

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 81**

[IN116-1a, FRL-6522-1]

Approval and Promulgation of Implementation Plans; and Designation of Areas for Air Quality Planning Purposes; Indiana**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: The EPA is approving a request from Indiana for redesignation of the carbon monoxide (CO) nonattainment areas in Lake and Marion Counties, Indiana to attainment of the CO national ambient air quality standards (NAAQS). The EPA is also approving the plans for maintaining the CO standard in the portions of these counties currently designated as not attaining the CO NAAQS. On December 21, 1999, the State of Indiana submitted a redesignation request and revision to the Indiana State Implementation Plan (SIP) that included maintenance plans for both Lake and Marion Counties.

DATES: This rule is effective on March 20, 2000, unless EPA receives adverse written comments by February 18, 2000. 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: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the material submitted by the State in support of these requests are available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Patricia Morris at (312) 353-8656 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR-18J), EPA, Region 5, Chicago, Illinois 60604, (312) 353-8656.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used we mean EPA.

Table of Contents

- I. When were these areas originally designated nonattainment for Carbon Monoxide?

- II. What are the geographical boundaries of the CO nonattainment areas?
- III. What are the criteria for redesignation?
- IV. Has the State met the criteria for redesignation?
- A. What data shows attainment of the CO NAAQS in Lake and Marion Counties in Indiana?
- B. How does the State meet the applicable requirements of section 110 and part D?
- i. Section 110 Requirements
- ii. Part D Requirements
- a. Subpart 1 of Part D—Section 172(c) Provisions
- b. Subpart 1 of Part D—Section 176 Conformity Provisions
- c. Subpart 3 Requirements
- C. Fully Approved SIP Under Section 110(k) of the Act?
- D. Improvement in Air Quality Due to Permanent and Enforceable Measures?
- E. Fully Approved Maintenance Plan Under Section 175A?
- i. What is the limited maintenance plan option?
- ii. How has the State met the limited maintenance plan requirements?
- a. Emissions Inventory
- b. Projection of Emissions Over the Maintenance Period
- c. Verification of Continued Attainment
- d. Contingency Plan
- e. Conformity Determinations
- iii. Commitment to Submit Subsequent Maintenance Plan Revisions
- V. Rulemaking Actions.
- VI. Administrative Requirements.
- A. Executive Order 12866
- B. Executive Order 12875
- C. Executive Order 13045
- D. Executive Order 13084
- E. Regulatory Flexibility Act
- F. Unfunded Mandates
- G. Submission to Congress and the Comptroller General
- H. National Technology Transfer and Advancement Act
- I. Petitions for Judicial Review

Introduction

Under the Clean Air Act (Act), EPA may redesignate areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3) of the Act. This includes full approval of a maintenance plan for the area. EPA may approve a maintenance plan which meets the requirements of section 175A. On December 21, 1999, the State of Indiana submitted a redesignation request and section 175A maintenance plan for the Marion County (Indianapolis) and the Lake County (East Chicago) CO nonattainment areas. When approved, the section 175A maintenance plan will become a federally enforceable part of the SIP for these areas.

The following is a detailed analysis of the Marion County and Lake County, Indiana, Redesignation Request and section 175A Maintenance Plan SIP submittal.

I. When were these areas originally designated nonattainment for Carbon Monoxide?

EPA originally designated both the Marion County and the Lake County areas as CO nonattainment areas under section 107 of the Act on March 3, 1978 (43 FR 8962). In 1990, Congress amended the Act (1990 Act) and added a provision which authorizes EPA to classify nonattainment areas according to the degree of severity of the nonattainment problem. In 1991, EPA designated and classified all areas. Both counties were designated as nonattainment and not classified for CO (40 CFR 81.315). This is because at the time of the designation and classification in 1991, air quality monitoring data recorded in the area did not show violations of the CO NAAQS. However, the State had not completed a redesignation request showing that it had complied with all of the requirements of section 107 of the Act. As a result, EPA designated the area as nonattainment, but did not establish a nonattainment classification. The preamble to the Federal Register document for the 1991 designation contains more detail on this action (56 FR 56694).

