nonattainment area and requested that this error be corrected.

EPA Response: EPA affirms its intent to approve the redesignation of the entire Indianapolis SO₂ nonattainment area, which includes Center Township, Perry Township, and Wayne Township in Marion County. Two facilities addressed in EPA's April 30, 2019 proposal are located in Center Township: Belmont Advanced Wastewater Treatment Plant (formerly Indianapolis Sludge Incinerator), and the Citizen's Thermal-Perry K steam generation plant. The April 30, 2019 proposal discussed the permanent and enforceable SO₂ emission reductions which have occurred at these two facilities. The enforceable requirements for these facilities, adopted into the SIP at 326 IAC 7–4–2.1, include new controls at the Belmont Advanced Wastewater Treatment Plant and an enforceable change from coal to natural gas as fuel for Citizen's Thermal-Perry K. EPA finds that the redesignation requirements for Center Township have been met, and therefore, EPA intends to include Center Township in the final redesignation action for the Indianapolis SO₂ nonattainment area.

Comment: A second commenter stated that Indiana is subject to a SIP call issued under CAA section 110(k)(5), and that EPA may not redesignate the Indianapolis area because “the state must have an approved SIP under section 110(k).” The commenter contends that the Indiana SIP provision covered by the SIP call is generally

applicable throughout the State, and unlawfully allows exemptions from emission limits during periods of malfunction. The commenter states that this provision creates a risk that Indiana sources could cause violations of the NAAQS. Accordingly, the commenter contends that EPA “cannot” approve any redesignation requests for Indiana “until the state addresses the substantial inadequacy identified by EPA in the SIP call.”

EPA Response: As an initial matter, although the commenter does not specifically identify which statutory provision pertaining to redesignation is at issue, we assume for purposes of our response that the commenter was referring to CAA section 107(d)(3)(E)(ii), which requires that “the Administrator has fully approved the applicable implementation plan for the area under section [110(k) of the CAA].” We disagree that a state being subject to an outstanding SIP call under section 110(k)(5) automatically means that CAA section 107(d)(3)(E)(ii) cannot be met, and that, as commenter avers, any nonattainment area in the state is subsequently barred from being redesignated to attainment.

As background, we believe the commenter is referring to the startup, shutdown, and malfunction (SSM) SIP Call, an action EPA took on June 12, 2015 regarding how various SIP provisions treat excess emissions during periods of SSM. See 80 FR 33840. With respect to Indiana, EPA determined in the SSM SIP call that 326 IAC 1–6–4(a)—a provision EPA first approved into the SIP in 1984—was “substantially inadequate to meet CAA requirements.” *Id.* at 33966. IDEM has submitted a SIP amendment to revise 326 IAC 1–6–4(a) and EPA is still evaluating that submittal. See Letter from Keith Bauges, Assistant Commissioner, IDEM Office of Air Quality, to Robert A. Kaplan, Acting Regional Administrator, EPA Region 5 (January 31, 2017) (EPA–R05–OAR–2017–0462).

For the reasons given below, we do not believe the SIP call for SIP rule 326 IAC 1–6–4(a) precludes the Indianapolis nonattainment area’s redesignation to attainment for the 2010 SO₂ NAAQS. First, a SIP call under section 110(k)(5) initiates a schedule for revising the *presently approved SIP*; it does not undo the SIP’s status as “fully approved.” Rather, it conveys the Administrator’s finding that the approved SIP has substantial inadequacies that must be revised and establishes a separate pathway for those revisions to occur. Until EPA approves a SIP revision, the *presently approved SIP* continues to apply and continues to

be “fully approved.” As stated in EPA’s longstanding interpretation of the redesignation provision, “An area cannot be redesignated if a required element of its plan is the subject of a *disapproval*; a *finding of failure to submit* or to *implement the SIP*; or *partial, conditional, or limited approval*. However, this does not mean that earlier issues with regard to the SIP will be reopened. Regions should not reconsider those things that have already been approved. . . .” Memorandum from John Calcagni, “Procedures for Processing Requests to Redesignate Areas to Attainment,” (September 4, 1992) (“Calcagni Memo”) at 3. See also *Gen. Motors Corp. v. United States*, 496 U.S. 530, 540 (1990) (“the approved SIP is the applicable implementation plan during the time a SIP revision proposal is pending”) (citing numerous cases); *Southwestern Pa. Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998) (affirming EPA’s interpretation in the Calcagni Memo). Notably absent from the list of CAA section 110 provisions in the Calcagni Memo that would bar EPA from finding that a SIP was fully approved—including disapproval or partial approval under section 110(k)(3), a finding of failure to submit under section 110(c)(1)(A), and conditional approval under section 110(k)(4)—is an action under the SIP call provision in section 110(k)(5). We therefore do not agree with the commenter that being subject to a SIP call bars Indiana from seeking redesignation for every nonattainment area in its state.

