

2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104-113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These amendments simply rename the title and move subparts to fit more appropriately in later subparts. There are no substantive changes to the regulation.

#### *K. 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

Congress and to the Comptroller General of the United States. The EPA will submit a report containing these amendments 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 amendments 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). This direct final rule will be effective on July 28, 2011.

#### **List of Subjects in 40 CFR Part 49**

Environmental protection, Air pollution, Indians—lands, Indians—tribal government.

Dated: April 22, 2011.

**Lisa P. Jackson,**  
*Administrator.*

For the reasons stated in the preamble, Title 40, Chapter I, Part 49 of the Code of Federal Regulations is amended as follows:

#### **PART 49—[AMENDED]**

■ 1. The authority citation for Part 49 continues to read as follows:

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

#### **PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT**

- 2. Revise the part heading for part 49 as set forth above. §§ 49.22–49.24 [Redesignated]
- 3. Redesignate § 49.22 in subpart A as § 49.5511 in subpart L.
- 4. Redesignate § 49.23 in subpart A as § 49.5512 in subpart L.
- 5. Redesignate § 49.24 in subpart A as § 49.5513 in subpart L.
- 6. Add and reserve new §§ 49.22–49.24 in subpart A.

[FR Doc. 2011-10321 Filed 4-28-11; 8:45 am]

**BILLING CODE 6560-50-P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

**[EPA-R05-OAR-2009-0729; FRL-9299-7]**

#### **Approval and Promulgation of Air Quality Implementation Plans; Indiana; Removal of Vehicle Inspection and Maintenance Programs for Clark and Floyd Counties**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a State Implementation Plan (SIP) revision submitted by the State of Indiana to allow the State to discontinue the vehicle inspection and maintenance (I/M) program in Clark and Floyd Counties, IN, the Indiana portion of the Louisville (IN-KY) 1997 8-hour ozone area. The revision specifically provides that I/M program regulations be removed from the active control measures portion of the SIP. The regulations will remain in the contingency measures portion of the Clark and Floyd Counties ozone maintenance plans. EPA is approving Indiana's request because the State has demonstrated that discontinuing the I/M program in Clark and Floyd Counties will not interfere with the attainment and maintenance of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) or with the attainment and maintenance of other air quality standards and requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on May 31, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2009-0729. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Francisco J. Acevedo at (312) 886-6061 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Acevedo, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052.

**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 the background for this action?

- II. What is our response to comments received on the notice of proposed rulemaking?  
 III. What action is EPA taking?  
 IV. Statutory and Executive Order Reviews

### I. What is the background for this action?

Clark and Floyd Counties were originally required to implement a “basic” I/M program under section 182(b)(4) of the CAA because they had been designated as part of the Louisville moderate 1-hour ozone nonattainment area. In order to maximize the emissions reductions from the I/M program, IDEM chose to implement an “enhanced” program in those areas and incorporated an on-board diagnostic (OBD) component into the program. EPA fully approved Indiana’s I/M program on March 19, 1996 (61 FR 11142). The enhanced I/M program began operation in 1997, to help meet nonattainment area requirements for the ozone NAAQS effective at the time. The Louisville 1-hour ozone nonattainment area was redesignated to attainment for that standard on October 23, 2001 (66 FR 53665).

Subsequently, Clark and Floyd Counties were designated as a portion of the IN–KY Louisville nonattainment area for the 1997 8-hour ozone NAAQS. On November 15, 2006, IDEM submitted a request to redesignate the Indiana portion of the Louisville nonattainment area to attainment for the 8-hour NAAQS, and for EPA approval of a 14-year maintenance plan for Clark and Floyd Counties. At the same time, IDEM requested EPA approval to terminate the I/M program in these counties. EPA approved the redesignation and maintenance plan for Clark and Floyd Counties on July 19, 2007 (72 FR 39571). The approved maintenance plan shows that control measures in place in this area are sufficient for overall emissions to remain beneath the attainment level of emissions until the end of the maintenance period, even without operation of I/M. In addition, the conformity budget in the maintenance plan reflects mobile source emissions without I/M in future years, and the maintenance plan demonstrates that the applicable standard will continue to be met without I/M. *See* 72 FR 26057, 26064–26065 (May 8, 2007).