Since the EPA's 1991 designation, monitors in both the Marion County and Lake County areas have not recorded a violation of the CO NAAQS. As a result, the area is eligible for redesignation to attainment consistent with the 1990 Act. On December 21, 1999, Indiana submitted a SIP revision request to the EPA which contained the redesignation request and maintenance plan, to ensure continued attainment of the CO standard for both the Marion County and Lake County areas. The State held public hearings on the redesignation request and maintenance plans on November 8 and 10, 1999.

II. What are the geographic boundaries of the CO nonattainment areas?

The CO nonattainment areas are much smaller than Lake County and Marion County, respectively. The Lake County nonattainment area is in the City of East Chicago (area bounded by Columbus Drive on the north, the Indiana Harbor Canal on the west, 148th St. if extended, on the south and Euclid Avenue on the east). The Marion County nonattainment area is in the central downtown area of Indianapolis (area bound by 11th St. on the north, Capitol on the west, Georgia

St. on the south and Delaware on the east).

III. What are the criteria for redesignation?

The 1990 Act revised section 107(d)(3)(E), which specifies five requirements that an area must meet to be redesignated from nonattainment to attainment. These requirements are:

1. The area has attained the applicable NAAQS;
2. The area has met all relevant requirements under section 110 and part D of the Act;
3. The area has a fully approved SIP under section 110(k) of the Act;
4. The air quality improvement is permanent and enforceable; and,
5. The area has a fully approved maintenance plan pursuant to section 175A of the Act.

IV. Has the State met the criteria for redesignation?

The EPA has reviewed the Indiana redesignation request for the Marion County area and the Lake County area and finds that the request for both of the areas meets the five requirements of section 107(d)(3)(E).

A. What data shows attainment of the CO NAAQS in Lake and Marion Counties in Indiana

There are currently 2 monitoring sites collecting CO data in Lake County, one at East Chicago Avenue and the other in Gary at Broadway and 15th Avenue. The design value for Lake County for the years 1996 and 1997 is 3.8 ppm. Both sites are showing attainment of the 8-hour and the 1-hour CO standard. Additional historic data are included in the State's request showing the historic downward trend and demonstrating that the area has been monitoring attainment since before 1991.

Currently 2 CO monitoring sites are operating in the Indianapolis area, one at Naval Avionics Center and the other at North Illinois Street. The CO design value for the years 1996 and 1997 in Marion County is 3.9 ppm. Both sites are showing attainment of the 8-hour and the 1-hour CO standard. Additional historic data are included in the State request.

The Indiana request is based on an analysis of quality-assured CO air quality data. Ambient air monitoring data for calendar years 1991 through 1998 show no violations of the CO NAAQS in either the Marion County or the Lake County area. The State collected this data in an EPA approved, quality assured, National Air Monitoring System monitoring network.

As a result, the areas meet the first statutory criterion for redesignation to attainment of the CO NAAQS. The State has committed to continue monitoring in these areas in accordance with 40 CFR part 58. As discussed further below, the design values for Lake (3.8 ppm) and Marion (3.9 ppm) Counties meet the test for the limited maintenance plan option since the design values are well below the 7.8 ppm level.

B. How does the State meet the applicable requirements of section 110 and part D?

EPA fully approved Indiana's CO rules on October 28, 1975, (41 FR 35677) as meeting the requirements of section 110(a)(2). Congress amended the Act in 1977 (the 1977 Act) to add part D. The 1990 Act modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for classification of nonattainment areas. Therefore, in addition to complying with requirements of the 1977 Act, for purposes of redesignation, the Indiana SIP must satisfy all applicable requirements of section 110(a)(2) and part D added by the 1990 amendments. The amendments and Part D also added emission reduction requirements for carbon monoxide areas which were classified as moderate and serious. Areas such as Lake and Marion County, which were not classified, did not have additional emission reduction requirements. EPA has reviewed the SIP to ensure that it contains all measures that were required under the amended 1990 Act prior to and at the time Indiana submitted its redesignation request for the Lake County and Marion County areas.

i. Section 110 Requirements

The Lake County and Marion County areas SIP meets the requirements of amended section 110(a)(2). The requirements for enforceable emission limits, control measures, and enforcement did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. The amendments added requirements for determining SIP completeness. The State has met these requirements. The EPA has analyzed the Indiana SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

ii. Part D Requirements

Before EPA may redesignate the Lake County and Marion County areas to attainment, the SIP must have fulfilled the applicable requirements of part D.

Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as not classifiable. EPA designated both the Lake County and Marion County areas as "not classified" CO nonattainment areas (56 FR 56694, November 6, 1991), codified at 40 CFR 81.323. Therefore, to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, (but not the requirements of subpart 3 of part D).

a. Subpart 1 of Part D—Section 172(c) Provisions

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years from the date of the nonattainment designation. As discussed below, Indiana has satisfied the section 172(c) requirements.

"Reasonable Further Progress" (RFP), required by section 110, is annual incremental reductions that a nonattainment area must make toward attainment of the NAAQS. This requirement only has relevance during the time it takes an area to attain the NAAQS. Because the Lake County and Marion County areas have attained the NAAQS, the SIP has already achieved the necessary RFP toward that goal.

In addition, because the Lake County and Marion County areas have attained the NAAQS and are no longer subject to an RFP requirement, the section 172(c)(9) contingency measures are not applicable, unless EPA does not approve the redesignation request and maintenance plan. However, section 175A contingency measures still apply. The State has submitted an acceptable section 175A contingency plan.

Similarly, once EPA redesignates an area to attainment, nonattainment new source review (NSR) requirements are not applicable. The area then becomes subject instead to prevention of significant deterioration (PSD) requirements (45 FR 29790). The State has an approved NSR program (59 FR 51108, October 7, 1994). In addition, EPA has delegated the federal PSD program at 40 CFR 52.21 to the State of Indiana. Therefore, the State's demonstration is acceptable.

The General Preamble (57 FR 13560, April 16, 1992) explains that section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonably

Available Control Measures (RACM) as expeditiously as practicable. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the area's attainment demonstration. Because the area has reached attainment, no additional measures are needed to provide for attainment.

b. Subpart 1 of Part D—Section 176 Conformity Provisions

Section 176(c) of the Act requires States to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other federally supported or funded projects ("general conformity"). Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the Act required the EPA to promulgate. EPA approved Indiana's general conformity rule on December 23, 1997 (62 FR 67000). Indiana does not yet have an approved transportation conformity rule. Indiana has revised its transportation conformity rule several times and must undertake further revision to comply with a March 2, 1999, court decision (see 62 FR 43780). Indiana has committed to submit State transportation conformity regulations consistent with the Federal conformity regulations when revised to meet the court decision.

The EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of federally approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet approved,

the EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. Consequently, EPA may approve the CO redesignation request for the Lake and Marion County areas notwithstanding the lack of a fully approved transportation conformity SIP.

Included in the December 21, 1999, submittal is a commitment by the State to satisfy the applicable requirements of the final transportation conformity rules. This is acceptable since the Federal transportation conformity rule applies to maintenance areas.

For purposes of transportation conformity, the areas have been considered "hot spot" areas. The nonattainment areas are too small for either a budget or "build/no-build" analysis to be effective in determining conformity. The State has determined that CO hot spot analysis is required for any regionally significant transportation projects to be completed in these areas. The limited maintenance plan option (discussed in detail below) supports this by concluding that "an emissions budget may be treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the CO NAAQS would result." The hot spot analysis will continue to be required for any regionally significant transportation projects to be completed in these areas.

c. Subpart 3 Requirements

As noted in the General Preamble, the subpart 3 requirements do not apply to "not classified" CO nonattainment areas (57 FR 13535). EPA classified the Lake County and Marion County areas as "not classified" CO nonattainment areas on November 6, 1991 (56 FR 56694) codified at 40 CFR 81.323. Therefore, to be redesignated to attainment, the State does not have to meet the requirements of subpart 3 of part D.

C. Fully Approved SIP Under Section 110(k) of the Act

As noted above, because the areas are "not classified" nonattainment areas, the 1990 Act did not establish additional requirements under subpart 3. Prior to the 1990 Amendments, EPA had fully approved the State's CO SIP. Since the areas are not subject to the subpart 3 requirements, no additional requirements exist under section 110(k) which the State must address prior to redesignation.

D. Improvement in Air Quality Due to Permanent and Enforceable Measures

The State must demonstrate that the actual enforceable emission reductions

are responsible for the improvement in air quality.