Moreover, to the extent that the commenter is asserting that the existence of an SSM provision in Indiana’s SIP could lead to violations, and thereby preclude redesignation, we disagree. The specific SSM provision implicated in the SIP call in 326 IAC 1–6–4(a) addresses malfunctions that result in excess emissions. Under the State’s maintenance plan, the State commits to enforce all measures necessary to maintain the 2010 SO₂ NAAQS, which would include ensuring that malfunctions affecting those measures are remedied. The State also commits to investigate and take action if significant increases in ambient SO₂ levels in a redesignated area occur, so as to ensure continuing maintenance of the NAAQS. Therefore, EPA finds that Indiana’s maintenance plan can address malfunctions which may affect a redesignated area.

The SIP provision at 326 IAC 1–6–4(a) has no bearing on Indianapolis’s ability to attain and maintain the 2010 SO₂ NAAQS. In its air quality modeling showing attainment in Indianapolis, as

cited in the April 30, 2019 proposed redesignation, IDEM identified six major sources of SO₂ as the main contributors to ambient SO₂ concentrations in Indianapolis, and applied emission reductions to them to provide for attainment of the 2010 SO₂ NAAQS. SIP rule 326 IAC 1–6–4(a) *does not apply to those major sources*; it applies only to non-major sources whose potential emissions are so small that their sole permitting requirement is either a registration permit or minor source permit under either 326 IAC 2–5.1 or 326 IAC 2–6.1, respectively. By contrast, the six major sources of SO₂ are subject to the permanent, enforceable SO₂ emission limitations codified at 326 IAC 7–4–2.1, a rule that has been fully approved into the Indiana SIP.¹ They also have major source operating permits issued by IDEM pursuant to rules approved by EPA under title V of the CAA and 40 CFR part 70, and those permits incorporate the SIP limits. The permanent and enforceable SO₂ emission reductions at those six sources—which Indiana demonstrated will provide for attainment in Indianapolis—are not affected in any way by 326 IAC 1–6–4(a). EPA’s finding here is consistent with prior redesignation actions. See, e.g., 79 FR at 55649, the September 17, 2014 final redesignation of the Phoenix-Mesa area (redesignating an area, notwithstanding the existence of SSM provisions, where “all of the specific control measures relied upon by the state for numeric credit for attainment and maintenance planning purposes, with very minor exceptions, apply to” sources not impacted by those SSM provisions).

EPA’s finding is also consistent with another finding in the September 17, 2014 final redesignation of the Phoenix-Mesa area, which concludes that the emissions of the sources in that action which were impacted by SSM provisions constituted such a small percentage of the inventory that they were unlikely to lead to violations. For the Indianapolis area, the total 2015 attainment year SO₂ inventory is 15,312 tons per year (tpy). The six major sources contributed a total of 14,967 tpy. The emission inventory included an additional 176 tpy in point source emissions that was not attributed to the six major sources. That 176 tpy of emissions represents only 1.1 percent of the total attainment inventory. Indiana’s attainment year inventory did not

¹ As discussed below, the commenter appears to have been mistaken about the status of 326 IAC 7–4–2.1. That provision was approved into Indiana’s SIP on March 22, 2019 (84 FR 10692), prior to EPA’s April 30, 2019 proposal to redesignate the Indianapolis nonattainment area.

specify the individual sources whose emissions made up the 176 tpy, but if that entire total was assumed to be emitted by a set of small SO₂ sources subject to 326 IAC 1–6–4(a), then this is the maximum portion of the attainment emission inventory which could potentially be put at risk by the SIP call provision. As noted in the April 30, 2019 proposed redesignation, Indiana’s modeled attainment demonstration gave a final ambient air quality result, including background, of 191.1 micrograms per cubic meter, which is equivalent to 73 parts per billion (ppb), or 97 percent of the standard. Even if all the sources subject to 326 IAC 1–6–4(a) released excess SO₂ emissions during malfunctions, we expect that the Indianapolis area would still meet the 2010 SO₂ NAAQS. The current monitored design value for the Indianapolis area (covering the three-year period 2016–2018) is 8 ppb, which is 11 percent of the 2010 SO₂ NAAQS, so the risk of malfunctions related to the SSM SIP call rule causing a monitored violation is very low.