In accordance with the CAA and EPA redesignation guidance, states are free to adjust control strategies in the maintenance plan as long as they can demonstrate that the revision will not interfere with attainment or maintenance of the NAAQS, or any other CAA requirements. *See* CAA sections 175A and 110(l). With such a

demonstration of noninterference with attainment or other applicable requirements, control programs may be discontinued and removed from the SIP. However, section 175A(d) of the CAA requires that contingency measures in the maintenance plan include all measures in the SIP for the area before that area was redesignated to attainment. Since the I/M program was approved into the SIP prior to redesignation to attainment for ozone, the I/M program must be included in the contingency portion of the ozone maintenance plan as required by section 175A(d).

The SIP revision submitted by IDEM for Clark and Floyd Counties included a 110(l) demonstration that addressed all applicable requirements and a request that the Indiana I/M program in Clark and Floyd Counties be moved from the active control measures portion of the SIP to the contingency measures portion of the Clark and Floyd Counties 1997 8–Hour Ozone Maintenance Plan.

On January 12, 2011, EPA proposed to approve Indiana’s request to discontinue operation of the I/M program in Clark and Floyd Counties (76 FR 2066). As noted in the proposal, in order to finalize this rulemaking EPA needed to complete rulemaking on a determination of attainment for PM<sub>2.5</sub> for the Louisville area. EPA has subsequently published a final action determining that this area is attaining the PM<sub>2.5</sub> NAAQS, published on March 9, 2011, at 76 FR 12860.

### II. What is our response to comments received on the notice of proposed rulemaking?

The public comment period for EPA’s proposal to approve Indiana’s request closed on February 11, 2011. EPA received two comments. Those comments and EPA’s responses follow:

*Comment:* “The notice of the proposed rule does not state that EPA conducted a modeling analysis to demonstrate that removal of the I/M program will not interfere with maintenance or attainment of the new 1-hour NO<sub>x</sub> [sic] NAAQS. It likely will. Therefore, EPA cannot approve this SIP modification without a quantitative analysis of its impacts on the 1-hour NO<sub>x</sub> [sic] NAAQS.”

*Response:* In its notice of proposed rulemaking, EPA noted that the area is designated attainment for nitrogen dioxide (NO<sub>2</sub>) (addressing air quality for the annual standard) and that EPA has “no reason to believe that discontinuation of the I/M program in Clark and Floyd Counties has caused or will cause the Louisville area to become nonattainment” for NO<sub>2</sub> or other criteria

pollutants. The commenter offered no data or supporting information on whether discontinuation of the I/M program would likely interfere with attainment or maintenance of the 1-hour NO<sub>2</sub> NAAQS. In response to this comment, EPA further examined air quality data as part of an assessment of whether the discontinuation of the I/M program has interfered or might interfere with attainment or maintenance of the 1-hour NO<sub>2</sub> air quality.

No NO<sub>2</sub> air quality monitors are currently located in Clark or Floyd Counties in Indiana. However, as noted above, Clark and Floyd Counties were included in the IN–KY Louisville nonattainment area for the 1997 8-hour ozone NAAQS, and air quality data are collected nearby in Louisville, Kentucky (at site number 21–111–1021). Since Louisville is more urbanized and is also a higher traffic area than Clark and Floyd Counties, these air quality data provide a conservative representation of air quality in Clark and Floyd Counties for NO<sub>2</sub>. Furthermore, the impact of mobile sources is declining as newer cleaner vehicles replace older dirtier vehicles. Accordingly, the impact of discontinuing the I/M program in Clark and Floyd Counties is expected to decline in the future as well. For the most recent 3-year period with certified, quality assured data (2007 to 2009), the design value (i.e., the NO<sub>2</sub> concentration computed for comparison to the 1-hour standard) for this site was 53 parts per billion, well below the standard of 100 parts per billion.

These three years are a period when the I/M program both in Louisville and in Clark and Floyd Counties had been discontinued. Therefore, the air quality data from this period (and mobile source emission trends) provide a basis for concluding that the discontinuation of the I/M program has not interfered and will not interfere with attainment and maintenance of the 1-hour NO<sub>2</sub> standard. While the commenter did not address the annual average NO<sub>2</sub> standard, the annual average design value for the Louisville site is 14 parts per billion, well below the 53 parts per billion standard; thus EPA also finds that the discontinuation of the I/M program has not interfered and will not interfere with attainment and maintenance of the annual average NO<sub>2</sub> standard.