The State provided a detailed discussion of the emission reductions of CO between 1977 and 1996 which it maintains were responsible for the improvement in air quality. Reductions occurred at stationary sources and mobile sources. The State made all emission estimates using EPA approved emissions inventory techniques. Consistent with EPA emission inventory guidance, the emission inventory represents average winter day *actual emissions* for the Lake and Marion Counties areas.

On-road mobile sources represent the majority of mobile source emissions in the Marion County CO nonattainment area. Reductions in mobile source CO emissions occurred through the Federal Motor Vehicle Control Program (FMVCP) and a number of transportation control measures that were implemented during the late 1970s and 1980s. These measures are still in effect today. In Marion County, 667.1 tons per year of CO were eliminated from the 1977 central business district emissions through transportation control measures (TCMs). After these TCMs were implemented, the area started monitoring attainment of the CO standard.

In Lake County, the steel plants currently contribute over half of the CO emissions in the base year inventory. However, Indiana determined that traffic density and traffic emissions were the primary cause of the CO nonattainment problem. Emissions from mobile sources and other point sources have been reduced through controls such as the FMVCP on motor vehicles and reasonably available control technology (RACT) on stationary sources. Indiana's documentation uses emissions inventory data taken from the Aerometric Information and Retrieval System (AIRS) to demonstrate the reductions in stationary source emissions. In Lake County, emissions from point sources have decreased from 225,379 tons per year in 1985 to 156,221 tons per year in 1996. However, EPA expects some growth in the future. Mobile source emission reductions were made through the FMVCP. A 35% reduction took place during the years 1981 to 1987 from these controls. The Lake County basic vehicle inspection and maintenance (I/M) program has resulted in a 13% reduction in CO emissions in Lake County. An enhanced vehicle I/M program is currently being operated in Lake County which will result in additional reductions. However, Indiana did not quantify the

additional expected reductions from the enhanced vehicle I/M program.

Indiana included actual emissions for point sources from 1985 through 1997. Indiana used actual activity levels, emissions factors based on the EPA Factor Information Retrieval System Version 6.1B, and control technology effectiveness to estimate emissions. All emissions are recorded in the AIRS facility data system.

Although not required under the limited maintenance plan option (discussed in detail below), Indiana projected point source emissions from the base year of 1996 out to the year 2007 by applying the Emissions Growth Analysis System (EGAS) to the 1996 point source inventory.

The State has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions of CO as a result of the federally enforceable FMVCP and local transportation control measures in Marion County and federally enforceable FMVCP, vehicle inspection and maintenance and stationary control measures in Lake County.

E. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems.

Under section 175A(d) contingency provisions must include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area.

In this action, EPA is approving the State of Indiana's maintenance plan for the Lake County and Marion County areas because EPA finds that Indiana's submittal meets the requirements of section 175A. The details of the maintenance plan requirements and how Indiana's submittal meets these requirements are detailed below.

i. What is the limited maintenance plan option?

The EPA issued guidance on October 6, 1995, titled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas." This option is only available to CO nonattainment areas with design values at or below 7.65 ppm (85 percent of exceedance levels of the CO ambient air quality standard). The limited maintenance plan option allows areas that are well below the national ambient air quality standard (design value at or below 7.65 ppm) to submit a less rigorous maintenance plan than was formerly required. The limited maintenance plan must meet certain core requirements. These requirements are:

- a. The State must submit an attainment emissions inventory based on actual "typical winter day" emissions of CO in the monitored attainment years.
- b. The maintenance demonstration does not need to project emissions over the maintenance period. The design value criteria are expected to provide adequate assurance of maintenance over the initial 10-year period.
- c. The State must continue operating an approved air quality monitoring network.
- d. The State must have a contingency plan and specific indicators or triggers for implementation of the contingency plan.
- e. The conformity determination under a limited maintenance plan can consider the emissions budget as essentially not constraining for the length of the initial maintenance plan.

ii. How has the State met the limited maintenance plan requirements?

a. Emissions Inventory. The State has adequately developed an attainment emission inventory for 1996 for both Lake County and Marion County.