EPA concludes that because the SIP call rule only applies to sources emitting a very small percentage of the total SO₂ emissions in the Indianapolis area, the risk suggested by the commenter that the SIP call provision could lead to violations of the 2010 SO₂ NAAQS is very low, and therefore the existence of that SIP provision does not undermine or preclude the approval of Indiana’s redesignation request for the Indianapolis area.

Comment: EPA has not approved all aspects of Indiana’s infrastructure SIP under section 110 of the CAA, even though an area must meet “all applicable requirements for the area under section 110 and Part D” before being redesignated. EPA thus “cannot” approve any redesignation request for Indiana until the state fully addresses all infrastructure requirements under CAA section 110, including interstate transport and visibility. The commenter specifically cited “the interstate transport prongs 1 and 2 of 110(a)(2)(D)(i)(I), prong 3 for visibility, and 110(a)(2)(J) for visibility.”

EPA Response: EPA does not agree that we are precluded from approving any redesignation for any nonattainment area in the state of Indiana until the state has met all CAA section 110 infrastructure requirements. CAA section 107(d)(3)(E)(v) states that EPA may not redesignate a nonattainment area to attainment unless “the State containing such area has met all requirements applicable to the area under section [110] of this title and part D of this subchapter.” The statute does

not specify how EPA is to determine which requirements in section 110 and Part D are “applicable” for purposes of evaluating a state’s redesignation request, and courts have agreed that this provision is ambiguous. *See Wall v. EPA*, 265 F.3d 426, 439 (6th Cir. 2001) (“Although “applicable” could be interpreted as limiting only the geographical area to which the statutory requirements must apply, it can also be interpreted as limiting the number of actual requirements within CAA section 110 and Part D that apply to a given area.”); *see also Sierra Club v. EPA*, 375 F.3d 537, 541 (7th Cir. 2004) (finding the term “applicable” in CAA section 107(d)(3)(E)(ii) to be “a protean word that takes color from context; it lacks a single, enduring meaning”).

Commenter’s interpretation of that provision would suggest that EPA is precluded from redesignating *any* area in the state, for *any* pollutant, until *every* section 110 infrastructure requirement has been met by the state and approved into the SIP by EPA. We think this interpretation of CAA section 107(d)(3)(E)(v) is unreasonable. States are required to submit section 110 infrastructure SIPs within 3 years of the promulgation of a new NAAQS (see CAA section 110(a)(1)), and taking commenter’s interpretation at face value, states would be precluded from seeking redesignation of an area for one NAAQS if it had outstanding infrastructure obligations under an entirely different NAAQS. We think this reading of the CAA is patently unreasonable and not what Congress intended.

EPA’s longstanding interpretation of “applicable” in CAA section 107(d)(3)(E)(v) focuses the Agency’s review for purposes of redesignation to those requirements in section 110 and Part D that are linked to an area’s nonattainment status for the specific NAAQS at issue and that will no longer need to be complied with upon redesignation. Requirements unlinked to an area’s nonattainment status for a particular NAAQS will continue to apply after the area is redesignated to attainment, and an area failing to comply with those obligations would remain subject to all related CAA consequences, including the possibility of sanctions. EPA has applied this interpretation to conformity and oxygenated fuels requirements and section 184 ozone transport requirements. In *Wall v. EPA*, the 6th Circuit upheld this interpretation, affirming EPA’s determination that a state’s failure to submit a SIP addressing transportation conformity requirements was *not* a basis upon which to deny the

state’s request for redesignation for a particular area in the state, because that requirement was not “applicable” under CAA section 107(d)(3)(E)(v). 265 F.3d at 440.