*Comment:* “From my point of view, these plans are good in different perspectives because the good is that it could help the state to cut down the budget for the two counties in I/M program as it doesn’t involve equipment and technologies to maintain it while

the bad thing is that the emission could destroy the ozone layer and harm people's health which is worse because people get sick and people that own the cars neglect to have their cars inspected as they don't have people to warn and check them so it has both pros and cons.

Even though, they keep the program as an emergency plan but for the best interest of the people or to prevent global warming, the state or EPA should study thoroughly about the advantages and disadvantages of the plans in order to prevent bad things from happening in the future. Although, it could help to save money but it could not save human's life when something bad happens. So for the best interest, it would be better not to remove the program but keep it to check once in a while or issue the people in those two counties a letter to have their cars inspected regularly according to state's law in order to make them alert and be aware of their vehicle's problem."

*Response:* EPA recognizes that there would be advantages as well as disadvantages to continuing to operate the I/M program in Clark and Floyd Counties. However, at issue in this rulemaking is whether discontinuation would be consistent with CAA provisions, including whether discontinuation might interfere with attainment and maintenance of air quality standards and whether other criteria for discontinuation of programs have been met. EPA notes that the NAAQS are required by the CAA to be set to protect public health with an adequate margin of safety, and that EPA is finding that approval of this revision will not interfere with attainment or maintenance of the NAAQS. EPA believes that the applicable criteria for discontinuation of the I/M program in Clark and Floyd Counties have been met and therefore the revision should be approved.

### III. What action is EPA taking?

EPA is taking final action to approve Indiana's demonstration that eliminating the I/M program in Clark and Floyd Counties will not interfere with the attainment and maintenance of the ozone NAAQS or with the attainment and maintenance of other air quality standards and requirements of the CAA. We are further approving Indiana's request to modify the SIP such that I/M is no longer an active program in Clark and Floyd Counties and is instead a contingency measure in the area's maintenance plan.

For the reasons stated in the proposed notice, EPA believes that Indiana has satisfied the requirements for

discontinuing I/M in Clark and Floyd Counties.

### IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct

costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 28, 2011. 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Volatile organic compounds.

Dated: April 20, 2011.

**Susan Hedman**,  
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

### PART 52—[AMENDED]

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

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

### Subpart P—Indiana

- 2. Section 52.777 is amended by adding paragraph (rr) to read as follows:

#### § 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

\* \* \* \* \*

(rr) Approval—EPA is approving a request submitted by the State of Indiana on October 10, 2006, and supplemented on November 15, 2006,

November 29, 2007, November 25, 2008, April 23, 2010 and November 19, 2010, to discontinue the vehicle inspection and maintenance (I/M) program in Clark and Floyd Counties. The submittal also includes Indiana's demonstration that eliminating the I/M programs in Clark and Floyd Counties will not interfere with the attainment and maintenance of the ozone NAAQS and the fine particulate NAAQS and with the attainment and maintenance of other air quality standards and requirements of the CAA. We are further approving Indiana's request to modify the SIP such that I/M is no longer an active program in these areas and is instead a contingency measure in this area's maintenance plan.

[FR Doc. 2011-10323 Filed 4-28-11; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2005-0308; FRL-8869-1]

#### Metiram; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of metiram in or on bananas and wine grapes. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective April 29, 2011. Objections and requests for hearings must be received on or before June 28, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2005-0308. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP

Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9367; e-mail address: [ertman.andrew@epa.gov](mailto:ertman.andrew@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>.

###### C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions

provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2005-0308 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 28, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2005-0308, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

##### II. Summary of Petitioned-For Tolerance

In the **Federal Register** issue of November 30, 2005 (70 FR 71829) (FRL-7747-2), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E6006) by BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide metiram: A mixture of 5.2 parts by weight of ammoniates of ethylenebis(dithiocarbamate) zinc with 1 part by weight ethylenebis(dithiocarbamic acid) bimolecular and trimolecular cyclic anhydrosulfides and disulfides, calculated as zinc ethylenebis(dithiocarbamate) in or on