TABLE 1. CO MAINTENANCE EMISSION INVENTORY SUMMARY 1996 [tons per typical winter day] for Marion County

Category	1996 tpd
Mobile sources	911
Area sources	140
Foundry	104
Other point sources	4
Total	1159

TABLE 2. CO MAINTENANCE EMISSION INVENTORY SUMMARY 1996

[tons per typical winter day] for Lake County

Category	1996 tpd
Mobile sources	302
Area sources	46
Steel plants	384
Other point sources	19
Total	751

The State has adequately demonstrated continued attainment of the CO NAAQS. The design values for the areas are well below the NAAQS for CO. The State has demonstrated permanent and enforceable reductions from the 1980 time frame when the areas were violating the CO NAAQS.

b. Projection of Emissions Over the Maintenance Period. Although not required for a limited maintenance plan approval, the State projected emissions out to the 2007 time period. The State documentation projects a small increase in emissions for Marion County. However, the projected levels for Marion County will be considerably under the CO levels prior to 1987, when the last exceedance occurred.

c. Verification of Continued Attainment. In the submittal the State commits to continue to operate and maintain the network of ambient CO monitoring stations in accordance with provisions of 40 CFR part 58 to demonstrate ongoing compliance with the CO NAAQS.

The submittal presents the tracking plan for the maintenance period which consists of continued CO monitoring. The State will continue to monitor CO levels throughout the Lake County and Marion County areas to demonstrate ongoing compliance with the CO NAAQS.

d. Contingency Plan. The contingency plan contains two levels of triggers: Indiana will implement a Level I response if there is a monitored air quality violation of the CO NAAQS, as defined in 40 CFR 50.8. The trigger date will be the date that the State certifies to EPA that the air quality data are quality assured, which will be no later than 30 days after monitoring an ambient air quality violation. In this case, Indiana will select measures that could be implemented in a short time so as to be in place as rapidly as possible.

Indiana will implement a Level II response in the event that monitored ambient CO values exceed 90 percent of the level of any ambient air quality standard at any site in the affected area. A Level II response consists of undertaking a study to determine whether the noted trends are likely to

continue; and, if so, implementing the control measures necessary to reverse the trend.

The level of CO emissions in the Lake County and Marion County areas will largely determine the ability to stay in compliance with the CO NAAQS in the future. As required by section 175A of the Act, Indiana has provided contingency measures with a schedule for implementation if a future CO air quality problem occurs. Contingency measures in the plan include one or more transportation control measures such as trip reduction programs, transit improvements and traffic flow improvements. In addition, Indiana will examine the point source inventory for sources with increased emissions and new sources. Indiana will implement contingency measures with full public participation. For a Level I response, Indiana commits to implementation within 12 months after it becomes aware that a violation occurred.

e. **Conformity Determinations.** Conformity determinations will be made using a "hot-spot" analysis to assure that any new transportation projects in the current CO areas do not cause or contribute to CO nonattainment. Mobile source emissions budgets have not been delineated for Lake or Marion Counties. The limited maintenance plan option allows the State to consider the emissions budget as essentially not constraining for the length of the initial maintenance plan.

iii. Commitment to Submit Subsequent Maintenance Plan Revisions

The State has committed to submit a new maintenance plan within eight years of the redesignation of the Lake County and Marion County areas, as required by section 175(A)(b). This subsequent maintenance plan must constitute a SIP revision and provide for the maintenance of the CO NAAQS for a period of 10 years after the expiration of the initial 10 year maintenance period.

V. Rulemaking Action

EPA is approving, the Lake County and Marion County redesignation request for CO because the State has complied with the requirements of section 107(d)(3)(E) of the Act. In addition, EPA is approving the Lake County and Marion County CO maintenance plans as a SIP revision meeting the requirements of section 175A.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this

Federal Register publication, EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective March 20, 2000 without further notice unless EPA receives relevant adverse written comment by February 18, 2000. Should the Agency receive such comments, it will publish a withdrawal informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 20, 2000.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987),) on federalism still applies. This rule will not have a substantial direct

effect on 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 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal

governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the

private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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 rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

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 March 20, 2000. 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

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

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

Authority for parts 52 and 81: 42 U.S.C. 7401 *et seq.*

Dated: January 3, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations and part 81, chapter I, subchapter C are 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 52.785 is amended by adding paragraph (b) to read as follows:

§ 52.785 Control strategy: Carbon monoxide.