With respect to the specific infrastructure elements cited by the commenter—the interstate transport requirements in CAA sections 110(a)(2)(D)(i)(I) and the requirements in CAA sections 110(a)(2)(D)(i)(II) and 110(a)(2)(J) to address visibility—these elements are not “applicable” requirements for purposes of CAA section 107(d)(3)(E)(v). As noted above, these requirements are not linked to the area’s designation as nonattainment for SO₂ and apply regardless of whether EPA redesignates the Indianapolis area. In any case, EPA approved the visibility element of CAA section 110(a)(2)(D)(i)(II), known as “Prong 4,”² for Indiana’s SO₂ infrastructure SIP on September 6, 2019 (84 FR 46889), so the comment that this requirement is missing from the infrastructure SIP is no longer accurate. In addition, on February 27, 2015 (80 FR 10644), EPA proposed to find that the requirements in CAA section 110(a)(2)(J) to address visibility were not germane to the State’s infrastructure SIP for the 2010 SO₂ NAAQS, and thus EPA took no action on that element in its final action on August 14, 2015 (80 FR 48733). To the extent that commenter is alleging that there are additional unapproved infrastructure SIP requirements under CAA section 110 besides the CAA section 110(a)(2)(D)(i)(I) transport prongs which EPA has not taken action upon, that Indiana would need to comply with before it may be redesignated, Indiana has met all of its other infrastructure requirements under CAA section 110. *See* 80 FR 48733 (August 14, 2015) (approving all other infrastructure SIP elements).

For all these reasons, EPA concludes that Indiana has met all CAA section 110 SIP elements applicable for purposes of redesignation.

Comment: EPA lists several Federal rulemakings as establishing allowable limits for six modeled sources. These include the Cross-State Air Pollution Rule (CSAPR), Mercury and Air Toxics Standards (MATS), and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Industrial Commercial and Institutional Boilers and Process Heaters. The commenter states that while EPA’s proposal explained that these limits have been

² Commenter cited “prong 3 for visibility.” In CAA section 110(a)(2)(D)(i)(II), Prong 3 is “interstate transport-prevention of significant deterioration,” and Prong 4 is “interstate transport-protect visibility.”

adopted at 326 IAC 7–4–2.1, the commenter believes that the Federal rulemakings cannot have themselves established appropriate enforceable limits for addressing hourly SO₂, because they were not written to do so. The commenter states that if EPA expects any co-benefits from these Federal programs, then it must first quantify those reductions, and then require Indiana to include these measures in an approved SIP revision.

EPA Response: The April 30, 2019 proposed redesignation included a statement which inadvertently oversimplified the role of CSAPR, MATS, and the NESHAP in Indiana's achieving SO₂ reductions in Indianapolis. In its July 17, 2017 submittal, Indiana stated that some emission limits for the Indianapolis facilities were established in response to those Federal rulemakings, which several facilities had already worked to comply with. However, Indiana did not rely on the existence of Federal rulemakings alone, but rather codified the facilities' SO₂ emission limits in 326 IAC 7–4–2.1. The limits in 326 IAC 7–4–2.1 were fully approved into Indiana's SIP on March 22, 2019 (84 FR 10692) and are permanent, enforceable, hourly emission limits. Indiana's modeled demonstration of attainment, detailed in EPA's NPRM on Indiana's nonattainment SO₂ SIP for Indianapolis, August 15, 2018 (83 FR 40487), showed that the emission limits in 326 IAC 7–4–2.1 are adequate to attain and maintain the 2010 SO₂ NAAQS in the Indianapolis nonattainment area.

Comment: The commenter stated that, based on information in an EPA website, 326 IAC 7–4–2.1 was not SIP-approved at the time of EPA's proposed redesignation. The commenter asserted that EPA could not rely on emission reductions from the rule to determine attainment of the SO₂ NAAQS.

EPA Response: Indiana revised its SO₂ rule for Marion County, codified at 326 IAC 7–4–2.1, and submitted it as a SIP revision on October 2, 2015. EPA approved these rules on March 22, 2019 (84 FR 10692). The rule was fully approved into the SIP at the time of EPA's April 30, 2019 proposed redesignation of the Indianapolis SO₂ nonattainment area. EPA's website has been updated accordingly.

Comment: EPA must clarify that Indiana is required to submit a second ten-year maintenance plan by the eighth year of the first ten-year maintenance period. Since Indiana's maintenance plan is effective to December 31, 2030, Indiana should be required to submit a second ten-year maintenance plan by December 31, 2028, and not eight years

after EPA's approval of this maintenance plan (which, if EPA publishes the final rule in 2019 would be 2027).

EPA Response: CAA section 175A(b) requires the State to submit an additional revision of the maintenance plan eight years after redesignation of the area. Indiana has committed in its July 10, 2017 submittal to fulfill this CAA requirement.

III. What action is EPA taking?

EPA is redesignating the Indianapolis SO₂ nonattainment area to attainment of the 2010 SO₂ NAAQS. This area consists of Center, Perry, and Wayne Townships in Marion County, Indiana. EPA is also approving Indiana's SO₂ maintenance plan for the Indianapolis area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule relieves the State of planning requirements for this SO₂ nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of the geographical area and do not impose any additional regulatory requirements on sources beyond those

required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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 these reasons, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of the NAAQS in tribal lands.

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 20, 2020. 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. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 24, 2020.

Kurt Thiede,
Regional Administrator.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770, the table in paragraph (e) is amended by adding an entry for “Indianapolis 2010 Sulfur Dioxide (SO₂) maintenance plan” following the entry “Indianapolis 2010 Sulfur Dioxide (SO₂) Attainment Plan” to read as follows:

§ 52.770 Identification of plan.

* * * * *
(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* * * * *			
Indianapolis 2010 Sulfur Dioxide (SO ₂) maintenance plan.	7/10/2017 5/21/2020, [insert Federal Register citation].		
* * * * *			

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.315 is amended by revising the entry “Indianapolis, IN” in the table entitled “Indiana—2010 Sulfur

Dioxide NAAQS [Primary]” to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—2010 SULFUR DIOXIDE NAAQS [Primary]

Designated area ^{1 3}	Designation	
	Date ²	Type
* * * * *		
Indianapolis, IN Marion County (part). Wayne Township, Center Township, Perry Township.	May 21, 2020	Attainment.
* * * * *		

¹ Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

² This date is April 9, 2018, unless otherwise noted.

³ Porter County will be designated by December 31, 2020.

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[FR Doc. 2020-09246 Filed 5-20-20; 8:45 am]

BILLING CODE 6560-50-P

SURFACE TRANSPORTATION BOARD**49 CFR Part 1250****[Docket No. EP 724 (Sub-No. 5)]****Petition for Rulemaking; Railroad Performance Data Reporting****AGENCY:** Surface Transportation Board.**ACTION:** Final rule.

SUMMARY: The Surface Transportation Board (STB or Board) is adopting a final rule amending its railroad performance data reporting regulations to include chemical and plastics traffic as a distinct reporting category for the “cars-held” metric.

DATES: This rule is effective on July 20, 2020.

FOR FURTHER INFORMATION CONTACT:

Amy Ziehm at (202) 245-0391.

Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The Board’s railroad performance data reporting regulations at 49 CFR part 1250, which became effective on March 21, 2017, require all Class I carriers and the Chicago Transportation Coordination Office (CTCO), through its Class I members, to report certain service performance metrics on a weekly, semiannual, and occasional basis.

On December 6, 2018, the American Chemistry Council (ACC) filed a petition for rulemaking¹ to amend those data reporting regulations to: (1) Include chemical and plastics (Standard Transportation Commodity Code (STCC) 28, except fertilizer)² traffic as a distinct reporting category for the cars-held metric at 49 CFR 1250.2(a)(6); (2) amend 49 CFR 1250.3(a) to clarify that yard dwell must be reported for each yard subject to average daily car volume reporting;³ and (3) extend the same

¹ On December 12, 2018, ACC filed an errata to its petition.

² STCC 28 is designated for “chemicals or allied products” and referred to generally by ACC as “chemical and plastics.” ACC excluded the fertilizer reporting category of STCC 28 from its request because fertilizer is already included in the Board’s data reporting regulations under section 1250.2(a)(6). (See Pet. 6.)

³ ACC initially sought to extend the weekly average terminal dwell time reporting requirement at 49 CFR 1250.2(a)(2) to include all Class I, terminal, and switching carriers at the Chicago gateway. However, in its comments filed on May 6, 2019, ACC withdrew this part of its initial request and instead sought the amendment described here.

types of terminal reporting requirements that are applicable to the Chicago gateway (as clarified by comments filed by ACC on May 6, 2019) to the New Orleans, East St. Louis, and Memphis gateways (together, the Mississippi Gateways). (Pet. 1, 5; ACC Comments 1, 12–13, May 6, 2019.)