* * * * *

(b) On December 21, 1999, the Indiana Department of Environmental Management submitted carbon monoxide maintenance plans for those portions of Lake and Marion Counties which they requested the Environmental Protection Agency redesignate to attainment of the carbon monoxide national ambient air quality standard.

* * * * *

PART 81—[AMENDED]

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

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

Subpart C—Section 107 Attainment Status Designations

2. The table in § 81.315 entitled "Indiana Carbon Monoxide" is amended by revising the entry for the "East Chicago Area" and the "Indianapolis Area" to read as follows:

§ 81.315 Indiana

INDIANA-CARBON MONOXIDE

Designated Areas	Designation		Classification	
	Date ¹	Type	Date ¹	Type
East Chicago Area: Lake County (part) Part of City of East Chicago (area bounded by Columbus Drive on the north, the Indi- ana Harbor Canal on the west, 148th St. if extended, on the south, and Euclid Ave, on the east..	February 18, 2000	Attainment.		
Indianapolis Area: Marion County (part) Part of City of Indianapolis (area bounded by 11th St, on the north, Capital on the west, Georgia St. on the south, and Delaware on the east)..	February 18, 2000	Attainment.		
Lake County (part): The remainder of East Chicago and Lake County.	Unclassifiable/Attainment.		
Marion County (part) The remainder of Indianapolis and Marion County.	Unclassifiable/Attainment.		
*	*	*	*	*

¹ This date is November 15, 1990, unless otherwise noted.

[FR Doc. 00-726 Filed 1-18-00; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL-6516-7]

State of Alabama; Underground Injection Control (UIC) Program Revision; Approval of Alabama's Class II UIC Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA announces a final rule regarding approval of Alabama's Class II Underground Injection Control (UIC) Program Revision to regulate as "underground injection" hydraulic fracturing of coal beds associated with methane gas production. This rule finalizes the Agency's decision to approve the revision to Alabama's Class II UIC program administered by the State Oil and Gas Board of Alabama (the Board). This action determines that the State has an effective program regulating hydraulic fracturing associated with methane gas production as underground injection pursuant to an EPA approved underground injection control program. This action also allows EPA to conclude all withdrawal proceedings initiated by

EPA concerning Alabama's Class II UIC program. The Administrator approved the revision to Alabama's Class II UIC program administered by the Board to regulate hydraulic fracturing of coal beds as underground injection on December 22, 1999.

DATES: Pursuant to the "good cause" provision of 5 U.S.C. 553(d)(3), this final rule is effective January 19, 2000.

The incorporation by reference of certain publications listed in this regulation was approved by the Director of the **Federal Register** as of January 19, 2000.

ADDRESSES: Copies of the public comments received, EPA responses, and all other supporting documents regarding this action are available for review and copying between 8:30 a.m. and 4:00 p.m. Monday through Friday at the Environmental Protection Agency, Region 4, Water Management Division, Ground Water/Drinking Water Branch, Ground Water & UIC Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Room 15-T53 Atlanta, GA 30303-8960, PH: (404) 562-9474.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cole, at (404) 562-9474 or at the address above.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background Information
- A. Introduction
- B. Withdrawal Activities

- C. Alabama Class II UIC Program Revision
 - II. Environmental Impact of Hydraulic Fracturing of Coal Beds
 - III. Hydraulic Fracturing of Coal Beds and the UIC Regulatory Structure
 - A. Safe Drinking Water Act
 - B. Well Classification and Regulation
 - C. Aquifer Exemptions
 - IV. Approval of Program Revision
 - A. Approval under SDWA Section 1422 versus Section 1425
 - B. SDWA Section 1425 Approval Justification
 - C. Response to Comments on Revision Package
 - V. Regulatory Impact
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Executive Order 13045: Children's Health Protection
 - C. Paperwork Reduction Act
 - D. Regulatory Flexibility Act
 - E. Executive Order 13132: Federalism
 - F. Unfunded Mandates Reform Act
 - G. National Technology Transfer and Advancement Act
 - H. Executive Order 13084: Consultation and Coordination with Indian tribal Governments
 - I. Submission to Congress and the Comptroller General Pursuant to the Congressional Review Act