On January 28, 2019, the Association of American Railroads (AAR) filed a reply in opposition to ACC’s petition. By decision served on April 5, 2019, the Board opened a rulemaking proceeding and directed ACC and AAR to provide additional information regarding ACC’s proposed amendments to the regulations. Pursuant to that decision, ACC and AAR each filed comments on May 6, 2019, and AAR filed reply comments on May 20, 2019.

After considering the petition for rulemaking and the comments received, the Board granted ACC’s petition in part and proposed amending its regulations to include chemical and plastics (STCC 28, except fertilizer) traffic as a distinct reporting category for the cars-held metric at § 1250.2(a)(6). NPRM, EP 724 (Sub-No. 5) (STB served Sept. 30, 2019). The Board denied ACC’s petition with regard to its other requested amendments.

In response to the NPRM, the Board received comments from ACC, AAR, the American Fuel & Petrochemical Manufacturers (AFPM), BNSF Railway Company (BNSF), and Canadian National Railway Company (CN). After consideration of the comments received, the Board will adopt as the final rule the NPRM proposal, with one modification. Specifically, the final rule modifies the proposed rule to clarify that the term “chemical or allied products” encompasses all STCC 28 commodities not otherwise reported under ethanol or fertilizer.

Background

In 2014, the Board initiated a rulemaking proceeding to establish new regulations requiring all Class I railroads and the CTCO, through its Class I members, to report certain service performance metrics on a weekly basis. See *U.S. Rail Serv. Issues—Performance Data Reporting (2014 NPRM)*, EP 724 (Sub-No. 4) (STB served Dec. 30, 2014).⁴ The primary purpose of that rulemaking proceeding was to develop a set of performance data that would allow the agency to monitor current service conditions in the industry and improve the Board’s ability to identify and help resolve future regional or national

⁴ For background on the service problems that led to the Board initiating the 2014 proceeding, see *2014 NPRM*, EP 724 (Sub-No. 4), slip op. at 2–3.

service disruptions more quickly, should they occur. *Id.* at 3. The Board adopted its final rule on November 30, 2016, *U.S. Rail Service Issues—Performance Data Reporting*, EP 724 (Sub-No. 4) (STB served Nov. 30, 2016), and the rule became effective on March 21, 2017.⁵

Proposed Rule

As noted above, ACC petitioned the Board to institute a rulemaking proceeding to, among other things, revise § 1250.2(a)(6) to include chemical and plastics (STCC 28, except fertilizer) traffic as a distinct reporting category for the cars-held metric. ACC stated that STCC 28 traffic accounts for the highest number of manifest carloads, compared to all other two-digit STCC groups, and plays a key role in the national economy. (Pet. 1.) According to ACC, STCC 28 traffic is especially vulnerable to rail service problems because it cannot readily shift to alternative rail carriers or to other modes. (*Id.* at 7.)

ACC asserted that separately reporting cars-held data for STCC 28 traffic would enable shippers to identify regional issues affecting that traffic. (ACC Comments 6, May 6, 2019.) ACC argued that the cars-held metric is an important indicator of rail system fluidity and that, for STCC 28 traffic, a fluid rail system is especially important in the Gulf Coast, where a substantial portion of this traffic is concentrated. (*Id.*) ACC also asserted that the current data reporting masks the severity of service events having a disproportionate impact on STCC 28 traffic. (*Id.* at 6–7.) ACC argued that additional reporting would enhance shippers’ ability to internally manage service issues and might lead to substantial cost savings. (*Id.* at 9.)

AAR opposed adopting additional commodity-specific reporting, arguing that a narrow focus on subsets of rail traffic could remove important context from the full picture of a globalized supply chain, that commodity-specific reporting is particularly susceptible to such distortion, and that granular reports are therefore of limited benefit. (AAR Reply 2–4, Jan. 28, 2019.) According to AAR, additional reporting of STCC 28 traffic as a line item in the “cars-held for more than 48 hours” report would require each Class I carrier to alter the coding necessary to pull the data prescribed by the Board. (AAR Comments 9–10, May 6, 2019.) AAR objected to “[c]ontinuous changes to the

⁵ By decision served on March 13, 2017, the Board issued a technical correction to the final rule to add one fertilizer STCC to the 14 fertilizer STCCs initially included. *U.S. Rail Serv. Issues—Performance Data Reporting*, EP 724 (Sub-No. 4) (STB served Mar. 13, 2017).